

**MEMORANDUM OF UNDERSTANDING
RELATING TO
THE HANDLING AND TRANSPORT OF MATERIALS
USED OR RECOVERED DURING AN OIL SPILL
BETWEEN THE
DEPARTMENT OF FISH AND GAME'S
OFFICE OF SPILL PREVENTION AND RESPONSE
AND
THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

WHEREAS, The Administrator of the Office of Spill Prevention and Response within the Department of Fish and Game (hereinafter referred to as OSPR) and the Director of the Department of Toxic Substances Control (hereinafter referred to as DTSC) are interested in developing a preapproved process for the handling and transport of materials used or recovered during an oil spill response, including materials that may be classified as hazardous waste; and

WHEREAS, Both the Administrator of OSPR and the Director of DTSC share the same goal of minimizing any unnecessary deleterious impacts to the environment, or to the public health and safety; and

WHEREAS, The Administrator of OSPR has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the State; and

WHEREAS, The Director of DTSC has the primary authority for regulating the handling, transport, recycling, treatment, and disposal of all hazardous waste within the State; and

WHEREAS, Both the Administrator of OSPR and the Director of DTSC are required under State law to establish a process for the handling and transport of materials used or recovered during an oil spill response.

NOW, THEREFORE, the Administrator of OSPR and the Director of DTSC (the Parties) have reached the following Memorandum of Understanding (MOU) and clarification of existing law concerning the handling and transport of materials used, collected, or recovered during an oil spill response.

I. Definitions

The Parties agree that for the purposes of this MOU the following definitions will apply:

a. Emergency Permit

“Emergency permit” means a permit issued by the DTSC in accordance with Title 22, California Code of Regulations, Section 66270.61.

b. Federal On Scene Coordinator

“Federal On Scene Coordinator” means the federal designated representative from the U.S. Coast Guard or the U.S. Environmental Protection Agency who represents the federal government within the Unified Command.

c. Immediate Response

“Immediate response” means the time period when response activities are undertaken that are reasonably necessary to prevent, reduce, or mitigate damages to persons, property, or natural resources of this State due to a threatened or actual spill of oil and/or oily materials.

d. Incident action plan

“Incident action plan” means the document(s) that describe those response activities approved by the Incident Commander or Unified Command.

e. Incident Commander

“Incident Commander” means the state designated representative for coordinating response to oil spills. The Administrator of OSPR or his or her designee is the Incident Commander during a spill and represents the state within the Unified Command.

f. Oil and/or oily materials

“Oil and/or oily materials” means any substance, matter, or medium containing or permeated with any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oily water, oil mixed with waste, and liquid distillates from unprocessed natural gas.

g. Orphan spill

“Orphan spill” means a situation where a Responsible Party does not exist, is unknown, or the Responsible Party is unable or unwilling to provide adequate and timely cleanup and/or to pay for the damages resulting from the spill.

h. Response Activities

“Response activities” means those activities that render care, assistance, or advice in accordance with the National Contingency Plan (40 CFR 300 et seq.), the State Oil Spill Contingency Plan, or at the direction of the Incident Commander or Unified Command during an immediate response to a spill or threatened spill of oil and/or oily materials. Response activities are approved in the incident action plan and include for the purposes of this MOU, but are not limited to, separation, recovery,

containment, transfer, or transport of oil and/or oily materials to temporary storage sites.

i. Response Area

“Response area” means the area where response activities are occurring or will be occurring as designated and approved by the Incident Commander or Unified Command within the incident action plan. Response area may include, but is not limited to, the location(s) of temporary storage sites and areas associated with a response vessels or other vehicle routes to such sites.

j. Response personnel

“Response personnel” are those individuals or entities performing response activities. Response personnel includes, but is not limited to, all employees, agents, designees, or subcontractors of the Responsible Party, including oil spill cleanup organizations as well as local, state or federal agency employees, volunteer workers, or individuals or entities acting under the direction of the Incident Commander or the Unified Command.

k. Responsible Party

For the purposes of this MOU, “Responsible Party” means any of the following:

- (1) The owner or transporter of oil and/or oily materials or a person or entity accepting responsibility for the oil and/or oily materials; or
- (2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility; or
- (3) A person or entity who, as a shore-based representative of a vessel or facility owner or operator, has full written authority to implement an oil spill contingency plan or otherwise accepts responsibility for the vessel or marine facility.

