

MINUTE ITEM

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CONSIDER EMERGENCY REGULATIONS GOVERNING
ALL MARINE TERMINALS IN CALIFORNIA

Calendar Item 10, concerning the adoption of emergency regulations, came before the Commission. The Commission was informed that, if any language was changed subsequent to the Commission's adoption of the regulations, further action by the Commission would be required, thereby delaying the effective date of the regulation.

Staff assured the Commission that modifications could be made during the process whereby the emergency regulations were made permanent. After hearing the testimony of Ted Shettler, Government Relations Consultant for Arco Transportation Co., and following some discussion, the Commission adopted the emergency regulations as proposed by staff 3-0.

A)

(Statewide

S)

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MINUTE ITEM
This Calendar Item No. 10
was approved as Minute Item
No. 10 by the State Lands
Commission by a vote of 3
to 2 of its 7-23-91
meeting.

CALENDAR ITEM

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CONSIDER EMERGENCY REGULATIONS GOVERNING
ALL MARINE TERMINALS IN CALIFORNIA

PROPOSAL

The Commission Staff is proposing, pursuant to the recently enacted Lempert-Keene-Seastrand Oil Spill Prevention and Response Act ("the Oil Spill Act"), adoption of a set of emergency regulations governing all marine terminals in the State. As emergency measures, these regulations would be in effect for only 120 days.

BACKGROUND

On September 24, 1990, the State of California enacted the Oil Spill Act, which establishes a comprehensive program for the prevention of and response to oil spills in California's marine waters. Among the provisions of the Act is Division 7.8 of the Public Resources Code, which requires the Commission to establish regulation and inspection programs governing all marine oil terminals in the State. To carry out these provisions, the Commission has created the Marine Facilities Inspection and Management Division ("the Division").

Ultimately, the Commission must establish long term, comprehensive regulations meeting the "best achievable protection" standards of the Oil Spill Act. However, planning, studies and coordination with other agencies will likely delay full implementation of the Act until sometime in 1992.

In the meantime, establishment of some regulations will help the Division curtail the incidence of oil spills which may arise from ongoing oil transfer activities at terminals. The Eleventh Coast Guard District receives reports, on average, of nearly three oil spills each day in navigable waters within and offshore of California. Many of these are associated with terminal operations. Given immediate establishment of these regulations, a significant portion of these spills may be avoided during their four-month period of effectiveness.

The Legislature recognized the need for immediate action when it enacted the Oil Spill Act as an urgency measure. The Legislature found, among other items, that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas, that emphasis must be put on prevention if the risk and consequences of oil spills are to be minimized, and that immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

If the Commission adopts these regulations, they would continue to operate while the Staff initiates and carries out the regular process to ensure these same or substantially similar measures remain in effect until a permanent, comprehensive regulatory program can be developed. During consideration of these interim measures, the public and other agencies would have an opportunity to comment and make recommendations pursuant to both the Oil Spill and Administrative Procedures Acts. Any appropriate modifications could then be incorporated into the interim regulations, which, if approved by the Commission, would be in place in September, 1991. Ultimately, they would in turn be replaced by a comprehensive, coordinated and long term regulatory program sometime in 1992.

PROPOSED REGULATIONS

The regulations contain five sections:

1. The first section contains definitions.
2. The second section establishes, in regulation, the Marine Facilities Inspection and Management Division.
3. The third section requires that all terminal operators in the state comply with all federal, state, and local regulations governing terminal operations. Particular reference is made to 33 CFR Parts 154, 155 and 156, the governing Coast Guard regulations. By incorporating the federal measures, the Commission will be able to ensure that terminals are operated at least to standards currently in effect. The Act requires the Commission to establish controls in accordance with "best achievable protection" standards, but a complete evaluation of how to meet that goal cannot be taken in time to ensure immediate action toward oil spill prevention. Until the long term regulatory program is developed, this regulation will enable the Division to

work with the Coast Guard to ensure enforcement of existing controls.

4. The fourth section delineates the Commission's inspection and monitoring program under P.R.C. §8757. This clarifies the terminal operator's obligations to ensure the Division's inspectors have the access to inspect the terminals and monitor all aspects of transfer operations.
5. The last section requires terminal operators to give the Division advance notification of any transfer operations, to allow inspectors to be deployed.

