

# Louisiana Oil Spill Prevention and Response Act, Ch. 19

Representatives T. Williams (Lead), Bembry, Braynon, Fresen, Legg, K. Roberson

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## Office of the Louisiana Oil Spill Coordinator

Louisiana's "Oil Spill Prevention and Response Act" (Act) creates the office of the Louisiana oil spill coordinator within the Office of the Governor. The coordinator is appointed by the Governor, subject to Senate confirmation.

The coordinator is charged with:

- developing a statewide oil spill prevention and response plan;
- providing a coordinated response effort from all appropriate state agencies;
- coordinating the operational implementation and maintenance of the oil spill prevention program;
- administering a fund to provide for paying for these activities;
- providing clear delineation for state-coordinated response efforts in relation to jurisdictional authorities and use of state and federal funds for removal costs;
- promulgating rules necessary for the administration of the Act;
- establishing procedures for hearings required by the Act; and
- adopting and enforcing regulations, relating to:
  - standards and requirements for discharge prevention programs and response capabilities of terminal facilities and vessels.
  - standards, procedures and methods consistent with federal law or regulations for designating persons in charge and reporting threatened or actual unauthorized discharges and violations of the Act.
  - standards, procedures, methods, means and equipment to be used in the abatement, containment and removal of pollution.
  - development and implementation of criteria and plans of response to unauthorized discharges, including realistically foreseeable worst-case scenarios consistent with federal regulations.
  - requirements for complete and thorough audits of vessel contingency and response plans covered by the Act.
  - requirements for complete and thorough inspections of terminal facilities covered by the Act.
  - certification of discharge cleanup organizations.
  - requirements for the safety and operation of vessels, motor vehicles, motorized equipment and other equipment involved in the transfer of oil at terminal facilities and the approach and departure from terminal facilities.
  - requirements that required containment equipment be on hand, maintained and deployed by trained personnel.
  - standards for reporting material changes in discharge prevention and response plans and response capability for purposes of terminal facility certificate reviews.

- such other rules and regulations consistent with the Act and appropriate or necessary to carry out the intent of the Act, consistent with federal law or regulations.

The coordinator is authorized to contract with public agencies or private persons or other entities, including entering into cooperative agreements with the federal government, contract for the purchase of goods or services, acquire and dispose of nonresponse related real or personal property, and delegate responsibility for implementing the requirements of the Act.

The coordinator may establish as a prerequisite for certification of any discharge cleanup organization, other than the Marine Spill Response Corporation and any discharge cleanup organization operated for profit or that has multi-state response jurisdiction, that the organization maintain on its governing body a minimum of two representatives from local governments within the area served by the organization.

### **Interagency Council**

The Louisiana oil spill coordinator must convene at least twice annually and serve as chairperson to an interagency council, composed of him/herself and the following:

- four people, who are not legislators, one selected by the chairman of various Senate and House committees;
- the secretary of the Department of Wildlife and Fisheries or his designee;
- the secretary of the Department of Public Safety and Corrections or his designee;
- the secretary of the Department of Natural Resources or his designee;
- the secretary of the Department of Environmental Quality or his designee;
- the attorney general or his designee, who shall serve as a nonvoting member;
- the executive assistant for coastal activities in the Office of the Governor;
- the executive assistant for environmental affairs in the Office of the Governor;
- an assistant director of the Governor's Office of Homeland Security and Emergency Preparedness designated by the director of the office, or the director if there is no assistant director

The council is charged with considering matters relating to the coordination of state prevention, response, and cleanup operations related to unauthorized discharges of oil, including but not limited to:

- assisting the coordinator in the development of a statewide oil spill prevention and contingency plan;
- assisting the coordinator in preparing an annual work plan, identifying state agency needs which must be met in order to comply with the state oil spill contingency plan;
- developing recommendations for additional legislation; and
- assisting the coordinator in preparing a budget necessary to implement the provisions of the Act.

