

MINUTE ITEM 47

W 6777.31

Meier

CONSIDER REGULATIONS GOVERNING
ALL MARINE OIL TERMINALS IN CALIFORNIA

Calendar Item 47 was presented by Gary Gregory, Chief, Marine Facilities Inspection and Management. He advised the Commission that staff was proposing to adopt regulations that would make permanent the emergency regulations, with some clarification and modifications, which the Commission adopted on May 1, 1991.

Mr. Morris Croce, Manager of United States Ports for Chevron Shipping Company, spoke of the concern of duplicate inspections and conflicting requirements of individual agencies, i.e. State Lands Commission, Fish and Game and the United States Coast Guard.

Commissioner McCarthy agreed this was a substantive concern and the Commission would be alerted to make sure no conflicting regulations are adopted.

Commissioner Tucker asked Mr. Croce to immediately notify the Commission if any problems arise so they can be resolved expeditiously.

After a short discussion, Calendar Item 47 was approved 3-0.

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MINUTE ITEM

This Calendar Item No. 47
was approved as Minute Item
No. 47 by the State Lands
Commission by a vote of 3
to 0 at its 9/23/91
meeting.

CALENDAR ITEM

47

A.)
) Statewide
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09/23/91
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**CONSIDER REGULATIONS GOVERNING
ALL MARINE OIL TERMINALS IN CALIFORNIA**

PROPOSAL

Staff proposes the adoption of a set of regulations to govern all marine terminals in the State, pursuant to the recently enacted Lempert-Keene-Seastrand Oil Spill Prevention and Response Act ("the Oil Spill Act"). This action would make permanent the emergency measures, with some modifications, which the Commission adopted on May 1, 1991.

BACKGROUND

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

Ultimately, the Commission must establish detailed, 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 Oil Spill Act until sometime in 1992.

In the meantime, it was necessary to promulgate regulations to establish the Division's authorities and monitoring and inspection program which could curtail the incidence of oil spills arising from oil transfer activities at affected terminals. For this reason, the Commission adopted a set of emergency regulations. The action herein proposed would allow the emergency regulations to remain in effect until new, comprehensive measures can be developed.

Several modifications have been made to the measures, primarily to clarify the language. These modifications were made in response to both public comments and recommendations by the

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Review Subcommittee of the State Interagency Oil Spill Committee (SIOSC). The public has been given every opportunity to submit written comments and to appear at public hearings held in both northern and southern California on July 18, 1991 and August 14, 1991, respectively. Many members of the communities subject to these regulations have commented, and the Review Subcommittee has also met and reviewed these regulations as required under the Oil Spill Act. Staff has either modified the regulations accordingly or explained why suggested modifications would be inappropriate.

PROPOSED REGULATIONS

The regulations contain five sections which provide the following:

1. Definitions.
2. Establishes, in regulation, the Marine Facilities Inspection and Management Division.
3. 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. Until the long-term regulatory program is developed, these regulations will enable the Division to work with the Coast Guard to ensure enforcement of existing controls.
4. 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. 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

EXHIBIT:

- A. Copy of the Proposed Regulations

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 classes 7 and 8, Action by a Regulatory Agency as Authorized by State Law to Assure the Maintenance, Restoration, Enhancement or Protection of a Natural Resource and of the environment where the regulatory process involves procedures for protection of the environment, 14 Cal. Code Regs. 15307 and 15308.

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

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, CLASSES 7 AND 8, AN ACTION BY A REGULATORY AGENCY AS AUTHORIZED BY STATE LAW TO ASSURE THE MAINTENANCE, RESTORATION, ENHANCEMENT, OR PROTECTION OF A NATURAL RESOURCE AND OF THE ENVIRONMENT WHERE THE REGULATORY PROCESS INVOLVES PROCEDURES FOR PROTECTION OF THE ENVIRONMENT, 14 CAL. CODE REGS. 15307 AND 15308.
- 2. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE REGULATION IS PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATION.

3. ADOPT REGULATIONS SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE IMMEDIATELY UPON FILING WITH THE SECRETARY OF STATE.
4. AUTHORIZE STAFF TO MAKE MODIFICATIONS IN THE REGULATIONS IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.
5. DIRECT STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND TO ENSURE THAT THE REGULATIONS BECOME EFFECTIVE.
6. DIRECT STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE PROVISIONS OF THE REGULATIONS AT SUCH TIME AS THEY BECOME EFFECTIVE.

