

[Assembly Bill 815](#) (Ridley-Thomas)

Date: Enrolled

Program: Oil Spill Prevention and Administration Fee

Sponsor: Board of Equalization

Government Code Sections 8670.40 and Revenue and Taxation Code Sections 46008, 46018, and 46101

Effective: January 1, 2016

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**Summary:** Clarifies who owes and pays the oil spill prevention fee, excludes petroleum products derived from fee-paid crude oil, and deletes unnecessary oil pipeline operator registration requirements. The bill also defines certain terms in the Revenue and Taxation Code.

**Purpose:** To reduce confusion and clarify the intent of last year's budget trailer bill, Senate Bill 861.<sup>1</sup>

**Fiscal Impact Summary:** Does not impact oil spill prevention fee revenues.

**Existing Law:** Existing law<sup>2</sup> imposes an oil spill prevention fee on each barrel of crude oil received from within or outside the state. The fee is also imposed on petroleum products received from outside the state at a marine terminal by any mode of delivery, provided it passed over, across, under, or through waters of the state. Marine terminal operators collect the fee from the owner of the crude oil or petroleum products, based on each barrel of crude oil received from within or outside the state, or petroleum products received from outside the state at a marine terminal by any mode of delivery that has passed over, across, under, or through waters of the state.

Additionally, the prevention fee is collected by the refinery owner from the crude oil or petroleum products owner at the time it is received at a refinery within the state by any mode of delivery that has passed over, across, under, or through waters of the state, whether from within or outside the state.

There is a rebuttable presumption that crude oil or petroleum products received at a marine terminal or refinery has passed over, across, under, or through waters of the state. The presumption may be overcome by the marine terminal or refinery operator, or the owner of the crude oil or petroleum products, by providing evidence to rebut the presumption.

Although the BOE generally hears petitions for redetermination and claims for refund, the BOE will not hear challenges to the rebuttable presumption. Instead, the BOE will forward such petitions or claims to the Administrator for a decision.

As a Governor's appointee in the Department of Fish and Wildlife, the Administrator annually sets the fee rate. The current fee rate cap is \$0.065 per gallon.<sup>3</sup> The Administrator is required to prepare a plan that projects revenues and expenses over three fiscal years. The fee amount is set so that the projected revenue will meet current and proposed state budget needs. The Administrator may also allow for a surplus if revenues will not be adequate to meet contingencies and shortfalls.

The refinery, marine terminal, and pipeline operators must each register with the BOE.<sup>4</sup> The owner of the crude oil or petroleum products, the marine terminal operator, or the refinery operator pays the fee monthly to the BOE. If the fee has been previously collected or paid on the crude oil or petroleum

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<sup>1</sup> [SB 861](#), Ch. 35, Stats. 2014.

<sup>2</sup> Government Code (GC) Section 8670.40, as enacted by SB 861. See [BOE analysis of SB 861](#) for statutory changes enacted by that bill.

<sup>3</sup> The cap was scheduled to reduce to \$0.05 on January 1, 2015, before the enactment of SB 861. Effective September 18, 2014, the fee cap remained at \$0.065.

<sup>4</sup> The Oil Spill Prevention and Administration Fee is administered and collected by the BOE consistent with Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code (RTC). Article 2, Section 46101 of the RTC, requires these same fee payers to register with the BOE.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

products at another marine terminal or refinery, the fee will not be imposed or collected again. The marine terminal or refinery operator or the owner of the crude oil or petroleum products has the obligation to demonstrate that the fee has been previously paid on the same crude oil or petroleum product.

Fees are deposited into the Oil Spill Prevention and Administration Fund to pay for oil spill prevention programs and studies. However, a separate fee funds oil spill response activities.

**Proposed Law:** This bill amends GC Section 8670.40(b)(4) to delete the provision that allows the owner of the crude oil or petroleum product to pay the fee to the BOE. The bill also amends GC Section 8670.40(b)(5) so that a marine terminal and refinery operator may presume that the prevention fee has been imposed on petroleum products derived from fee-paid crude oil refined at a California refinery.