### **State Oil Spill Contingency Plan**

The coordinator is charged with developing and distributing a state oil spill contingency plan. In addition, the state departments of Environmental Quality, Wildlife and Fisheries, Natural Resources, and Public Safety and Corrections are required to recommend provisions of the plan with regard to their

particular areas of jurisdiction. The plan is required to conform to the national contingency plan and rules promulgated under federal law, to the greatest extent practicable. The coordinator may impose requirements under the state oil spill contingency plan that are in addition to or vary materially from federal requirements if the state interests served by the requirements substantially outweigh the burdens imposed on those subject to the requirements. The plan must be filed with all state agencies participating in response operations and federal officials responsible for federal discharge response within waters of the state, and local political subdivisions deemed appropriate by the coordinator. The coordinator is required to provide for clear designation of responsibilities and jurisdiction and avoid unnecessary duplication and expense.

The plan must be fully operational and implemented not later than one year after the latest effective date of the area and regional contingency plans designated for the state pursuant to federal law and implemented by the United States Coast Guard and Environmental Protection Agency.

The state contingency plan is required to contain the following:

- detailed emergency operating procedures for initiating actions in response to unauthorized discharges;
- a response command structure and state response team;
- an inventory of public and private equipment and its location and a list of available sources of supplies necessary for response;
- a table of organizations with the names, addresses and telephone numbers of all persons and agencies responsible for implementing each phase of the plan and provisions for notification to such persons and agencies in the event of an unauthorized discharge;
- plans for practice drills for the response command structure and the state response team;
- establishment of a single state hotline for reporting incidents that will satisfy all state notification requirements;
- provisions for notifying the Department of Environmental Quality;
- plans for volunteer coordination and training;
- use of both proven and innovative prevention and response methods and technologies;
- the circumstances under which a discharge may be declared to be a state of emergency;
- the circumstances under which an unauthorized discharge may be declared to be abated and pollution may be declared to be satisfactorily removed;
- designation of environmental and other priority zones to determine the sequence and methods of response and cleanup;
- procedures for disposal of removed oil or hazardous substances;
- procedures established in cooperation with the Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources for assessment of natural resources damages and plans for mitigation of damage to and restoration, protection, rehabilitation, or replacement of damaged natural resources;
- provision for the participation and involvement of the appropriate local governmental authorities that may be affected by or involved in the prevention, response and removal of an oil spill; and
- any other matter necessary or appropriate to carry out response activities, including but not limited to preapproval of the use of dispersants.

## **Oil Spill Prevention and Response**

On notification of an actual or threatened unauthorized discharge of oil, the coordinator is required to take immediate action to assess the discharge and prevent, abate or contain any pollution from the discharge. The coordinator, in consultation with the Department of Environmental Quality, is authorized to administer the Act and direct all state discharge response and cleanup operations resulting from unauthorized discharges of oil or threatened unauthorized discharges of oil in coastal waters, the land, or any other waters of Louisiana as directed by the governor or upon a declaration of emergency as declared by the governor. The Department of Environmental Quality, under the direction and control of the coordinator, is the lead technical agency of the state for response and cleanup. In the event of an unauthorized discharge of oil, nothing in the Act precludes the Department of Environmental Quality from, at the earliest time practicable, assuming response and cleanup duties for the discharge, provided the coordinator is notified within 24 hours.

### Notification and response

A person responsible for an unauthorized discharge of oil or in charge of any vessel or a terminal facility from or at which an unauthorized discharge of oil has occurred, as soon as that person has knowledge of the discharge, is required to:

- immediately notify the hotline (emergency telephone number established in accordance with the provisions of the Act to respond to a threatened or unauthorized discharge of oil) of the discharge; and
- undertake all reasonable actions to abate, contain and remove pollution from the discharge.

If the persons responsible or in charge are unknown or appear to the coordinator to be unwilling or unable to abate, contain and remove pollution from an unauthorized discharge of oil in an adequate manner, the coordinator may abate, contain and remove pollution from the discharge and may contract with and appoint agents who operate under his/her direction.

