

MINUTE ITEM
No. C46
approved as minute item
by the State Legislature
by a vote of 3
at its 5/5/92
meeting.

CALENDAR ITEM

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W 9777.102
Meier
Gregory

CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING
WITH THE MEMBERS OF THE REVIEW SUBCOMMITTEE
OF THE STATE INTERAGENCY OIL SPILL COMMITTEE

PROPOSAL

The Commission Staff has negotiated a Memorandum of Understanding (MOU) with the other members of the Review Subcommittee of the State Interagency Oil Spill Committee (SIOSC) regarding subcommittee procedures. A copy of the MOU is attached as Exhibit "A." This proposal, if adopted, would direct the Executive Officer to execute an MOU substantially in the form of the attached and to take whatever action is appropriate for its implementation.

BACKGROUND

Under Gov. C. §8574.10, the Legislature established the Review Subcommittee of SIOSC to review and make recommendations on amendments to the State Oil Spill Contingency Plan and on regulations and guidelines adopted under the provisions of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. The Chair of the subcommittee is the Director of Fish and Game, and the other members are the Executive Officer of the State Lands Commission, the Executive Director of the California Coastal Commission, the State Oil and Gas Supervisor, and the Executive Director of the State Water Resources Control Board. As permitted by the statute, each member has a designated representative to carry out the member's subcommittee responsibilities.

The purpose of the attached memorandum is to establish procedures under which the subcommittee will function. Its provisions would govern such matters as voting, the form of submissions to the subcommittee, the form of subcommittee recommendations, and responses by submitting agencies to subcommittee actions.

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At this time, all agency representatives have agreed to the provisions of the MOU, subject to review and approval by their principals. No significant changes are currently anticipated to the agreed-upon language. If substantial modifications are made to the proposed memorandum at the request of any other member, then the memorandum would be brought back to the Commission for approval.

Nothing in the memorandum would alter in any way the respective statutory or regulatory authority of the Commission or other subcommittee members, nor constitute a delegation of authority by any party to any other. The MOU may be terminated by any party at any time upon notice to the others.

STATUTORY REFERENCES:

- A. Government Code Section 8574.10

AB 884:

N/A

EXHIBIT:

- A. Copy of the Memorandum of Understanding

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 because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: P.R.C. 21065, 21080, and 14 Cal. Code Regs. 15378.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED UNDER P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.

CALENDAR ITEM NO. 46 (CONT'D)

2. AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE MEMORANDUM OF UNDERSTANDING WITH THE OTHER MEMBERS OF THE REVIEW SUBCOMMITTEE OF THE STATE INTERAGENCY OIL SPILL COMMITTEE SUBSTANTIALLY IN THE FORM OF THE COPY WHICH IS ATTACHED AS EXHIBIT "A."
3. AUTHORIZE STAFF TO TAKE WHATEVER ACTIONS ARE APPROPRIATE AND NECESSARY TO IMPLEMENT THE PROVISIONS OF THE MEMORANDUM OF UNDERSTANDING.

EXHIBIT "A"

MEMORANDUM OF AGREEMENT
REVIEW SUBCOMMITTEE OF THE
STATE INTERAGENCY OIL SPILL COMMITTEE

This agreement is entered into by and between the following parties:

The Office of Oil Spill Prevention and Response of the
Department of Fish and Game (OSPR),
The State Lands Commission (SLC),
The California Coastal Commission (CCC),
The Division of Oil and Gas (DOG) of the
Department of Conservation, and
The State Water Resources Control Board (SWRCB).

WHEREAS;

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act established the Review Subcommittee;

The Review Subcommittee is responsible for reviewing regulations, guidelines, and amendments to the state oil spill contingency plan prepared pursuant to the Act;

Procedures are necessary to ensure adequate and full review of regulations and plan amendments; and

Expedited procedures are necessary for the processing of emergency regulations;

NOW THEREFORE, it is agreed as follows:

1. The Review Subcommittee is composed of one representative or designee from each of the agencies named in this agreement. The Administrator of the OSPR or his or her representative shall serve as the Chair of the Review Subcommittee. Each agency shall inform the Chair, in writing, of its official designee to the Review Subcommittee. Additional staff may attend any meeting of the Review Subcommittee.
2. It is the goal of the Review Subcommittee to reach consensus on all issues. If consensus cannot be reached, then the following procedures shall be followed:
 - a. If three or more agencies agree upon a recommendation with which the submitting agency does not agree, then the recommendation shall be considered the recommendation of the subcommittee. The submitting agency shall respond to the recommendation in accordance with Gov. C. §8574.10, sub. (d).

