

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEPARTMENT OF FISH AND GAME'S
OFFICE OF SPILL PREVENTION AND RESPONSE
AND THE
STATE WATER RESOURCES CONTROL BOARD
RELATING TO
DISCHARGES ASSOCIATED WITH RESPONSE ACTIVITIES
CONDUCTED PURSUANT TO CH. 7.4, DIVISION 1
OF THE GOVERNMENT CODE**

WHEREAS, The Administrator; of the Office of Spill Prevention and Response (hereinafter referred to as OSPR) and the Executive Director of the State Water Resources Control Board (hereinafter referred to as SWRCB), acting for the SWRCB and the Regional Water Quality Control Boards (RWQCBs), are directed by Government Code section 8670.7, as amended by Stats. 1993, ch. 736, to enter into a memorandum of understanding (MOU) to address discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and clean up of an existing or threatened oil spill in marine waters, conducted pursuant to Chapter 7.4, Division 1 of the Government Code; and WHEREAS, It is the intent of this MOU that all incidental discharges as defined herein shall occur within the response area in or proximate to the area in which the oil recovery activities are taking place for the purpose of returning any oily water back into the response area; and

WHEREAS, Both the Administrator of OSPR and the SWRCB 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 or threatening the marine waters of the State; and

WHEREAS, The SWRCB and the RWQCBs have the primary authority for regulating and ensuring the quality of the waters of the State; and

WHEREAS, This MOU is not effective until approved by the SWRCB and the Administrator of OSPR; and

NOW, THEREFORE, the Administrator of OSPR and the Executive Director of SWRCB (the Parties) have reached the following agreement and clarification of existing law concerning discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and clean of an oil spill in marine waters, pursuant to Chapter 7.4, Division 1 of the Government Code.

I. Definitions

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

a. **Incident Command System or Unified Command Structure:**

For the purpose of this section the terms “Incident Command System or Unified Command Structure” mean the procedures established for directing personnel, facilities, equipment, and communications during the response, containment, and cleanup of an oil spill incident in marine waters.

b. Incidental Discharge

“Incidental discharge” means the release of oil and/or oily water within the response area in or proximate to the area in which the oil recovery activities are taking place during and attendant to oil spill response activities. Incidental discharges include, but are not limited to, the decanting of oily water; in order to conserve oil storage capacity, and the wash down of vessels, facilities, and equipment used in the response

c. Marine Waters:

“Marine waters” include all waters defined as marine waters in California Government Code Section 8670.3(h) and all water otherwise within the jurisdiction of the Administrator of OSPR. under Chapter 7.4, Division 1 of the Government Code.

d. National Pollution Discharge Elimination System Permit (NPDES Permit):

An NPDES Permit is any permit issued by the SWRCB or the RWQCBs pursuant to California Water Code section 13370 et seq., as required or authorized by the Federal Clean water Act, Title 33 U.S.C. 1251 et seq.

e. Oily water:

Oily Water 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, oil mixed with waste, and liquid distillates from unprocessed natural gas. Waste includes, but is not limited to, seaweed, driftwood, debris, and other similar types of materials.

f. Response:

Response means the time period when response personnel, acting under the authority of the Administrator, the Federal On-Scene Coordinator, the State On-Scene Coordinator, through the Incident Command System or Unified Command Structure, are performing Response Activities that are reasonably necessary to prevent, reduce, or mitigate damages to persons, property, and/or natural resources of this State due to an oil spill incident in marine waters.

g. Response Activities:

Response Activities means those activities, consistent with the National Contingency Plan, the State Oil Spill Contingency Plan, or taken at the direction of the Administrator or Federal On-Scene Coordinator through the Incident Command System or Unified Command Structure, in response to a spill, that

entail the removal of oil from marine waters of the State. This includes all activities conducted on-water or onshore relating to the separation, recovery, containment, transfer, or treatment of marine waters of the State contaminated by oil and/or oily materials.

h. Response Area:

Response Area means the area of marine waters where response activities are occurring as defined by the daily work plan approved under the Incident Command System or Unified Command Structure by the Administrator, Federal On-Scene Coordinator, or State On-Scene Coordinator.

i. Waste Discharge Requirements

“Waste Discharge Requirements” are a set of requirements issued by the RWQCBs, pursuant to California water Code section 13260 et seq., regulating the discharge of waste that could affect state waters. Waste Discharge Requirements may be issued by the SWRCB upon the review of an action or failure to act by a RWQCB, pursuant to Water Code section 13320.

