MINUTE ITEM

This Calendar Item No. C76 was approved as Minute Item No. 76 by the California State Lands Commission by a vote of 2 to 0 at its 12-08-05 meeting.

CALENDAR ITEM
C76

A
STATEWIDE
S

12/08/05
W9777.106
L. PRABHU
R. VARMA
M. MEIER

CONSIDER REPEAL OF DUPLICATIVE EXISTING REGULATIONS REGARDING STRUCTURAL REQUIREMENTS FOR VAPOR CONTROL SYSTEMS AT MARINE OIL TERMINALS

PROPOSAL:

The California State Lands Commission (the Commission) proposes to repeal existing regulations comprising Sections 2550 through 2556 of Title 2, Division 3, Chapter 1, Article 5.4 of the California Code of Regulations. These sections pertain to structural requirements for vapor control systems at Marine Oil Terminals (MOTs) in the state. The proposed repeal of Article 5.4 would remove duplication in the California Code of Regulations. All of the requirements of Article 5.4 are now contained in Chapter 31F of Title 24, Part 2, Volume 1 of the California Code of Regulations (CCR). Chapter 31 F becomes effective on February 6, 2006.

Having the same requirements under two separate titles in the CCR would be contrary to the provisions of the Administrative Procedure Act's "nonduplication" standard.

The proposed repeal of Sections 2550 through 2556 would 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 June 1991, the federal government required the fitting of vapor control systems at marine oil terminals. The regulations under 33 CFR Part 154, Subpart E included a US Coast Guard certification program for such installations. However, the federal regulations did not have provisions for the structural strengthening of dock components where these systems were fitted. As Commission staff witnessed the installation of vapor control systems, they became aware that there was a need in many cases to strengthen certain structural components of the dock bearing the load of vapor control equipment. Commission staff developed structural regulations under 2 CCR Article 5.4. This Article became effective in 1997.

Since 1991, Commission staff, in consultation with industry and consultants, has developed comprehensive specific requirements entitled "Marine Oil Terminal Engineering an Maintenance Standards (the MOTEMS). The majority of MOTs in California are over 50 years old. There were no existing standards at the time these MOTs were built. Since they were built, the size of tank vessels that berth at these MOTs has increased threefold. At the time they were built, there were no provisions for providing safety from seismic activitiy. The MOTEMS under 24 CCR Chapter 31F, Divisions 1 through 11, was adopted by the Commission on August 17, 2004 and approved by the Building Standards Commission on January 19, 2005. The MOTEMS is the only comprehensive structural, mechanical, electrical and safety standard in the US.

The MOTEMS incorporates all of the provisions of 2 CCR, Article 5.4. If Article 5.4 were not repealed, there would be duplication within the California Code of Regulations. Duplication would likely lead to confusion and misinterpretation by the regulated community. The Commission is therefore taking the necessary steps to repeal the regulations under Title 2, Division 3, Chapter 1, Article 5.4 entitled "Structural Requirements for Vapor Control Systems at Marine Terminals."

Under the Provisions of the Administrative 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 public has had an opportunity to review and comment on the proposed repeal of Article 5.4, from September 30, 2005 to November 14, 2005. Members of the Review Subcommittee of the State Interagency Oil Spill Committee (SIOSC) reviewed the proposed repeal. 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 repeal.

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 THE PROPOSAL TO REPEAL SECTIONS 2550 THROUGH 2556 OF 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

~~Article 5.4. Structural Requirements for Vapor ControlSystems at Marine Terminals.~~

~~§2550. Purpose, Applicability and Date of Implementation.~~

~~(a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 5.4 of the California Code of Regulations is to provide the best achievable protection of the public health and safety and of the environment by using the best achievable technology for the installation, inspection and reassessment of Vapor Control Systems at marine terminals.~~

~~(b) The provisions of Article 5.4 apply to Vapor Control Systems installed at marine terminals.~~

~~(c) When a Vapor Control System or VCS at a marine terminal is connected to a facility VCS that serves tank storage areas and other refinery processes located beyond the boundaries of the marine terminal, the specific requirements of this article apply between the vessel vapor connection and the point where the marine terminal VCS connects to the facility's main VCS.~~

~~(d) Unless otherwise specified in this article, all of the provisions of this article 5.4 become effective thirty days after they have been filed with the Secretary of State.~~

~~Authority: Sections 8751, 8755 and 8756, Public Resources Code.~~

~~Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code.~~

~~§2551. Review of Engineering Practice, Structural Calculations, Drawings and Petitions.~~