STATUTORY REFERENCES:

- A. P.R.C. Sections 8750 through 8760.
- B. Title 33, United States Code Sections 1251 through 1387.
- C. P.R.C. Section 21084

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 8, actions taken by a regulatory agency as authorized by State or local ordinance to assure the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment, 14 Cal. Code Regs 15308.

Authority: P.R.C. 21084 and 14 Cal. Code Regs. 15300.

EXHIBIT:

- A. Copy of the Proposed Regulations.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 8, AN ACTION TAKEN BY A

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REGULATORY AGENCY AS AUTHORIZED BY STATE OR LOCAL ORDINANCE TO ASSURE THE MAINTENANCE, RESTORATION, ENHANCEMENT, OR PROTECTION OF THE ENVIRONMENT WHERE THE REGULATORY PROCESS INVOLVES PROCEDURES FOR THE PROTECTION OF THE ENVIRONMENT, 14 CAL. CODE REGS 15308.

2. FIND THAT AN EMERGENCY EXISTS, AND THAT THE REGULATIONS, A COPY OF WHICH IS ATTACHED AS EXHIBIT "A", ARE NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH AND SAFETY, OR GENERAL WELFARE.
3. ADOPT THE REGULATIONS, A COPY OF WHICH IS ATTACHED AS EXHIBIT "A", AS EMERGENCY REGULATIONS, EFFECTIVE IMMEDIATELY UPON FILING WITH THE SECRETARY OF STATE, AND REMAIN IN EFFECT FOR 120 DAYS THEREAFTER, PURSUANT TO GOVERNMENT CODE SECTION 11346.1.
4. DIRECT STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE, PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT, GOVERNMENT CODE SECTIONS 11340 THROUGH 11356, TO ESTABLISH INTERIM REGULATIONS SUBSTANTIALLY IN THE FORM OF THOSE CONTAINED IN EXHIBIT "A", WHICH COULD REMAIN IN EFFECT UNTIL REPEALED OR SUPERSEDED BY SUBSEQUENTLY ADOPTED REGULATIONS.

EMERGENCY REGULATIONS FOR TERMINAL OPERATIONS

ARTICLE 5. MARINE FACILITIES INSPECTION AND MANAGEMENT

2300. DEFINITIONS.

Unless the context requires otherwise, the following definitions govern the construction of this article:

- (a) "Administrator" means the Administrator for Oil Spill Response, as referenced in P.R.C. §8750, subsection (a).
- (b) "Barge" means any waterborne vessel which is not self-propelled and which is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo. Where reference is made to the crew of a barge, that reference means the crew of both the barge and the tug being used to propel the barge.
- (c) "The Division" means the Marine Facilities Inspection and Management Division.
- (d) "Offshore terminal" means any terminal at which transfers are made to or from a vessel while it is made fast to a buoy or buoys.
- (e) "Transfer" means any movement of oil between a terminal and a vessel, including the movement of the oil within any part of the terminal or any part of the vessel while oil is moving between the terminal and the vessel.
- (f) "Transfer operations" means the following:
 - (1) For all terminals, all activities carried out with regard to a transfer, including, but not limited to, the following:
 - (A) Preparation for transfer;
 - (B) Hookup and disconnect of hoses, mechanical loading arms and any other equipment used for transferring oil; and
 - (2) For offshore terminals, the approach, mooring and departure of the vessel to and from the terminal,

as defined in the facility operations manual, as well as those items specified in subdivision (1).

- (g) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Note: Authority: Sections 6005, 6105, 6108, 6216, 6301, 6321, 6501, 6501.1, 6501.2, 8751, 8755 and 8757, Public Resources Code

Reference: Sections 6216, 6501.1, 6501.2, 8750, 8751, 8755 and 8757, Public Resources Code.

2301. THE MARINE FACILITIES INSPECTION AND MANAGEMENT DIVISION.

- (a) There is in the Staff of the Commission the Marine Facilities Inspection and Management Division, which has the primary responsibility for carrying out the provisions of the Act within the Commission's jurisdiction.

- (b) The primary office of the Division is at 330 Golden Shore, Suite 210, Long Beach, California 90802, telephone (213) 499-6312.

Note: Authority: Sections 6005, 6105, 6108, 6216, 6301, 6321, 6501, 6501.1, 6501.2, 8751, 8755 and 8757, Public Resources Code

Reference: Sections 6216, 6501.1, 6501.2, 8750, 8751, 8755 and 8757, Public Resources Code.

