

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 3/26/02
Department Name: Planning & Development
Department No.: 053
Agenda Date: 4/2/02
Placement: Departmental
Estimate Time: 45 minutes
Continued Item: YES
If Yes, date from: 3/19/02

TO: Board of Supervisors

FROM: John Patton, Director
Planning and Development Department

STAFF CONTACT: Doug Anthony, Energy Specialist, Energy Division, (805) 568-2046
Dr. John Day, Planner, Energy Division, (805) 568-2045

SUBJECT: Proposed Change of Owner, Operator, or Guarantor Ordinance, Supplemental Report

Recommendation(s):

That the Board of Supervisors:

A. Consider the adoption (Second Reading) of an Ordinance adding Chapter 25B, titled *Change of Owner, Operator or Guarantor for Certain Oil and Gas Facilities*, and make the findings specified as Exhibit D to the Board Letter dated March 19, 2002; and consider the adoption (Second Reading) of an Ordinance amending sections of Chapter 24A, titled *Administrative Fines*, so that it is applicable to Chapter 25B.

OR

B.1. Consider re-opening the first reading of proposed Chapter 25B of the Santa Barbara County Code, titled *Change of Owner, Operator, or Guarantor for Certain Oil and Gas Facilities*, and amendments to Chapter 24A of the Santa Barbara County Code, titled *Administrative Fines*, for the purpose of adding the following amendments to Sections 25B-3, "Definitions," and 25B-10.1.i, "Operator Capability" of Chapter 25B.

(a) Amend the definition of "Major Incident" in Section 25B-3 to read:

"Major incident" shall mean any accident that results in one or more of the following:

- a. an oil spill of 50 barrels or more, not including associated water, that escapes any device designed for spill containment and enters the environment;
- b. one or more fatalities or *serious* injuries that require significant medical intervention to members of the public who were situated outside the facility's premises when the incident occurred;

- c. evacuation of people outside the boundaries of the facility from which the release occurred;
- d. a fire offsite or that spread offsite.

(b) Amend Section 25B-10.1.i to read:

Operator Capability. The proposed operator has the skills, training, and resources necessary to operate the permitted facility in compliance with the permit and all applicable County codes and has demonstrated the ability to comply with compliance plans listed in section 25B-10.1.f. The Director shall require relevant records of compliance, and corrective actions taken subsequent to any major incidents for facilities, if any, that are similar in nature to those that are the subject of the ~~original~~ permit, as may be necessary to make findings. ***These records shall be used to provide sufficient assurance that the proposed operator does not reflect a record of non-compliant or unsafe operations systemic in nature for similar facilities to those being considered for operatorship.***

B.2. Continue the hearing to April 16, 2002, for purposes of conducting the second hearing for the proposed addition of Chapter 25B to the County code and the proposed amendments to Chapter 24A, which were first read on March 19, 2002.

Alignment with Board Strategic Plan:

The recommendation primarily aligns with Goal No. 2.: A Safe and Healthy Community in Which to Live, Work, and Visit.

Executive Summary and Discussion: The Board of Supervisors voted 3-2 during its regularly scheduled hearing of March 19, 2002, to approve the first reading of the proposed ordinance to govern changes of owner, operator, or guarantor for certain oil and gas facilities, including oil refineries and those onshore oil and gas facilities that support offshore development. Most of the discussion during that hearing focused on the second sentence of Section 25B-10.1.i of the proposed ordinance, having to do with request and review of relevant records of compliance and major incidents. Representatives of the oil industry asked for some additional clarification about the request for and review of records of compliance and major incidents. Supervisor Urbanske also questioned how staff and the Planning Commission might review the records of major incidents. Based on these comments, Supervisor Schwartz offered some additional language to help focus and clarify the scope of such review. As approved for the purposes of the first reading on March 19, 2002, subsection 25B-10.1.i reads as follows, with the amendments made by the Board of Supervisors shown in italics:

Operator Capability. The proposed operator has the skills, training, and resources necessary to operate the permitted facility in compliance with the permit and all applicable County codes and has demonstrated the ability to comply with compliance plans listed in section 25B-10.1.f. The Director shall require relevant records of compliance and *corrective actions taken subsequent to any major incidents for facilities, if any, that are similar in nature to those that are the subject of the original permit* as may be necessary to make findings.

Staff subsequently met with representatives of the oil industry to discuss additional clarifications in the scope of the request for and review of records of compliance and corrective action of any major incidents that would help them better understand the extent of the new ordinance. That meeting resulted in three staff-recommended clarifications, which are as follows:

(1) **Public Safety vs. Occupational Safety**

Modify the definition of section 25B-3, "Definitions," to clarify that the scope of major incidents as used in the proposed ordinance entails fatalities or serious injuries to the general public, and not to workers at a facility. Such clarification reflects current County practice when permitting new oil and gas facilities, or modifications to existing facilities, that are applicable under the proposed ordinance. Analysis of risk to public safety in Environmental Impact Reports focuses on public safety, not worker safety. This practice is also reflected in County policies contained in the Safety Element Supplement (adopted by the Board of Supervisors in January, 2000) and the Public Safety Thresholds chapter of the County's Environmental Thresholds and Guidelines Manual (adopted by the Board of Supervisors in August, 1999). The proposed revision reads as follows (emphasis provided only to illustrate added text):

““Major incident” shall mean any accident that results in one or more of the following:

- e. an oil spill of 50 barrels or more, not including associated water, that escapes any device designed for spill containment and enters the environment;
- f. one or more fatalities or *serious* injuries that require significant medical intervention *to members of the public who were situated outside the facility's premises when the incident occurred*;
- g. evacuation of people outside the boundaries of the facility from which the release occurred;
- h. a fire offsite or that spread offsite.”

