MINUTE ITEM

This Calendar Item No C75 was approved as Minute Item No. 75 by the California State Lands Commission by a vote of 2 to 0 at its 12-08-05 meeting.

CALENDAR ITEM
C75

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12/08/05
W9777.106
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CONSIDER ADOPTION OF AMENDMENTS TO UPDATE EXISTING REGULATIONS REGARDING INSPECTIONS OF MARINE OIL TERMINALS

PROPOSAL:

The California State Lands Commission (the Commission) proposes to amend existing regulations in Section 2320 of Title 2, Division 3, Chapter 1, Article 5 of the California Code of Regulations. This section pertains to the Commission's inspections of Marine Oil Terminals in the state. The proposed amendments would replace a triennial thorough examination of each marine oil terminal in the state with more comprehensive ongoing continuous inspections and investigations authorized by Chapter 31F of Title 24, Part 2, Volume 1 of the California Code of Regulations. Chapter 31 F becomes effective on February 6, 2006. The purpose of these inspections and investigations is to determine whether the structural integrity of the terminal, the oil transfer operations system and the safety equipment are designed and being maintained in a safe working condition.

The proposed amendment to Section 2320 would update the provisions of Article 5 and thereby eliminate misinterpretation and confusion within the regulated community.

BACKGROUD:

On September 24, 1990, the State of California enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (the "Act"). The Act added Public Resources Code §§8750 through 8760, establishing a comprehensive program for the prevention of oil spills in California's marine waters. Under Public Resources Code §8755, the Commission is required to adopt rules, regulations, guidelines and leasing policies for reviewing the location, type, character, performance standards, size and operation of all existing and proposed marine terminals within the state, whether or not on lands leased from

the Commission, to minimize the possibilities of a discharge of oil. Public Resources Code §8756 requires that the regulations be periodically reviewed and accordingly modified to ensure that all operators of marine terminals within the state always provide the best achievable protection of the public health and safety and the environment.

Initially, the Commission adopted emergency regulations with an effective date of June 10, 1991, to ensure that all marine terminals were at least in compliance with existing state and federal regulations regarding oil pollution prevention during transfer operations. The emergency regulations, with minor modifications, were readopted as permanent regulations on December 5, 1991. This first set of permanent regulations was superseded by the Commission's more comprehensive regulations entitled "Marine Terminals Inspection and Management," which became effective December 20, 1992. Amendments, which further clarified provisions of the regulations or addressed acts or circumstances not included in the 1992 version, were added to Article 5 and became effective on November 7, 1994.

In its continuing efforts to carry out the Commission's mandates, Commission staff developed a comprehensive set of regulations entitled "Marine Oil Terminals Engineering and Maintenance Standards" (the MOTEMS). The California Building Standards Commission approved the MOTEMS under Title 24, Part 2, Volume 1, of the California Code of Regulations (CCR) on January 19, 2005. By its owner terms, the MOTEMS becomes effective on February 6, 2006.

Under the provisions of the Adimistrative Procedures Act (Gov. Code §11340 et seq.), the proposed amendments would not take effect until after February 6, 2006, the date the provisions of MOTEMS take effect.

The proposed amendment to Section 2320 would update the provisions of Article 5 in line with the provisions of Chapter 31 F. This would largely eliminate any misinterpretation and confusion within the regulated community.

The public has had an opportunity to review and comment on the proposed amendments from September 30, 2005 to November 14, 2005. Members of the Review Subcommittee of the State Interagency Oil Spill Committee (SIOSC) reviewed the proposed amendments. No comments have been received from either the regulated community or from SIOSC members.

No costs to the state would be incurred beyond those budgeted and already

expended on monitoring compliance. Staff has determined that the proposed amendments to Article 5 will not have a significant impact on the creation or elimination of businesses within the State of California, nor will they have an adverse economic impact on business, including the ability of California businesses to compete with businesses in other states.
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. 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. Section11342, 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 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, 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 REGULATIORY 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 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.

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. ADOPT AMENDMENTS TO §2320(a)(2) IN TITLE 2, CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A" TO BECOME EFFECTIVE IMMEDIATELY UPON FILING WITH THE SECRETARY OF STATE.

6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENTS 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 AMENDMENTS TO THE REGULATIONS AT SUCH TIME AS THEY BECOME EFFECTIVE.

