MINUTE ITEM
This Calendar Item No. C74
was approved as Minute Item
No. 74 by the State Lands
Commission by a vote of 3
to 0 at its 4-20-00
meeting.

CALENDAR ITEM
C74

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) Statewide
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04/20/00
W 9777.234
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Meier

CONSIDERATION OF REGULATIONS SETTING THE FEE USED TO IMPLEMENT CALIFORNIA'S BALLAST WATER MANAGEMENT PROGRAMS FOR CONTROL OF NONINDIGENOUS SPECIES

PROPOSAL:

The Commission's Staff proposes the adoption of regulations setting the fee required to fund California's new ballast water management programs for control of nonindigenous species. When the regulations take effect, the fee would be $400 for each voyage by a vessel into California if, during that voyage, the vessel has traveled through any location outside the United States' Exclusive Economic Zone. Under existing emergency regulations, the fee is $600 for each such voyage arriving in California prior to April 30, 2000, and $400 for each such voyage arriving in California on or after April 30, 2000. The emergency regulations will expire on August 28, 2000. The action Staff here proposes would make the $400 fee permanent after April 30, 2000.

BACKGROUND:

On December 3, 1999, the Commission adopted emergency regulations setting a fee under §71215(b)(1) of the Public Resources Code (P.R.C.), part of a new division entitled, "Ballast Water Management for Control of Nonindigenous Species" (the Act). The purpose of the fee is to provide funding for all the State's new programs under the Act. On the first day of January 2000, the program began as scheduled, and collection of the fee is underway.

In December, the fee was set at $600 for each qualifying voyage, defined as a transit by a vessel destined for any California port from a port or place outside the United States' Exclusive Economic Zone (the EEZ), including intermediate stops at a port or place within the EEZ. For the purposes of the Act, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage. This definition of a voyage is identical to the definition contained in the

Federal regulations found in 33 CFR §151.2025(b). The Act allows the Commission to set the fee at a level up to a maximum of $1000 for each voyage.

Given information provided at the time by the shipping community, Staff concluded that the fee should be set at $600 to cover program costs of $2,048,000 for Fiscal Year 2000/2001. Using 1998 figures, it was estimated that approximately 5,560 voyages into California would qualify for the fee. However, Staff does not believe that all those who are required to pay the fee will in fact do so. The Coast Guard indicated that compliance with its ballast water reporting program has not been good, amounting to less than 50% in Southern California. Furthermore, the Board of Equalization (BOE), the agency charged with collecting the fee, has historically found that the State has been unable to collect all required fees of this nature. Based upon these experiences and the recommendations of BOE, Staff applied a compliance rate of 70%. Consequently, Staff used a factor of only 3892 voyages in calculating the fee. Thus, the revenue expected from a $600 was expected to be $2,335,200, leaving a margin for error of $287,200.

On January 12, 2000, Staff convened a Technical Advisory Group (the TAG) comprised of representatives from the shipping community subject to the Act. Along with Staff, those present were Mr. Kenneth Levin of the Pacific Merchant Shipping Association (PMSA), Mr. Jay Winter of the Steamship Association of Southern California, Ms. Meredith Endsley and Captain Lynn Korwatch of Matson Shipping, Captain Robin Lindsay of General Steamship Corporation, Mr. Bryan Dorsch and Ms. Meri Ng of Chevron Shipping Company L.L.C. and Mr. Robert Kliest of Evergreen Shipping. These parties represented companies that carry out the substantial majority of the voyages subject to the Act. Representatives from several cruise ship companies were also invited, but declined to attend. The Tag assured Staff that the number of voyages into California in 1998 was much lower than average and that the State can expect more than 6000 qualifying voyages in each of the coming years. Furthermore, the representatives in general and Mr. Levin and Mr. Winter in particular assured Staff that compliance rates would exceed 75% over the life of the program. Based upon these assurances, Staff agreed to calculate the fee based upon 6000 qualifying voyages a year, and a compliance rate of 75%.

This enabled the fee to be reduced to $400 per voyage, if the current fee of $600 remains in effect until April 30, 2000. A surplus is expected in this fiscal year which will be used to cover deficits expected in Fiscal Year 2000/2001, and Fiscal Year 2001/2002.

The TAG also requested that the regulations include a provision that the TAG is to be reconvened on or after July 1, 2000, to reevaluate the fee and the condition of the Exotic Species Control Fund. The TAG would therefore have opportunities in the future to make recommendations as to the fee.