This bill deletes GC Section 8670.40(h) and amends RTC Section 46101 to clarify that pipeline operators are not required to register for and pay the *prevention* fee, but are required to register for the oil spill *response* fee program.

Proposed RTC Section 46008 defines “barrel” to clarify the unit of measurement of crude oil and petroleum products upon which the fee is imposed. The bill deletes RTC Section 46018 which defines “oil,” as it is unnecessary for BOE administration and is already defined in the Government Code.

This bill is effective January 1, 2016.

**Background:** Currently, the prevention fee is imposed on crude oil received at a marine terminal or refinery. The prevention fee is also imposed on petroleum products received at a refinery, whether from within or outside the state, and on petroleum products received from outside the state at a marine terminal. While SB 861 expanded the prevention fee to crude oil and petroleum products received at the refinery, the bill also added provisions that prevent the fee from being imposed or paid twice on the same crude oil or petroleum products. However, current law is not clear that petroleum products derived from fee-paid crude oil, once refined, are not subject to the fee. BOE staff believes the petroleum products derived from fee-paid crude oil are a new and distinct product and therefore subject to the prevention fee. In contrast, both the Administrator<sup>5</sup> and the oil industry<sup>6</sup> interpret Section 8670.40(b)(5) to mean that the prevention fee is not collected by a marine terminal or refinery operator on petroleum products derived from fee-paid crude oil, as the petroleum products derived from fee-paid crude oil are the same molecules and therefore, are fee-paid.

As stated in its AB 2678 analysis, BOE staff believes that legislative intent language alone may be ineffective to relieve industry from the requirement to document that the prevention fee previously was paid on petroleum products derived from fee-paid crude oil. Therefore, statutory guidance is necessary to clarify the issue.

## Commentary:

- 1. Effect of the bill.** This bill makes several administrative changes that reduce confusion and clarify the intent of SB 861. Since the passage of last year’s budget trailer bill, SB 861, the BOE has worked with the Department of Fish and Wildlife and the affected industries to implement the expansion of the oil spill prevention fees from only marine waters to all waters of the state, and to include crude oil and petroleum products received at a refinery in this state.

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<sup>5</sup> Department of Fish and Wildlife’s Office of Spill Prevention and Response (OSPR) is responsible for implementation of SB 861. OSPR submitted an emergency regulation, operative October 23, 2014, that clarifies that the prevention fee is not intended to be imposed on petroleum products derived from fee-paid crude oil.  
[https://govt.westlaw.com/calregs/Document/I1976B700622511E494DF8E988D408861?viewType=FullText&originatio nContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I1976B700622511E494DF8E988D408861?viewType=FullText&originatio nContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

<sup>6</sup> Clean up language in [AB 2678 \(Ridley-Thomas, 2014\)](#) contained legislative intent stating the prevention fee is imposed on crude oil or petroleum products upon first entry into the state and not upon subsequent movement of that same oil or products derived after that first delivery.

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2. **The marine terminal and refinery operator currently collect the fee.** The marine terminal and refinery operator collect the fee from the owner of the crude oil or petroleum products. To avoid confusion or overpayment, this bill deletes the provision that allows the owner of the crude oil or petroleum products to pay the fee to the BOE.
3. **Clarifies intent of SB 861.** This bill specifies that a marine terminal and refinery operator may presume that the fee has been imposed on petroleum products derived from fee-paid crude oil refined in California. The change provides clear guidance consistent with Department of Fish and Wildlife regulations and supported by the affected industry.
4. **Clarifies registration requirements for pipeline owners.** The oil spill prevention fee is no longer imposed on pipeline operators; therefore, this bill does not require them to register with the BOE for that program.

**Administrative Costs:** Any costs associated with this bill are absorbable.

**Revenue Impact:** This bill does not impact oil spill prevention fee revenues.