To the extent permitted by law, oil spill response organizations are not considered a Responsible Party solely due to their performance of response activities authorized in this MOU.

l. Spill or discharge

“Spill” or “discharge” means any release of oil and/or oily materials into or any federal, state, or local government entity does not authorize that impacts state waters that.

m. Temporary Storage Site

“Temporary storage site” means an area or facility approved by the Incident Commander or Unified Command for characterizing and

temporarily storing recovered oil and/or oily materials used, collected, or recovered during an oil spill response. Such an area may include, but is not limited to, permitted or interim status hazardous waste storage facilities, other non-permitted facilities, vessels, barges, tanks, barrels, containers, storage piles, or other appropriate containment methods and locations that may be used to hold recovered oil and/or oily materials. Temporary storage sites need not be owned, operated, or leased by a Responsible Party.

n. Unified Command

“Unified Command” consists of the state Incident Commander, the Federal On Scene Coordinator and the Responsible Party. The Unified Command determines the procedures for directing personnel, facilities, equipment, and communications during the response, containment, and cleanup of an oil spill.

II. Implementation

The Parties agree that:

- a. The Director of DTSC will designate individual(s) (hereinafter DTSC representative(s)) in advance or when notified by OSPR, the Office of Emergency Services, or the U.S. Coast Guard that a threatened or actual spill or discharge of oil and/or oily materials has occurred who are authorized to implement and ensure compliance with all terms and conditions of this MOU.
- b. The DTSC representative(s) will immediately report to the Incident Commander or Unified Command for assignment where needed and represent the DTSC throughout the response, containment, and cleanup of the spill.
- c. The DTSC representative(s) will ensure that all appropriate federal, state, and local agencies are kept informed of potential or actual hazardous waste issues throughout the response and related disposal activities.
- d. The Administrator of OSPR agrees to take appropriate efforts to ensure that a Responsible Party reimburses DTSC for all reasonable and necessary response costs incurred and to fund the positions of all reasonably necessary DTSC personnel throughout the duration of an orphan spill.

III. Immediate Response Exemption

The Parties agree that:

- a. During an immediate response, all response activities conducted on water within the response area will be exempt from obtaining a hazardous waste facility permit pursuant to section 66270.1(c)(3)(A), Title 22,

California Code of Regulations, Division 4.5, and 66263 (hazardous waste manifesting) for treatment or containment activities.

- b. Response personnel will use the generator identification number issued for emergency response actions. However, other than the Responsible Party, owners and operators of response equipment, including but not limited to, tanker vessels, barges, or other waterborne craft, vacuum trucks, or other vehicles performing response activities shall not be deemed hazardous waste generators for the purposes of this MOU and shall not require generator identification numbers.
- c. During an immediate response all oil and/or oily materials used, collected, or recovered within the response area will be allowed to be expeditiously removed, transferred, or transported to temporary storage sites without uniform hazardous waste manifests.
- d. The immediate response exemption created in Article III shall be in effect at all times, for a period of up to thirty (30) days, while oil and/or oily materials are being recovered, transported, or transferred to temporary storage sites for material characterization. Additional thirty (30) day extensions may be granted under appropriate circumstances.

IV . Temporary Storage Sites

The Parties agree that:

- a. As soon as practicable once an immediate response has commenced, the Incident Commander or Unified Command will designate or approve temporary storage sites for storing all oil and/or oily materials used, collected, or recovered during a spill response.
- b. The Incident Commander will notify DTSC of all designated or approved temporary storage sites, and, to the extent practicable and feasible, will work in conjunction with the DTSC representative(s) and other state and local agencies to avoid any unnecessary deleterious impacts to the environment or threats to the public health and safety when designating or approving temporary storage sites.
- c. The Incident Commander will ensure that DTSC representatives have full access to all temporary storage sites to perform all appropriate regulatory activities.
- d. Permitted or interim status hazardous waste facilities, or other authorized facilities will obtain an emergency permit from DTSC to modify or necessitate modifying any existing permits issued by DTSC for acting as a temporary storage site. The Responsible Party will be liable for all costs associated with the emergency permit.
- e. Oil and/or oily materials stored or otherwise contained at temporary storage sites may not be transferred, transported, treated, disposed, processed, used or re-used, or otherwise utilized until the Incident

Commander or Unified Command authorizes such activities. Authorization will not be given until such materials have been characterized (as described in Article V.), and a volumetric determination of the amount of such materials recovered has been made or approved by the Incident Commander.