EXHIBIT A

§2320. Inspections and Monitoring.

(a) The Division shall carry out an inspection program which shall include the following:

(1) At least once a year, the Division shall cause to be carried out an inspection of each marine terminal in the state to determine whether all parts of the terminal are being maintained and operated in such a manner to ensure the public health and safety and the protection of the environment and in accordance with the operations manual required and approved under §2385 of these regulations and 33 CFR Part 154.

(2) ~~At least once every three years, the Division shall cause to be carried out a thorough examination of each marine terminal in the~~ On a Continuing basis, the Division shall carry out or cause to be carried out inspections and investigations authorized by Chapter 31F of Division 1 through 11, Title 24, Part 2, Volume 1 of the California Code of Regulations of all onshore marine terminals in the state to determine whether the structural integrity of the terminal, the oil transfer operations system and the safety equipment are designed and being maintained in a safe working condition.

(3) On a continuing basis, the Division shall monitor transfer operations at all marine terminals.

(b) Every agent or employee of the Division shall, prior to the inspection of a marine terminal or monitoring of an oil transfer operation, or at the time the agent or employee arrives at the terminal or vessel to carry out inspection or monitoring activities, make every reasonable attempt to notify the TPIC or VPIC, as appropriate, of the intended activity.

(c) (1) Every terminal operator shall provide to the Division access at any time to any and all parts of the operator's terminal.

(2) (A) Every terminal operator shall provide to the Division access at any time to any and all documents, records, policies, guidelines and reports relating to terminal personnel training, testing, inspections, maintenance and operation of the terminal, including, but not limited to, the following:

1. A copy of the terminal operator's letter of intent;

2. A copy of the state approved terminal operations manual with its letter of adequacy;

3. The name of each person currently designated as a TPIC at that terminal;

4. The date and result of the most recent test or examination of each item tested or examined as required by 33 CFR 156.170;

5. The hose information required by §2380, subsections (a)(1)(E),(F) and (G), including that marked on the hose;

6. The record of all inspections and examinations of the terminal by the U.S. Coast Guard and the Division within the last 3 years;

7. The record of all safety related inspections and examinations of the terminal by the State Fire Marshal local fire department or any port police within the last 3 years;

8. Any current permits to perform work of a hazardous nature issued pursuant to §2360; and

9. The Declaration of Inspection required by §2335.

(B) If policies, guidelines and reports described in subsection (A) of this section for a particular terminal are not available at the terminal except in an office or other location which is open and reasonably accessible only during reasonable business hours, the terminal operator shall not be required to provide the Division access to those policies, guidelines and reports except during reasonable business hours.

(C) No terminal operator shall be required to provide access to policies, guidelines and reports except during reasonable business hours, during transfer operations, or during investigations resulting from emergency situations, including, but not limited to, oil discharge events or situations where an oil discharge involving the terminal may be imminent.

(3) Each operator of any vessel shall provide to the Division access on board the vessel at any and all times the vessel is engaged in oil transfer operations at any terminal. Access shall be provided to any and all parts of the vessel necessary, as deemed by the employee or agent of the Division, to monitor any and all phases, aspects and parts of transfer operations for compliance with regulations of the State of California.

(4) Access under subsections (c)(1), (2) and (3) of this section shall be provided without warrant or prior notification by the Division.

(5) (A) If any duly authorized employee or agent of the Division is denied access, as specified in this section, to any part of the terminal or to any vessels at the terminal, the employee or agent shall immediately make every reasonable attempt to notify the TPIC or the VPIC, whichever is appropriate, that access has been denied.

(B) No terminal may be used in transfer operations with any vessel during any period where any duly authorized employee or agent of the Division is denied access to that vessel.

(6) If any duly authorized employee or agent 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 U.S. 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 or appropriate to obtain access.

(d) In the event of an oil spill, the presence of any employee or agent of the Commission shall in no way relieve or alter any responsibility any operator of a terminal or vessel may have to report the discharge to the Office of Emergency Services, as required under Government Code §8670.25.5, and to comply with all applicable contingency plans and all requirements under the Government Code regarding response to oil spills.

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

Reference: Sections 8670.1 through 8670.70, Government Code; Sections 8750, 8751, 8755 and 8756, Public Resources Code.