All of the participants at the January 12, 2000, TAG meeting, agreed with the fee level here proposed. In order to confirm the recommendations of the TAG, the Chief of the Commission's Marine Facilities Division, Mr. Gary Gregory, e-mailed a summary of the January 12, 2000, TAG meeting to all the participants and asked for comments and corrections. No adversed comments were received.

Staff also held two public hearings on the regulations on April 11 and 13, 2000, in Oakland and Long Beach, respectively. At the time this report was prepared, those hearings had not yet taken place. Staff will provide the Commission with any and all comments submitted.

It should be noted that at least one shipping company has objected to application of the fee to certain types of voyages. However, the issue raised concerns how and when the fee is collected, which is governed by the Act itself, rather than the amount of the fee, which is set by the Commission.

The most significant question at this time concerns compliance. As of March 31, 2000, approximately 54% of the fees owed under the program for more than 30 days have been collected, rather than the 75% upon which the $400 fee was based. In some cases, some of the largest shipping companies operating in California have failed to make the required payments. At the January 12, 2000, TAG meeting, Staff explained that, if there were not at least 6000 voyages a year in the future and if the compliance rate did not reach at least 75%, then the fee would have to be raised. The TAG indicated that they understood this.

In spite of the poor compliance during the first three months of the program, Staff continues to recommend adoption of the $400 fee at this time. Efforts to collect the outstanding amounts are underway; and, since the program is still relatively new, Staff and BOE believe that compliance will improve. If it does not, Staff will recommend an increase in the fee to cover the shortfall.

The Commission Staff considered alternatives to the proposed amendments, but found none that would be more effective in carrying out the purpose for which the action is proposed and less burdensome to those who would be affected.

STATUTORY AND OTHER REGULATIONS:

A. P.R.C. §§71200 through 71271

PERMIT STREAMLINING ACT DEADLINE:

N/A.

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. §11342, sub. (h), because all affected businesses are transportation and warehousing businesses having annual gross receipts of more than $1,500,000, as specified under Gov. C. §11342, sub. (h)(2)(I)(vii).

EXHIBITS:

A. Proposed Amendments.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE14, CALIFORNIA CODE OF REGULATIONS, §15061, BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE §21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, §15378

2. FIND THAT THE REGULATIONS WILL NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE SECTION 11342(h), BECAUSE ALL AFFECTED BUSINESSES ARE TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAN $1,500,000, AS SPECIFIED UNDER GOVERNMENT CODE SECTION 11342(h)(2)(I)(VII).

3. FIND THAT THE REGULATIONS 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 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 REGULATIONS ARE PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.

5. ADOPT THE PROPOSED REGULATIONS, WHICH WOULD ADD ARTICLE 4.5, INCLUDING §§2270 AND 2271, TO TITLE 2, DIVISION 3, CHAPTER 1, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE AT THE TIME THE EXISTING PROVISIONS OF ARTICLE 4.5 EXPIRE.

6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE REGULATIONS IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.

7. 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.

8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE REGULATION AT SUCH TIME AS THEY BECOME EFFECTIVE.

Exhibit "A"

Title 2, Division 3, Chapter 1

Article 4.5. Ballast Water Management for Control of Nonindigenous Species

Section 2270. Ballast Water Management and Control; Definitions

For purposes of this Article, the following definitions apply.

(a) "Voyage" means any transit by a vessel destined for any California port from a port or place outside the EEZ, including intermediate stops at a port or place within the EEZ. For the purposes of this section, a transit by a vessel from a United States port to any other United States port, if at any time the vessel operates outside the EEZ or equivalent zone of Canada, is also a voyage.

(b) "EEZ" means exclusive economic zone, which extends from the baseline of the territorial sea of the United States seaward 200 miles.

Authority: Public Resources Code Section 71215(b)
Reference: Public Resources Code Sections 71200 and 71215

Section 2271. Fee Schedule for Exotic Species Control Fund

(a) The fee required under Public Resources Code Section 71215 is four hundred dollars ($400) per vessel voyage.

(b) (1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the fee required under Public Resource Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the fee, taking into account the provisions Public Resources Code Sections 71200 through 71216.

(2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

Authority: Public Resources Code Section 71215(b)
Reference: Public Resources Code Sections 71200 and 71215