(2) **Serious Injuries**

Clarification about the extent of injury that would qualify serious in the definition of major incidents quoted above would help define the scope of a request for and review of corrective action subsequently taken for any major incident. Currently, the ordinance depicts a serious injury as one requiring significant medical intervention. It stems from a definition codified in 1999 into the County's *Environmental Thresholds and Guidelines Manual*, Chapter 13, "Public Safety Thresholds," which reads: "Physical harm to a person that requires significant medical intervention." Implementation of the Public Safety Threshold provides further clarification of what constitutes a serious injury for the purposes of the proposed ordinance. Examples may be viewed in the Quantitative Risk Analysis for Venoco's Platform Holly and Ellwood Facility (June 2000), and the draft Environmental Impact Report for the Tranquillon Ridge Oil and Gas Development Project (February 2002), both of which Arthur D. Little, Inc. (ADL) prepared under contract to Santa Barbara County. "Damage criteria" that pertain to serious injury include the following for acutely toxic gas, thermal radiation (i.e., fire), and explosion:

- (a) To estimate physical harm to the public from a release of gas contaminated with hydrogen sulfide, ADL uses the American Industrial Hygiene Association's Emergency

Response Planning Guidelines (ERPGs). ERPG-2 specially addresses serious injury as follows: “The maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual’s ability to take protective action.” This category is further defined by the two other ERPG categories that frame it. ERPG-3, which is more harmful than ERPG-2, extends to life threatening health effects (inclusive of death), while ERPG-1 is limited to mild, transient adverse health effects.

- (b) To estimate physical harm to the public from exposure to thermal radiation (i.e., fire), ADL independently employs severe pain and second-degree burns as the minimum “damage criteria” for determining serious injury. Each is based on intensity of heat, measures as kilowatts per square meter (i.e., a measure of the rate of energy output).
- (c) To estimate physical harm to the public from exposure to an explosion, ADL calculates overpressure damage. In this case, injuries from broken glass to more substantial structural damage are assumed to have sufficient potential to cause serious injury or fatality.

Staff recommends an approach that is consistent with the current practice for environmental review of oil and gas facilities when requesting and reviewing records of major incidents in the proposed ordinance. According, staff has proposed a change to the ordinance that considers only physical harm to members of the public outside the facility’s premises to represent a serious injury if it resulted in more harm than mild, transient adverse health effects due to exposure to toxic materials, thermal radiation, or explosions. This clarification provides more specificity regarding implementation of the proposed ordinance.

Staff further proposes to interpret the phrase “significant medical treatment” consistent with how that term is used in the practice of preparing quantified risk analyses, as discussed above.

3. **Scope of review of compliance and accident records**

The revised language to subsection 25B-10.1.i, approved by the Board on March 19, 2002, helped to clarify the scope of review of accident records. Moreover, Board inquiries and staff responses clarified that the examination of a new operators skills, training, and resources required by this subsection would include examination of proposed staffing levels, which previously has been of some concern when processing changes in operator.

Staff has also developed an additional clarification that will apply to records of compliance and help focus the review of such records. Accordingly, staff recommends that the Board of Supervisors further revise the language of subsection 25B-10.1.i to read as follows:

“Operator Capability. The proposed operator has the skills, training, and resources necessary to operate the permitted facility in compliance with the permit and all applicable County codes and has demonstrated the ability to comply with compliance plans listed in section 25B-10.1.f. The Director shall require relevant records of compliance, and corrective actions taken subsequent to any major incidents for facilities, if any, that are similar in nature to those that are the subject of the original permit, as may be necessary to make findings. ***These records shall be used to***

provide sufficient assurance that the proposed operator does not reflect a record of non-compliant or unsafe operations systemic in nature for similar facilities to those being considered for operatorship.

First, we have added two commas to the second sentence, between the words “compliance” and “and,” and between the words “permit” and “as” to clarify that the review of records of compliance applies to more than just major incidents. That is, acts of non-compliance that may be of some concern do not always entail major incidents.

Second, staff recommends deletion of the word “original” because several permits that will be subject to this ordinance have been modified significantly since they were originally issued. The permit for Torch’s Lompoc oil processing facility, for example, was subsequently modified to add a sour gas processing facility.

Third, we have added a third sentence that focuses the review of records on a systemic or recurring practice of non-compliance or accidents, which reflects staff’s understanding of the review during implementation.

County Counsel advises that, if the Board chooses to incorporate the foregoing revisions to the ordinance, then it would be best to re-open the first reading of the ordinances and hold a second hearing at a later date. Staff has tentatively scheduled a second reading for April 16, 2002.

Mandates and Service Levels: The proposed ordinance is not a mandated program, but rather a response to federal and state laws and decisions to lease tracts offshore Santa Barbara County to the oil industry for the purpose of developing oil and gas reserves. Such leasing decisions have placed a legislative burden on adjacent local jurisdictions to adopt rules for processing and monitoring permits for the onshore infrastructure necessary to support offshore oil and gas development. The proposed ordinance codifies a cost reimbursable process to handle transfers of such permits from one owner, operator, or guarantor to another in a consistent and comprehensive manner.

Fiscal and Facilities Impacts: Development of the proposed ordinance has been funded from outside grants, with matching funds approved in the Energy Divisions FY 2000-01 and 2001-02 budgets (program 5080, projects PCHG, PCH2, and PCH). The proposed ordinance establishes reimbursing mechanisms for costs incurred in implementing the ordinance. The ordinance does not affect any County facilities.

Special Instructions: N/A.

Concurrence: County Counsel.