

MINUTE ITEM

34

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Meier

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CONSIDER EMERGENCY REGULATIONS GOVERNING
ALL MARINE TERMINALS IN CALIFORNIA

Calendar Item 34, attached, was pulled from the agenda prior to the meeting.

Attachment: Calendar Item 34

A)

(Statewide

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CALENDAR ITEM

A)
S) Statewide

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CONSIDER EMERGENCY REGULATIONS GOVERNING
ALL MARINE TERMINALS IN CALIFORNIA

PROPOSAL

The Commission Staff is proposing adoption of a set of emergency regulations governing all marine terminals in the state, pursuant to the recently enacted Lempert-Keene-Seastrand Oil Spill Prevention and Response Act ("the Oil Spill Act"). 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 established 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 P.R.C., 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 mean time, establishment of some regulations will help the Division curtail the incidence of oil spills arising from 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 the four-month period of effectiveness.

The Legislature recognized the need for immediate efforts when it enacted the Act as an emergency measure. The Legislature found, among other items, that marine transportation of oil can be a

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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 clean up 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 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.

The Oil Spill Act requires that all regulations adopted under the act be submitted to the Review Subcommittee of the State Interagency Oil Spill Committee. The Subcommittee has met only once and has not yet established procedural rules. Staff therefore sent copies of the regulations to each member of the Subcommittee, requesting their comments and recommendations as soon as possible and noting that more extensive opportunity for comment and recommendation by the Subcommittee as a whole would be available during consideration of the interim regulations. All of the members of the subcommittee indicated that they had no objection or recommendations regarding the proposed emergency measures.

PROPOSED REGULATIONS

The regulations contain five sections:

1. The first section contains definitions.
2. The second section establishes in regulations 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 made 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 in ensuring 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 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
- D. Government Code Section 8570.1 through 8570.72

AS 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.

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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 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.
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 TO BECOME EFFECTIVE IMMEDIATELY UPON FILING WITH THE SECRETARY OF STATE AND TO REMAIN IN EFFECT OF 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, TOWARD ESTABLISHMENT OF INTERIM REGULATIONS SUBSTANTIALLY IN THE FORM OF THOSE CONTAINED IN EXHIBIT "A", WHICH WOULD REMAIN IN EFFECT UNTIL REPEALED OR SUPERSEDED BY SUBSEQUENTLY ADOPTED REGULATIONS.

EXHIBIT "A"

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 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 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 federal, state, and local pollution prevention regulations, including, but not limited to, the provisions under Title 33 of the Code of Federal Regulations, Parts 154, 155 and 156.

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

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

INSPECTIONS AND MONITORING.

- (a) The Division shall carry out an inspection program which shall include the following:
- (1) At least once every three years, the Division shall cause to be carried out a system safety inspection of each terminal in the state to determine whether the structural integrity of the terminal is being maintained.
 - (2) At least once a year, the Division shall cause to be carried out a comprehensive terminal inspection to determine whether all parts of the terminal are being maintained and operated in such a manner as to insure the public health and safety and the protection of the environment, and in accordance with Section 2302, above, and with the operations manual required and approved under federal regulations.
 - (3) 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 regulations of the U.S. Coast Guard with regard to oil pollution prevention during transfer operations, with operations manuals, and 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 an employee or representative 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 employee or representative 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, either or both of the following:
 - (i) Seek any orders or other documents necessary or appropriate from the Administrator, or
 - (ii) 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 for a particular terminal, 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.