MINUTE ITEM
This Calendar Item No. C58 was approved as Minute Item No. 58 by the California State Lands Commission by a vote of 3 to Ø at its 4-9-02 meeting.

CALENDAR ITEM
C58

A) Statewide

S) Statewide

04/09/02
W 9777.234
M. Falkner
M. Meier

CONSIDER AN EMERGENCY AMENDMENT REDUCING THE FEE USED TO FUND CALIFORNIA'S BALLAST WATER MANAGEMENT PROGRAMS FOR CONTROL OF NONINDIGENOUS SPECIES

PROPOSAL:

The Commission's Staff proposes the adoption of an emergency amendment to reduce the fee required to fund California's ballast water management programs for control of nonindigenous species. The fee would be set, as of July 1, 2002, at $200 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 (USEEZ). Current regulations provide for a fee of $400 per such voyage.

BACKGROUND:

Under Section 71215(b) of the Public Resources Code (P.R.C.), the Commission is authorized and directed to establish a fee (the Fee) to be used to fund the State's ballast water management program. The fee is not to exceed $1000 per voyage, defined as a transit by a vessel destined for any California port from a port or place outside the USEEZ, including intermediate stops at a port or place within the USEEZ.

The Fee was established initially at $600 per voyage by emergency regulation that became effective on January 1, 2000. The Fee was reduced to $400 per voyage, effective April 30, 2000 by emergency regulation. That emergency regulation was replaced on August 29, 2000 with permanent regulations setting the fee at $400 per voyage. Quarterly review of the Fund status by Board of Equalization and State Land Commission staff predicts that under conservative assumptions, a continued Fee set at $400 is unnecessarily high.

Staff has met periodically with representatives from the regulated community in a Technical Advisory Group ("the TAG"). In 2000, the TAG took note of the fact that the budgets for the various programs through the end of 2003 have largely been established, so costs are essentially fixed. As a result, any reduction in the Fee for some would result in an increase in the Fee for others. The TAG therefore recommended a flat Fee for everyone.

In February 2002, staff from BOE and CSLC, after reviewing costs and other factors, recommended that the Fee be reduced to $200 per qualifying voyage beginning July 1, 2002. The TAG was asked to respond to this proposed Fee reduction in March 2002 and has agreed with staff recommendations. A permanent regulation is being prepared. However, due to the time required to process this permanent regulation and the need to reduce Fee amount it is necessary to adopt this emergency regulation in order to establish the new Fee as of July 1, 2002.

The amount of the Fee earlier charged was based upon an analysis which entailed a number of assumptions, the primary one being that the financial needs for the program will be in accordance with the Budget Change Proposals which have been submitted to date. These call for expenditures of $615,000 in Fiscal Year ("FY") 1999/2000, $1,930,000 in FY 2000/2001, $2,005,00 in FY 2001/2002, $2,098,00 in FY 2002/2003 and *$972,500* in FY 2003/2004, at the end of which the program will expire. The other two assumptions were that the State would see about 6000 voyages each year against which the Fee could be levied and that the State would likely see a compliance rate of approximately 75%. These figures were based upon the experience of the shipping community and the Board of Equalization. Calculations were therefore based upon 4500 qualifying voyages per year. With these assumptions, the Commission and the TAG concluded that the Fee could be set at $400 per voyage.

During an annual review of the Fund status by Board of Equalization and Commission staff in February 2002, several assumptions used to set the Fee at $400 per voyage were determined to be incorrect. Currently, the State is seeing a compliance rate of approximately 98%; and the number of qualifying voyages per year is approximately 5810 per year. Based on the current Fee amount of $400 per voyage and the revised assumptions, projections produce revenues that will exceed the costs of the programs mandated under the act. Staff calculated the fee based upon 5810 qualifying voyages a year, rather than 5560, and a compliance rate of 98%, rather than 75%, thus changing the multiplier for the fee from 4500 voyages to 5700 each year. Utilizing the revised assumptions, the Commission and the TAG concluded that the Fee could be set at $200 per voyage, beginning July 1, 2002 to cover the remaining program costs though FY 2003/2004.

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

AB 884: 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 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 Amendment.

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 AMENDMENT 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 AN EMERGENCY EXISTS AND THAT THE REGULATIONS ARE NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH AND SAFETY OR GENERAL WELFARE.

4. FIND THAT THE AMENDMENT WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITH CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.

5. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE AMENDMENT IS PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.

6. ADOPT THE PROPOSED EMERGENCY AMENDMENT, WHICH WOULD AMMEND ARTICLE 4.5, §§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 ON JULY 1, 2002.

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

8. 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 AMENDMENT BECOME EFFECTIVE.

9. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT AT SUCH TIME AS IT BECOMES EFFECTIVE.

Exhibit A

Title 2, Division 3, Chapter 1

Article 4.5. Ballast Water Management for Control of Nonindigenous Species

Section 2271. Fee Schedule for Exotic Species Control Fund

(a) The fee required under Public Resources Code Section 71215 is ~~four hundred dollars ($400)~~ two hundred dollars ($200) 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