### Response coordination

The coordinator is required to appoint a state-designated on-scene coordinator to act in the his/her absence. If the unauthorized discharge of oil is subject to the national contingency plan, in responding to the discharge the coordinator is required to act in accordance with the national contingency plan as is practicable under the circumstances and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority. The coordinator may act independently to the extent no federal on-scene coordinator or authorized agency or official of the federal government has assumed federal authority to oversee, coordinate and direct response and cleanup operations. The coordinator may act to protect any interests of the state that are not covered by the national contingency plan, and are consistent with the state or national contingency plans.

### Assistance and compensation

Subject to the coordinator's authority, any person or discharge cleanup organization may assist in abating, containing or removing pollution from any unauthorized discharge of oil. Any person or discharge cleanup organization that renders such assistance may receive compensation from the fund for removal costs, provided the coordinator approves compensation prior to the assistance being rendered. Prior approval for compensation may be provided for in the state oil spill contingency plan. The coordinator, on petition and for good cause shown, may waive the prior approval prerequisite.

### Qualified immunity for response actions

No action or omission taken by any person (including any discharge cleanup organization) to respond to pollution from a discharge of oil to or consistent with the request of an authorized federal or state official, or pursuant to or consistent with the request of the responsible person, is to be construed as an admission of responsibility or liability for the discharge.

Notwithstanding any other provision of law, and except for the responsible person, no person, including any discharge cleanup organization, that responds to pollution from a discharge of oil is liable for removal costs, damages or civil penalties, resulting from acts or omissions committed in rendering such care, assistance or advice. This provision does apply to actions for personal injury or wrongful death or for acts or omissions of gross negligence or willful misconduct. A party responsible for the initial discharge is liable for any removal costs or damages.

### Limitation of liability

The total of the liability of a responsible party for all damages and removal costs may not exceed the following:

- For a tank vessel, the greater of:
  - One thousand two hundred dollars per gross ton; or
  - In the case of a vessel greater than three thousand gross tons, ten million dollars.
  - In the case of a vessel of three thousand gross tons or less, two million dollars.
- For any other vessel, six hundred dollars per gross ton or five hundred thousand dollars, whichever is greater.
- For an offshore facility except a deepwater port, the total of all removal costs plus seventy-five million dollars.
- For any onshore facility or a deepwater port, three hundred fifty million dollars; provided that, for onshore facilities, where the president of the United States has established a limitation of less than three hundred fifty million dollars.

These limits of liability do not apply if the incident was primarily caused by gross negligence or willful misconduct of, or the violation of an applicable federal, state, or local safety, construction or operating regulation.

## **Natural resource damages**

In any action to recover natural resources damages, the coordinator, in consultation with any other state trustees, is required to make the determination whether to assess natural resource damages and the amount of damages according to the procedures and plans contained in the state oil spill contingency plan. Such determination creates a rebuttable presumption of the amount of such damages.

The coordinator, in consultation with the state trustees, is required to develop an inventory that identifies and catalogs the physical locations, the seasonal variations in location, and the current condition of natural resources; provides for data collection related to coastal processes, abandoned pits, facilities, sumps, reservoirs and oil spills; and identifies the recreational and commercial use areas that are most likely to suffer injury from an unauthorized discharge of oil. The inventory is incorporated into the state oil spill contingency plan.

The responsible party is required to make full payment or initiate restoration, rehabilitation, replacement or mitigation of damages to natural resources.

### Regional Restoration Planning Program

To assist in making the natural resource damage assessment process more efficient, a Regional Restoration Planning Program, encompassing the entire geographic area of the state, is established in the office of the oil spill coordinator. The office of the oil spill coordinator is required to develop and implement the program in coordination with the state natural resource trustees.

### Natural Resource Restoration Trust Fund

The Natural Resource Restoration Trust Fund was established to fulfill the Louisiana constitutional mandate to protect, conserve and replenish the natural resources of the state. The treasurer pays into the fund an amount equal to the amount of all restoration monies received by the office of the oil spill coordinator from natural resource damage assessments. The monies in this fund are invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies remains in the fund. The amounts placed in the fund are separate from the Oil Spill Contingency Fund.