II. NPDES Permits

The Parties agree that:

The incidental discharges covered by this MOU are consistent with the State Contingency Plan and the National Contingency Plan. Incidental discharges as described in this MOU which are in compliance with the instructions of the On-Scene Coordinator, pursuant to the National Contingency Plan or the applicable Coast Guard regulations, are excluded from regulation under an NPDES permit, as provided by the Federal Environmental Protection Agency regulation 40 C.F.R. 122.3(d), are consistent with Federal laws and regulations, and do not constitute a prohibited discharge.

III. Waste Discharge Requirements

The Parties agree that:

a. It is in the public interest for the RWQCBs for the North Coast, San Francisco Bay, Central Coast, Los Angeles, Santa Ana and San Diego Regions to waive the issuance of waste discharge requirements for incidental discharges, within the response area during a spill response as provided in Water Code section 13269. The SWRCB will recommend such action to the RWQCBs.

b. Such discharges do not create a vested right to discharge, but rather such discharges are privileges, as provided by California Water Code section 13263(g).

IV. Miscellaneous

- a. The terms of this agreement may be changed at any time by the Parties by a written, signed amendment hereto with or without notice to any other person.
- b. Either party may terminate the agreement at any time without notice to any person other than the other party.
- c. No rights, duties, obligations, or liabilities enforceable at law are created by this agreement.
- d. This agreement does not alter, modify, abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the State of California.
- e. In the event that individual and severable portions of this agreement are found to be in conflict with either state or federal law, regulations or policies, and, therefore, of no effect, the agreement will remain in effect without those provisions unless either party notifies the other in writing that the entire agreement is terminated..
- f. Any action to modify, amend, or terminate this agreement may only be taken by the Administrator of OSPR and the Executive Director of SWRCB, or persons to whom this authority is specifically delegated by them. Any such modification is not effective until approved by the SWRCB.

FOR THE OFFICE OF OIL SPILL
PREVENTION AND RESPONSE:

Pete Bontadelli
Administrator
Date:

FOR THE STATE WATER RESOURCES
CONTROL BOARD:

Walt Pettit
Executive Director
Date:

State of California

M e m o r a n d u m

To : Ben D. Kor, NCRWQCB
Steven R. Ritchie, SFBRWQCB
Roger Briggs, CCRWQCB
Robert P. Ghirelli, LARWQCB
Gerard J. Thibeault, SARWQCB
Arthur L. Coe, SDRWQCB

Date: APR 28 1995

Walt Pettit
Executive Director

From : STATE WATER RESOURCES CONTROL BOARD
901 P Street, Sacramento. CA 95814 Mail Code G-8

Subject: WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR INCIDENTAL DISCHARGES ASSOCIATED WITH OIL SPILL RESPONSE ACTIVITIES

In 1993 the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act was amended to require that the Administrator of the Office of Spill Prevention and Response (OSPR) and the Executive Director of the State Water Resources Control Board (SWRCB) enter into a memorandum of understanding (MOU), which addresses all permits and other requirements pertaining to the incidental discharge of wastewater during oil spill response activities. An MOU was subsequently signed in 1995. A copy is attached for your reference as Attachment I.

The MOU addresses discharges of oily water which occur during oil spill response activities within or proximate to oil spill response areas. The MOU finds that these discharges are exempt from regulation under a National Pollutant Discharge Elimination System (NPDES) permit. The MOU also provides that the SWRCB will recommend that the coastal Regional Water Quality Control Boards (RWQCBs) waive the issuance of waste discharge requirements for these types of discharges.

The purpose of this memorandum is to request that you take appropriate action to amend the waiver resolution or water quality control plan, as appropriate, for your region to include incidental discharges on the list of discharges for which waste discharge requirements are waived. Waiver of this type of discharge would be in the public interest, as provided' in Water Code section 13269, because the issuances of waste discharge requirements under the circumstances could significantly impede oil spill cleanup. Also, the addition of incidental discharges to an RWQCB's waiver list could be considered categorically exempt from the California Executive Officers.

Environmental Quality Act, Public Resources Code section 21000, et seq. under the emergency project exemption. See 14 C.C.R. § 15269. The addition of incidental discharges to an RWQCB's waiver list would also be exempt from review by the Office of Administrative Law under the Administrative Procedure Act, Government Code section 11340, et seq. See Gov. Code § 11352(b).

Sample language for inclusion in the RWQCB's waiver resolution is contained in Attachment 2. Please contact Sheila Vassey, Senior Staff Counsel, in the Office of the Chief Counsel at (916) 657-2408 or Calnet 8-437-2408 if you would like further information regarding this matter.

Attachments (2)

cc: Pete Bontadelli Administrator Office of Spill Prevention and Response Department of Fish and Game
1700 K Street, Suite 250 Sacramento, CA 95814

Barry R. Ogilby Carlsmith, Ball, Wichman, Murray, Case & Ichiki
555 South Flower Street, 25th Floor Los Angeles, CA 90071-2326