2302. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS.

All terminal operators shall comply with all applicable regulations of the U.S. Coast Guard with regard to oil pollution prevention during transfer operations, including, but not limited to, the provisions under Title 33 of the Code of Federal Regulations, Parts 154, 155 and 156, and with all state and local marine pollution prevention regulations, except for local regulations in conflict with federal or state law.

Note: Authority: Sections 8751, 8755 and 8757, Public Resources Code.

Reference: Sections 8750, 8751, 8755 and 8757,
Public Resources Code.

2303. INSPECTIONS AND MONITORING.

- (a) The Division shall carry out an inspection program which shall include the following:
- (1) At least once a year, the Division shall cause to be carried out an inspection of each terminal in the state to determine whether all parts of the terminal are being maintained and operated in such a manner as insure the public health and safety and the protection of the environment, and in accordance with the operations manual required and approved under federal regulations.
 - (2) On a continuing basis, the Division shall monitor transfer operations at all terminals.
- (b)
- (1) Every terminal operator shall provide to the Division access at any time to any and all parts of the operator's terminal facility.
 - (2) Every terminal operator shall provide to the Division access at any time to any and all policies, guidelines and reports relating to testing, inspections, maintenance and operation of the terminal, including but not limited to operations manuals and U.S. Coast Guard Inspection Reports.
 - (3) All terminal operators shall ensure that the Division has access onboard any and all vessels at the terminal at any and all times the vessel is engaged in transfer operations at the terminal. Access shall be for the purpose of monitoring transfer operations and compliance with Commission regulations. The Division shall have access to any and all areas of the vessel necessary, as deemed by the Division inspector, to monitor any and all phases, aspects, and parts of transfer operations.
 - (4) Access under subdivision (1) , (2) and (3) shall be provided without warrant or prior notification by the Division.
 - (5) If any duly authorized employee or agent of the Division is denied access as specified under this section, all transfer operations at the terminal

shall terminate and may not proceed until the earlier of the following:

- (A) A period of 48 hours has passed from the time that the inspector was informed access was denied, or
 - (B) The Division gives approval for transfers to proceed.
- (6) If any duly authorized employee or agent of the Division is denied access as specified under this section, the Division shall do all of the following:
- (A) Provide notification of the denial of access to the Coast Guard Marine Safety Office having jurisdiction.
 - (B) Provide notification of the denial of access to the Administrator; and
 - (C) Take whatever legal action is necessary to obtain access, including, but not limited to, the following:
 - (i) First, seek any orders or other documents necessary or appropriate from the Administrator, and
 - (ii) Then, if necessary, seek any orders or other documents necessary or appropriate from a court having proper jurisdiction.
- (c) In the event of an oil spill, the presence of any Division inspector or other agent or employee of the Commission shall in no way relieve or alter any responsibility any operator of a facility or vessel may have to report the discharge to the Office of Emergency Services, as required under Section 8670.25.5, and to comply with all applicable contingency plans and all requirements under the Government Code regarding response to oil spills.

Note: Authority: Sections 8751, 8755 and 8757, Public Resources Code

Reference: Section 8670.1 through 8670.70, Government Code; Sections 8750, 8751, 8755 and 8757, Public Resources Code.

2304. PRIOR NOTICE OF TRANSFER OPERATION.

- (a) Unless the Division and a terminal operator agree otherwise, at least four (4) hours, but not more than twenty four (24) hours, prior to the initiation of any transfer operation, the operator of the terminal where the transfer is to take place shall provide notice of the transfer to the Division.
- (b) Notifications shall be made in person, by telephone or by facsimile machine to the local area State Lands Commission field office. For terminals located north of the boundary between Santa Barbara and San Luis Obispo Counties, notifications are to be made to the field office in Vallejo, (707) 649-4732; facsimile number (707) 648-5371. For terminals located south of the boundary between Santa Barbara and San Luis Obispo Counties, notifications are to be made to the field office in Long Beach, (213) 499-6348; facsimile number (213) 499-6317.
- (c) The notification shall include the time anticipated for initiation of the transfer operations, the name of the vessels involved, the type of the oil being transferred, and any other information requested by the Division pertaining to the transfer.

Note: Authority: Sections 8751, 8755 and 8757, Public Resources Code.

Reference: Sections 8750, 8751, 8755 and 8757, Public Resources Code.