~~At least sixty days prior to any installation or modification of a VCS, or to structures supporting a VCS, or to request an alternative to the requirements of this Article 5.4, the terminal operator shall submit any and all plans, calculations, specifications, drawings, analyses, test results and reports required by §§2553, 2554 and 2555, and supporting documentation to justify a request for alternatives under §2556 of this Article 5.4 to the Division to review for conformity with good engineering standards, principles and practice and compliance with this Article 5.4. Unless otherwise specified, all documentation supporting a planned installation or a modification of a VCS or its supporting structures shall be signed by an engineer employed by or appointed by the petitioner.~~

~~(a) The Division shall review all documentation and supporting data submitted by a terminal operator for any installation, modification or alternative for completeness within thirty working days of receipt. If the supporting data is incomplete, the Division shall require the petitioner to provide any missing information or~~

~~additional documentation necessary for the Division to complete its evaluation and make a determination. Any plan or request to install or modify a VCS or VCS supporting structures in accordance with the provisions of §§2553, 2554, and 2555, or to be granted an alternative under §2556 of this Article 5.4, shall not be deemed to be complete until the Division notifies the petitioner in writing that the plan or request is complete. After a plan or request is determined to be complete, the Division may request additional information only when necessary to clarify, modify, or supplement previously submitted material.~~

~~(b) The Division shall either approve an installation or modification to a VCS or its supporting structures or disapprove it within thirty working days after the documentation and supporting data have been declared complete. Such approval or disapproval shall be communicated to the petitioner in writing as follows:~~

~~(1) A letter of approval, issued under any of the provisions of this Article 5.4, shall set forth any findings or conditions, if necessary, upon which the approval is based, and a copy of the approval letter shall be maintained with the terminal's operations manual required by 2 CCR §2385.~~

~~(2) A letter of disapproval, issued under any of the provisions of this Article 5.4, shall set forth the findings or reasons upon which the disapproval is based.~~

~~(c) If the Division fails to act within the thirty working day period following the date a plan or request is declared complete in accordance with the provisions of subsection (b) of this section, the plan or request shall be deemed to have been approved and the Division shall issue a letter of approval as provided in subsection (b)(1) of this section.~~

~~(d) Any terminal operator may, upon receipt of a letter of disapproval from the Division Chief, appeal the disapproval to the Commission, provided that the appeal is submitted in writing to the Executive Officer of the Commission within fifteen working days after receiving notice of the disapproval.~~

~~Authority: Sections 8751, 8755, 8756, 8757 and 8758, Public Resources Code.~~

~~Reference: Sections 8751, 8755, 8756, 8757 and 8758, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.~~

~~§2552. Definitions.~~

~~Unless the context otherwise requires, the following definitions shall govern the construction of this article:~~

~~(a) "Division" means the staff of the Marine Facilities Division of the California State Lands Commission.~~

~~(b) "Division Chief" means the Chief of the Marine Facilities Division or any employee of the Division authorized by the Chief to act on his behalf.~~

~~(c) The term "Engineer" means a civil, structural or geotechnical engineer licensed by the state of California.~~

~~(d) An "Existing Vapor Control System" or "EVCS" means either of the following:~~

~~(1) A VCS which was installed at a marine terminal and first operated prior to December 31, 1996; or~~

~~(2) A VCS which was installed at a marine terminal and first operated as an NVCS after December 31, 1996, but which was subsequently certified in writing by a designated certifying entity and approved for operation by the U. S. Coast Guard. The change in designation from an NVCS to an EVCS shall be effective twenty-four hours after both certification and approval have occurred.~~

~~(e) A "New Vapor Control System" or "NVCS" means a VCS which is not an Existing Vapor Control System or EVCS.~~

~~(f) "Marine Terminal" means a facility, other than a vessel, located on or adjacent to marine waters in California, used for transferring oil to or from tank vessels or barges. The term references all parts of the facility including, but not limited to, structures, equipment and appurtenances thereto used or capable of being used to transfer oil to or from tank vessels or barges. For the purpose of these regulations, a marine terminal includes all piping not integrally connected to a tank facility.~~

~~(g) A "Tank Facility" means any one or combination of above ground storage tanks, including any piping which is integral to the tank, which contains crude oil or its fractions and which is used by a single business entity at a single location or site. A pipe is integrally related to an above ground storage tank if the pipe is connected to the tank and meets any of the following:~~

~~(1) The pipe is within the dike or containment area;~~

~~(2) The pipe is connected to the first flange or valve after the piping exits the containment area; or~~

