



SHIPPING | MARCH 2021

OIL SPILL-RELATED CRIMINAL FINES DOUBLED IN THE GOLDEN STATE

Liability for ship-sourced oil pollution in the U.S. is subject to both federal and state law. The State of California recently enacted significantly increased criminal penalties for oil-spill related offenses in California waters.

The Oil Pollution Act of 1990 (33 U.S.C. 2701-2761) ("**OPA 90**") amends the Clean Water Act to address prevention and response mechanisms of large oil spills and create a liability and compensation regime for oil pollution within the navigable waters of the United States. OPA 90 violations can carry criminal penalties for vessel owners, operators and crewmembers.

OPA 90 allows individual U.S. states to impose and enforce their own liability regulations concerning oil pollution spills that occur within the state's jurisdiction. Under the OPA 90 model, vessel operators could be liable under both federal and state law for pollution incidents within state waters.

California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the "**LOSPRA**") recently made two significant changes: (1) doubled the existing minimum and maximum fines and (2) provided California courts with the opportunity to impose additional criminal fines.

- Under the prior California law, the oil spill related violations could be criminally punished with fines between \$5,000 to \$500,000. Under the new law, the state **must** impose a fine between \$10,000.00 to \$1,000,000.00 per day.
- The new law **permits** courts to impose an additional fine of up to \$1,000 per gallon spilled.

The amendments only affect fines. The underlying offense relates to "persons," which includes individuals and corporate actors, who knowingly:

- fail to follow the direction or orders of the administrator in connection with an oil spill;
- fail to notify the Coast Guard that a vessel is disabled within one hour of the disability, and the vessel, while disabled, causes a discharge of oil that enters marine waters;
- engage in or cause the discharge or spill of oil into waters of the state, or a person who reasonably should have known that the person was engaging in or causing the discharge or spill of oil into waters of the state;
- fail to begin cleanup, abatement, or removal of spilled oil.

The amended bill is available [here](#).

California has taken a strong stance regarding oil spills and fines in the past; for instance, in 2007 when the *M/V Cosco Busan* containership crashed into a tower of the Bay Bridge. The crash resulted in the release of almost 60,000 gallon of heavy bunker fuel into the bay and the owners and operators of the vessel were required to pay \$44.4 million for damages and penalties.

The latest major oil spill in California, also known as the 2015 Refugio oil spill, occurred along the shore of Santa Barbara when a pipeline ruptured and 140,000 gallons of oil spilled into the Pacific Ocean. In 2019, the pipeline company was sentenced to pay \$3.3 million in fines and penalties.

How the LOSPRA amendments will be applied to future spills remains to be seen. The LOSPRA amendment render it clear that in an oil spill both criminal and civil liability may attach.

Early risk assessment is critical. As with any pollution incident, vessel operators must conduct a diligent investigation with the assistance of counsel. Depending on the nature of the incident, stakeholders should also consider retaining a criminal defense attorney as well.

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