- b. (1) If at least one, but fewer than three, member agencies object to a regulation, guideline or plan amendment proposal by the submitting agency, the agency or agencies objecting to the proposal shall, within five working days, provide the other agencies with written comments detailing the objections and how these might be resolved. At the request of any member agency, the Chair shall call a second meeting on the proposal to resolve the conflict. The second meeting may be held by means of a conference call. If there is no resolution, the submitting agency shall respond to these comments as it would to comments by a member of the public pursuant to the Administrative Procedures Act. Copies of the responses shall be sent to all of the member agencies.
- (2) The submitting agency shall treat the comment of a single member agency as a recommendation of the subcommittee if both of the following occur:
- (a) If the comments are provided to the other member agencies within five days after the meeting of the subcommittee during which the proposed regulations were discussed; and
- (b) If, within five days thereafter, but prior to the end of the 60-day subcommittee review period, at least two other member agencies indicate in writing to the submitting agency that they agree with the comment.
- (3) Nothing in this section shall be construed as extending the 60-day review period.
3. The Chair shall call meetings of the Review Subcommittee at the request of any member agency. The Chair shall call meetings for the consideration and discussion of any regulations that are submitted for review, unless all agencies agree a meeting is not needed. The meetings shall be at a time and place determined by the Chair or at a time and place determined by at least three of the member agencies. Meetings shall be scheduled so as to give member agencies sufficient time to review submitted proposals, but early enough to allow time for resolution of conflicts and for preparation of responses by the submitting agency to comments by the member agencies prior to the end of the 60-day review period. The Chair shall give 5 days advance notice of all meetings.
4. For emergency regulations, the Review Subcommittee shall make every possible effort to complete the review and preparation of any comments as soon as possible so as not to delay the filing of any emergency regulations.

5. The 60-day review period allowed by the Act may overlap any other comment period, provided that any public hearing required by statute shall be held after the submitting agency has submitted to the member agencies a response to the review subcommittee.
6.
 - a. Except for emergency regulations, the version of any proposed regulations submitted to the Review Subcommittee shall be the version submitted to the Office of Administrative Law for publication. Earlier drafts may be sent to member agencies for comment and consultation, but they shall not be considered submissions to the Review Subcommittee for purposes of Gov. C. §8574.10, sub. (d). Submissions to the subcommittee shall be accompanied by the Notice of Proposed Action submitted to the Office of Administrative Law, as required under Gov. C. §11346.4.
 - b. The version of any emergency regulations, guidelines or plan amendment proposed by a submitting agency shall be as close to final as practicable, given time considerations which may apply.
 - c. The provisions of this section shall not preclude circulation of earlier drafts pursuant to Section 9.
7. If any changes are made to regulations, guidelines, or plan amendments after consideration by the Review Subcommittee, those changes shall be submitted to the members of the Review Subcommittee. The member agencies agree to work cooperatively and as quickly as possible to review these changes so as not to delay the adoption of regulations. A meeting shall be called at the request of any member agency to consider the changes made. The Subcommittee shall have at least fifteen days for review of any changes. The submitting agency shall make every reasonable effort to ensure that each subcommittee member receives a copy of the changes prior to the beginning of any fifteen-day public review period for changes required under the Government Code §11346.8, sub. (c).
8. Prior to the Review Subcommittee meeting, proposed changes may be made to draft regulations or plan amendments. As early as possible prior to the meeting, these changes shall be submitted to the member agencies who shall attempt an expeditious review so as to avoid delay in consideration of the draft regulations or plan amendments. Any proposed deletions from the last draft submitted shall be stricken out, and any proposed additions to the last draft submitted shall be underlined.
9. Cooperation is necessary to implement successfully the Act. It is the duty of each of the member agencies to ensure close coordination and cooperation. Each member agency shall keep the other informed of the progress of regulations and plan amendments and shall attempt to distribute drafts prior to formal

consideration by the Review Subcommittee. Drafts should be sent to the Administrator with copies to other member agencies.

10. Any or all provisions of this agreement may be waived upon mutual agreement, oral or written, of all subcommittee members at any time or, if a waiver is proposed during a subcommittee meeting, then of all members present at that meeting. The inaction of any member of the subcommittee shall be construed as a consent to a waiver if all of the following occur:
 - a. The subcommittee Chair calls or otherwise contacts that member regarding a proposed waiver of a provision of this agreement;
 - b. A message is left for that member describing the proposed waiver generally; and
 - c. The member does not respond within three working days after the message is sent.

11. This agreement may be terminated at any time upon mutual agreement by at least three subcommittee members. Any member agency may also terminate its participation in this agreement at any time. In the event that any member agency or agencies should terminate their participation, the provisions of this agreement shall continue to govern the activities of the remaining member agencies.

Office of Oil Spill Prevention and Response

Date

State Lands Commission

Date

California Coastal Commission

Date

Division of Oil and Gas

Date

State Water Resources Control Board

Date