~~(3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.~~

000401 CALENDAR PAGE

002698 MINUTE PAGE

~~(h) A "Vapor Control System" or "VCS" means an arrangement of piping and equipment used to control vapor emissions collected from cargo tanks of tank vessels or barges at a marine terminal. For the purpose of these regulations, a VCS includes any and all vapor collection systems, any and all vapor processing and destruction units, any and all vapor recovery units and any and all VCS equipment installed at a marine terminal.~~

~~(i) "VCS Equipment" means any and all components of a VCS, including, but not limited to, critical piping, control systems, and liquid knockout vessels.~~

~~Authority: Sections 8751, 8755 and 8756, Public Resources Code.~~

~~Reference: Sections 8750, 8751, 8755, 8756 and 8757, Public Resources Code.~~

~~§2553. Structures supporting NVCS or New VCS Equipment to be Installed as part of a Marine Terminal but not on the Wharf or Pier.~~

~~(a) This section shall apply only to NVCS or new VCS equipment that is to be installed within and as part of a marine terminal, but not on a wharf or pier. Unless it will result in a significant increase in loading to supporting structures, this section does not apply to planned or emergency VCS equipment change-outs or one-for-one part replacements.~~

~~(b) At least sixty days prior to installation of an NVCS or new VCS equipment, the terminal operator shall submit to the Division a comprehensive soils report, including, but not limited to, data on all geotechnical properties necessary and appropriate for analysis and design of foundations for the NVCS or new VCS equipment. The geotechnical report submitted for Division review shall be signed by a geotechnical engineer. Upon receipt, the Division shall review all documentation and supporting technical data submitted in response to this section for completeness before approving or disapproving the plan or request, conforming to the procedures and time limits set forth in §2551 of this Article 5.4.~~

~~(c) Any structure or foundation providing support for an NVCS installed at a marine terminal shall, at a minimum, conform to the Uniform Building Code, 1994 Edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.~~

~~(d) Supports for VCS components mounted on skids shall, at a minimum, conform with the Uniform Building Code, 1994 Edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601. The effects of seismic, wind and dead, live and other appropriate loads, using applicable load combinations shall be considered in~~

~~designing the individual tie-downs of components to the skid. Steel skirts, supporting structural elements, vessels, controls and detonation arresters shall all be considered for connection and load transfer to the base skid and foundation.~~

~~Authority: Sections 8751, 8755 and 8756, Public Resources Code.~~

~~Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.~~

~~§2554. Structures supporting New VCS Equipment to be Installed on Areas of Existing Wharves or Piers Overhanging the Water or Wetlands.~~

~~(a) This section shall apply only to NVCS or new VCS equipment that is to be installed on a wharf or pier at a marine terminal.~~

~~(b) Any portion of a structure providing lateral or vertical support to a skid-mounted, prefabricated VCS component or equipment shall be upgraded to the current structural design and analysis set forth in the following manuals, codes and recommended practice, as appropriate:~~

~~(1) Uniform Building Code, 1994 Edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.~~

~~(2) Bridge Design Specifications Manual, December 31, 1995 Edition, published by the State of California, Department of Transportation, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815-3800.~~

~~(3) MIL-Handbook 1025/1, "Military Handbook – Piers and Wharves," October 30, 1987, published by the Department of the Navy, Defense Printing Service, Detachment Office, 700 Robbins Avenue, Philadelphia, PA 19111-5094.~~

~~(4) MARINE TERMINAL AUDIT MANUAL, Second Edition, March 1996, published by the California State Lands Commission, Marine Facilities Division, 200 Oceangate, Suite 900, Long Beach, CA 90802-4335.~~

~~(c) Under certain conditions, such as near-fault phenomena or deep alluvia, the structural response may significantly amplify the lateral loads at the base of any VCS equipment. When such conditions prevail, the Division may require a more rigorous treatment, such as a dynamic analysis of the structure and VCS equipment using a locally accepted site-specific response spectrum. The~~

~~methodology of any such additional analysis shall be determined by an engineer employed by or appointed by the petitioner.~~

~~(d) All analyses and design performed under the provisions of this section shall be submitted to the Division for review. Upon receipt, the Division shall review all documentation and supporting technical data submitted in response to this section for completeness before approving or disapproving the plan or request, conforming to the procedures and time limits set forth in §2551of this Article 5.4.~~

~~Authority: Sections 8751, 8755 and 8756, Public Resources Code.~~

~~Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.~~

~~§2555. Inspection and Reassessment of EVCS Structural Installations.~~

~~(a) This subsection (a) shall apply to all EVCS and EVCS equipment installed on a wharf or pier.~~

