

**CALENDAR ITEM
C58**

A Statewide
S Statewide

10/22/09
W9777.226
M. Eskijian
G. Gregory

PROPOSAL:

CONSIDER APPROVAL OF MINOR REVISIONS TO THE MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS). THIS PROPOSAL INVOLVES SOME MINOR CORRECTIONS AND CHANGES TO SPECIFIC PERFORMANCE STANDARDS.

BACKGROUND:

Under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990 (the Act), the California State Lands Commission is mandated to adopt rules and regulations for the performance standards of marine oil terminals. In August 2004, the Commission approved the "Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS), which were adopted by the California Building Commission (BSC) in January 2005, and became Chapter 31F of the California Building Standards Code (Title 24, Part 2, Vol. 1) with an effective date of February 6, 2006. After this effective date, marine oil terminals throughout California, whether on land leased from the state, or within port authorities, must comply with all of the requirements of the MOTEMS. To date, 11 high risk terminals have submitted initial "audits" that provide an assessment of the terminal's fitness-for-purpose. During the next two years, 31 moderate and low risk terminals will submit their initial audits.

This proposal is to amend the existing MOTEMS, with some corrections and changes to specific performance standards. These proposed revisions have gone through two periods of public comment, with the final comment period ending September 30, 2009.

Seven sections of the proposed regulatory text that were originally noticed to the public and to the State's Interagency Oil Spill Committee were amended. The final regulatory text is shown in Exhibit "A".

CALENDAR ITEM NO. **C58** (CONT'D)

STATUTORY AND OTHER REGULATIONS:

- A. P.R.C. Sections 8750 through 8760.

OTHER PERTINENT INFORMATION:

- 1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. §10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

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

- 2. The proposed regulatory amendments do not affect small businesses as defined in Gov. C. Section 11342.610, because all affected businesses are either petroleum refiners, as specified under Gov. C. Section 11342, sub. (b)(9), or transportation and warehousing businesses having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342.610 sub. (c)(7).

Exhibit:

- A. Proposed Express Terms.

IT IS RECOMMENDED THAT THE COMMISSION:

- 1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378
- 2. FIND THAT THE REGULATORY AMENDMENTS DO NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOV. C. SECTION 11342.610, BECAUSE ALL AFFECTED BUSINESSES ARE EITHER PETROLEUM REFINERS, AS SPECIFIED UNDER GOV. C. SECTION 11342.610(b)(9), OR TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAN \$1,500,000, AS SPECIFIED UNDER GOV. C. SECTION 1342.610(c)(7).
- 3. FIND THAT THE REGULATORY AMENDMENTS WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITHIN CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE

CALENDAR ITEM NO. **C58** (CONT'D)

ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.

4. 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.
5. DIRECT THE COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND AMENDMENTS AND TO ENSURE THAT THE REGULATIONS BECOME EFFECTIVE.
6. APPROVE THE PROPOSED REVISIONS TO THE MOTEMS STANDARDS FOR SUBMISSION TO THE BUILDING STANDARDS COMMISSION FOR ADOPTION. THESE REVISIONS ARE IN THE FORM SET FORTH IN EXHIBIT "A" WHICH IS ON FILE AT THE OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION.
7. AUTHORIZE THE COMMISSION STAFF TO MAKE NON SUBSTANTIVE MODIFICATIONS TO THE PROPOSED REVISIONS IN RESPONSE TO RECOMMENDATIONS BY THE CALIFORNIA BUILDING STANDARDS COMMISSION.