EXHIBIT "A"

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 Public Resources Code §8750, subsection (a).
- (b) "Barge" means any vessel that is constructed or adapted for the carriage of oil in commercial quantities as cargo but is not equipped with a means of self-propulsion. 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 and from a vessels tankers or barges while ~~it is~~ they are made fast to a buoy or buoys.
- (e) "Terminal" means marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.
- (fe) "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.
- (gf) "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; and
 - (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 tanker or barge vessel to and from the terminal, as defined in the facility operations

manuals, as well as those items specified in subdivision (g)(1).

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

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

Reference: Sections 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.

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

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

2302. COMPLIANCE WITH FEDERAL, STATE AND LOCAL REGULATIONS.

(a) All terminal operators shall comply with all applicable federal 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 ("CFR"), Parts 154, ~~155~~ and ~~156~~ (FACILITIES TRANSFERRING OIL AND HAZARDOUS MATERIAL IN BULK) and with 156, Subpart A. (OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS), and with all state and local marine pollution prevention regulations, except for local regulations in conflict with federal or state law.

(b) All terminal operators shall make arrangements with operators of vessels which will conduct transfer operations at their terminal or terminals that the vessels shall comply with the provisions of Title 33 of the Code of Federal Regulations (CFR), Part 155 (OIL AND HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS).

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 to insure the public health and safety and the protection of the environment, and in accordance with the operations manual required and approved under 33 CFR Part 154.
 - (2) On a continuing basis, the Division shall monitor transfer operations at all terminals.
- (b) Every agent or employee of the Division shall, prior to the inspection or monitoring of any terminal operation, make every reasonable attempt to notify the duty person-in-charge at the terminal of the intended inspection or monitoring.
- (bc) (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) (A) 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.
 - (B) If policies, guidelines and reports described in subsection (A), above, for a particular terminal are not available at the terminal except in an office or other location which is open and reasonably accessible only during reasonable business hours, the operator of the terminal shall not be required to provide the Division access to those policies, guidelines and reports except during reasonable business hours.

- (C) No terminal operator shall be required to provide access to policies, guidelines and reports except during reasonable business hours, during transfer operations or during emergency situations, including, but not limited to, oil discharge events or situations where an oil discharge involving the terminal may be imminent.
- (3) Prior to any transfer operation, each terminal operator shall obtain an agreement or agreements from all operators of vessels at the terminal, or agents of those operators, ensuring all terminal operators shall ensure that the Division has access on board 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 be given 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 subdivisions (cb)(1), (cb)(2) and (cb)(3) shall be provided without warrant or prior notification by the Division.
- (5) (A) If any duly authorized employee or agent of the Division is denied access to any part of the terminal or to vessels at the terminal as specified under this section, the employee or agent shall immediately make every reasonable attempt to notify the person in charge of the terminal or the person in charge of the tanker or barge that access has been denied. Immediately upon such notification, subject to considerations of safety, all transfer operations at the terminal shall terminate and may not proceed until the earlier of the following:
- (ia) A period of 48 hours has passed from the time that the inspector was informed access was denied, or
- (iiB) The Division gives approval for transfers to proceed.
- (B) If any duly authorized employee or agent of the Division is denied access to any tanker or barge at the terminal as specified under this section, the employee or agent shall immediately make every reasonable attempt to notify the person in charge

of the terminal or the person in charge of the tanker or barge that access has been denied. Immediately upon such notification, subject to considerations of safety, all transfer operations at any terminal in the state involving that vessel shall terminate and may not proceed until the earlier of the following:

(i) A period of 48 hours has passed from the time that the employee or agent was informed access was denied, or

(ii) 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.

(ed) 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 Government Code Section 8670.25.5, and to comply with all applicable contingency plans and all requirements under the Government Code regarding response to oil spills.

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. For barge operations, where the terminal operator has less than four (4) hours advance notice of the transfer, the terminal operator shall provide the Division with notice of the transfer as soon as possible after receiving notice of the anticipated transfer, but in any case prior to the initiation of transfer operations.
- (b) Notifications shall be made in person, by telephone or by facsimile machine to the local area Division 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 location of the transfer, time anticipated for initiation of the transfer operations, the name of the tanker or barge vessels involved, and the type of the oil being transferred, and any other information requested by the Division pertaining to the transfer.

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

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