~~(1) The Terminal Operator shall carry out or cause to be carried out a thorough inspection of all structural members providing lateral or vertical support to the EVCS and EVCS equipment to determine the structural integrity of the installation. Each inspection shall be carried out in the same manner, utilizing the procedures for performing structural and safety system audits as set forth in the MARINE TERMINAL AUDIT MANUAL, Second Edition, March 1996, published by the California State Lands Commission, Marine Facilities Division, 200 Oceangate, Suite 900, Long Beach, CA 90802-4335, at the following maximum intervals:~~

~~Construction Material~~	~~Inspection Interval~~
~~Timber~~	~~Three Years~~
~~Concrete~~	~~Six Years~~
~~Steel~~	~~Six Years~~

~~(2) A report of the inspection of the EVCS structural installation, which documents damage to piles, beams, decks, bumpering systems, dolphins and other structural elements, and which contains an evaluation by an engineer employed by or appointed by the petitioner, including a description of remedial measures taken, shall be submitted to the Division for review. If internal damage to piles, beams or deck components is suspected, the inspection shall include non-destructive testing as required~~

~~by the Division, to establish the component's structural integrity with certainty. Upon receipt, the Division shall review all documentation and supporting technical data submitted in response to this section for completeness before approving or disapproving the plan or request, conforming to the procedures and time limits set forth in §2551 of this Article 5.4.~~

~~(3) Based on the severity of an inspection report showing structural damage, pest damage, damage caused by impact, corrosion, or any other damage or deterioration that might affect the safety or operation of the VCS, and any damage at the terminal that is reported under the provisions of 2 CCR §2325(e), a more frequent cycle of inspections may be established by the Division.~~

~~(b) This subsection (b) shall apply to all EVCS and EVCS equipment at a marine terminal not installed on a wharf or pier.~~

~~(1) The Terminal Operator shall carry out or cause to be carried out a thorough inspection of visible structural members providing lateral or vertical support to the EVCS and EVCS equipment to determine the structural integrity of the installation. As a minimum, each major component should be inspected for lateral restraint for seismic loads, and for dead plus live vertical loads being transferred to the structure. The inspection interval shall be a maximum of six years.~~

~~(2) A report of the inspection of the EVCS structural installation, which documents damage to structural elements, and which contains an evaluation by an engineer employed by or appointed by the petitioner, including a description of remedial measures taken, shall be submitted to the Division for review. Upon receipt, the Division shall review all documentation and supporting technical data submitted in response to this section for completeness before approving or disapproving the plan or request, conforming to the procedures and time limits set forth in §2551 of this Article 5.4.~~

~~Authority: Sections 8751, 8755 and 8756, Public Resources Code.~~

~~Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.~~

~~§2556. Alternatives.~~

~~(a) Petitions for Alternatives.~~

~~(1) Any terminal operator may submit a petition to the Division Chief for alternatives to the requirements of this Article 5.4.~~

~~(2) All petitions for alternatives must be submitted in writing. A petition may be in any form, but it must contain all data and information necessary to evaluate its merits.~~

~~(b) Review and Response to Petitions.~~

~~Upon receipt, the Division shall review any request for an alternative to the requirements of this Article 5.4 in response to this section for completeness before approving or disapproving the request, conforming to the procedures and time limits set forth in §2551 of this Article 5.4.~~

~~(c) Approval of Alternatives.~~

~~(1) The Division Chief may approve any proposed alternatives to the requirements of this Article 5.4, if it can be determined that compliance with the proposed alternatives will ensure an equivalent or greater level of protection of the public health and safety and the environment than that established by this Article 5.4.~~

~~(2) The Division Chief shall either approve or disapprove any petition for alternatives within thirty working days of receipt of a petition that is declared complete. The process for notifying the petitioner of an approval or disapproval and the petitioner's right to appeal a disapproval are set forth in §2551(b), (c) and (d) of this Article 5.4.~~

~~(d) Withdrawal of Approval.~~

~~(1) The Division Chief may withdraw the letter of approval of any alternative to the requirements of this Article 5.4, any time the Division verifies that the petitioner has not regularly and consistently complied with the approved alternative requirements.~~

~~(2) Withdrawal of approval of any alternatives to requirements under this Article 5.4, shall be effective immediately upon receipt by the petitioner of written notification of the withdrawal from the Division Chief.~~

~~Authority: Sections 8751, 8755 and 8756, Public Resources Code.~~

~~Reference: Sections 8751, 8755, 8756 and 8757, Public Resources Code; Sections 15375, 15376 and 15378, Government Code.~~