## **Defenses**

A person is not liable under the Act if the discharge resulted solely from any of the following:

- an act of God, war, or terrorism;
- an act of government, either state, federal or local;
- an unforeseeable occurrence exclusively occasioned by the violence of nature without the interference of any human act or omission;
- the willful misconduct or a negligent act or omission of a third party, other than an employee or agent of the person responsible or a third party whose conduct occurs in connection with a

- contractual relationship with the responsible person, unless the responsible person failed to exercise due care and take precautions against foreseeable conduct of the third party; or
- any combinations of the first three circumstances.

### **Oil Spill Contingency Fund**

The purpose of the Oil Spill Contingency Fund is to immediately provide available funds for response to all threatened or actual unauthorized discharges of oil, for cleanup of pollution from unauthorized discharges of oil, natural resources damages, damages sustained by any state agency or political subdivision, and removal costs from threatened, unauthorized discharges of oil. All fees, taxes, penalties, judgments, reimbursements, charges and federal funds collected pursuant to the provisions of the Act are deposited immediately upon receipt into the state treasury.

After compliance with the requirements of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited, and monies appropriated by the legislature are credited to the Oil Spill Contingency Fund. The monies in this fund are invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies remain in the fund. Money in the fund may be disbursed for the following purposes and no others:

- administrative and personnel expenses of the office of the coordinator, excluding those of the oil spill technical assistance program, not to exceed \$600,000 in any fiscal year;
- removal costs related to abatement and containment of actual or threatened unauthorized discharges of oil incidental to unauthorized discharges of hazardous substances;
- removal costs and damages related to actual or threatened unauthorized discharges of oil;
- protection, assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources damaged by an unauthorized discharge of oil; and
- grants for interagency contracts not to exceed seven hundred fifty thousand dollars in any fiscal year.

### **Oil Spill Contingency Fee**

The Oil Spill Contingency Fee is imposed on every person owning crude oil in a vessel at the time such crude oil is transferred to or from a vessel at a marine terminal within the state of Louisiana. This fee is in addition to all taxes or other fees levied on crude oil.

The operator of the marine terminal collects the fee from the owner of the crude oil and remits the fee to the Department of Revenue. The fee is imposed only once on the same crude oil. The fee is paid quarterly by the last day of the month following the calendar quarter in which liability for the fee is incurred. Fees collected during a quarter must be remitted to the state even if the fee is suspended during that quarter. For the expenses of collecting this fee, the operator is authorized to withhold one and one-half percent of the fees collected during each quarter provided that the amount due was not delinquent at the time of payment.

### Determination of fee

Except as otherwise by the Act, the rate of the fee is two cents per barrel of crude oil until the state treasurer certifies that the balance in the fund has reached seven million dollars. The fee is not be collected or required to be paid on or after the first day of the second month following the treasurer's certification to the secretary of the Department of Revenue.

If the balance in the fund falls below five million dollars, the secretary resumes collecting the fee.

The fee is levied at the rate of four cents per barrel if:

- The balance in the fund is less than five million dollars.
- An unauthorized discharge of oil in excess of one hundred thousand gallons has occurred within the previous 30 days as certified by the coordinator.

### Liability of the fund

The fund is liable for the following removal costs and damages, provided that such are not recoverable under the federal Oil Pollution Act of 1990 (P.L. 101-380) and the claimant has exhausted all federal remedies: (1) All authorized, proven, reasonable damages and removal costs incurred by state agencies or local governing authorities from a threatened or unauthorized discharge of oil. (2) All natural resources damages from an unauthorized discharge of oil.

### Reimbursement of fund

The coordinator is required to diligently pursue reimbursement to the fund of any sum expended or paid from the fund in accordance with the state and national oil spill contingency plans.

The coordinator is required to recover for the use of the fund, either from persons responsible for the unauthorized discharge or otherwise liable, or from the federal Oil Spill Liability Trust Fund, all sums owed to or expended from the fund. The coordinator is required to seek reimbursement from the federal fund for damages to natural resources in excess of the liability limits prescribed by the Act. If that request is denied or additional money is required following receipt of the federal money, the coordinator has the authority to pay the requested reimbursement from the fund for a period of two years from the date the federal fund grants or denies the request for reimbursement.