V. Material Characterization

The Parties agree that:

- a. Once the oil and/or oily materials have been contained at the temporary storage site, the Responsible Party, or, in the event of an orphan spill, the Incident Commander in conjunction with DTSC, must expeditiously determine:
 - (1) Those materials that are capable of being processed, used or re-used, or otherwise utilized as an ingredient in the manufacture of petroleum products or other products and therefore not a waste or hazardous waste; or
 - (2) Those materials that are waste but are nonhazardous waste; or
 - (3) Those materials that are hazardous waste.
- b. Materials capable of being processed, used or re-used, or otherwise utilized as an ingredient in the manufacture of petroleum products or other products will be expeditiously transported to any facility that is otherwise authorized during non-spills to perform such activities. Facilities performing such activities will obtain emergency permits from DTSC before processing, using or re-using, or utilizing such materials. The Responsible Party will be liable for all costs associated with the emergency permit.
- c. Recovered oil and/or oily materials deemed a waste by the Responsible Party, or by DTSC, must undergo chemical waste characterization as provided in Title 22, California Code of Regulations, sections 66264.13 and 66265.13, to determine whether the materials recovered are hazardous waste.
- d. Materials characterized as hazardous waste after undergoing characterization will be managed in accordance with all applicable statutes, regulations, or permits prior to and during transfer, or transport to a hazardous waste management facility.
- e. Notwithstanding V.(a)-(d) or any other provision of law, debris that is contaminated only with petroleum or any of its fractions is exempt from regulation under Chapter 6.5, of Division 20 of the Health and Safety Code if all of the following conditions are met:

- (1) The debris consists exclusively of wood, paper, textile materials, concrete rubble, metallic objects, or other solid manufactured objects.
- (2) The debris is not subject to regulation as a hazardous waste under the federal act.
- (3) The debris does not contain any free liquids, as determined by the paint filter test specified in the regulations adopted by the department.
- (4) The debris is disposed of in a composite lined portion of a waste management unit which is classified as either a Class I or Class II landfill in accordance with Article 3 (commencing with Section 2530) of Chapter 15 of Division 3 of Title 23 of the California Code of Regulations, the disposal is made in accordance with the applicable requirements of the California regional water quality control board and the California Integrated Waste Management Board, and, if the waste management unit is a Class II landfill, it is sited, designed, constructed, and operated in accordance with the minimum standards applicable on or after October 9, 1993, to new or expanded municipal solid waste landfills, which are contained in Part 258 (commencing with Section 258.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations, as those regulations read on January 1, 1996.

VI. Emergency Permit

The Parties agree that:

- a. Once oil and/or oily materials have been deemed hazardous waste at the temporary storage site(s), the DTSC representative will expeditiously determine if the storage of such materials creates an imminent and substantial endangerment to human health or the environment.
- b. If such determination is made, the DTSC representative will immediately issue an emergency permit to the Responsible Party, or to the Incident Commander in the event of an orphan spill, for the temporary storage site(s).
- c. The emergency permit will thereafter be valid throughout the duration of the response activities but in no case in excess of ninety (90) days unless extended in writing by DTSC pursuant to Title 22, California Code of Regulations, Section 66270.61.
- d. The emergency permit shall allow all response personnel to expeditiously perform all other response activities (within the scope of DTSC's authority) that are reasonably necessary to prevent, reduce, or mitigate damages to persons, property, or natural resources of this State including transfer, treatment, storage, resource recovery, or disposal of materials used, collected, or recovered during the oil spill response.

VII. Miscellaneous

The Parties agree that:

- a. The terms of this MOU may be changed at any time by the mutual consent of both Parties by a written, signed amendment hereto.
- b. In the event that individual and severable portions of this MOU are found to be in conflict with either State or Federal law, regulations or policies, and, therefore, of no effect, the MOU will remain in effect without those provisions unless either party notifies the other in writing that the entire MOU is terminated.
- c. Any action to modify, amend, or terminate this MOU may only be taken by the Administrator of OSPR and the Director of DTSC, or persons to whom this authority is specifically delegated by them.

FOR THE OFFICE OF OIL SPILL
DEPARTMENT OF
PREVENTION AND RESPONSE:
CONTROL:

FOR THE
TOXIC SUBSTANCES

Pete Bontadelli
Administrator

Jesse Huff
Director

FOR THE DEPARTMENT OF FISH
AND GAME: