



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

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

Department Name: Planning & Development
Department No.: 053
For Agenda Of: 02/01/2011
Placement: Departmental
Estimated Tme: 1 Hour
Continued Item: Yes
If Yes, date from: 01/11/2011
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Glenn Russell, Ph.D., Director, Planning and Development
Director(s) (805)568-2085

Contact Info: Dianne Black, Director of Development Services
(805)568-2086

**SUBJECT: Ordinance Amending Chapter 25, Petroleum Code, to Address Regulation of
“High Risk” Petroleum Operations and Operators**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

That the Board of Supervisors:

1. Introduce (first reading) an Ordinance amending Chapter 25, Petroleum Code, of the Santa Barbara County Code, as it relates to the regulation of “High Risk” Petroleum Operations and Operators;
2. Continue to February 15, 2011 to:
 - a. Find that the Ordinance amending Chapter 25, Petroleum Code, is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15307 and 15308;
 - b. Approve the attached Notice of Exemption (Attachment C) and direct staff to file the Notice of Exemption with the County Clerk;
 - c. Find that 5 or more unauthorized releases of oil, produced water, other deleterious substances and/or other hazardous material of a quantity not less than one barrel (42 gallons) other than within secondary containment for each incident, within a 12-month period, is harmful to the environment, and such frequent unauthorized releases are indicative of an operation that poses a significant risk to the County of Santa Barbara’s environment and its resources;

- d. Consider the adoption (second reading) of an Ordinance amending Chapter 25, Petroleum Code, of Santa Barbara County Code, as it relates to the regulation of “High Risk” Petroleum Operations and Operators, to be effective 30 days from adoption.

Summary Text:

During the January 11, 2011 Board hearing, staff provided the Board of Supervisors with a proposed ordinance to amend the existing Petroleum Code as it relates to the ongoing regulation of Onshore Petroleum Operations and Operators. At that hearing, the Board directed staff to review additional revisions prior to moving forward with the ordinance amendment.

Background:

At the January 11, 2011 Board hearing, staff recommended amendments to the Petroleum Code to revise the current thresholds for determining high risk operations, as well as to clarify the remediation requirements for high risk operations under Section 25-43. Based on issues identified at that hearing, staff recommends the following revisions to the ordinance amendment, in addition to the recommendations previously proposed on January 11, 2011:

1. Added definition for “Hazardous Materials”;
2. Revised definitions for “High Risk Operations”; and
3. Added definition for “Owner” to address distinction between surface land owner and mineral rights owner.

Some additional minor changes are also proposed as part of this ordinance amendment. Changes include:

1. Reference to Article 79 of the California Fire Code has been stricken since this Article has been removed from the 2010 edition of the California Fire Code;
2. Reference to Petroleum Administrator under section 25-6 Permit Procedures has been clarified;
3. Reference to the County Administrative Fine Ordinance (Chapter 24) has been added when referring to Notices of Determination of Fines;
4. Definition of High Risk Operations has been modified to include other “deleterious substances”; and
5. Audit costs responsibilities under Section 25-43 Remediation of High Risk Operations has been clarified.

These proposed changes are marked in strikeout/underline format and highlighted in Attachment A for ease of reference. The original proposed changes presented during the January 11th hearing appears in Attachment A in strikeout/underline format without highlights.

Hazardous Materials Defined

During the January 11, 2011 hearing, your Board expressed concerns that the definition for High Risk Operations uses the term “hazardous materials” but that term has not been defined in the ordinance. A definition for the term “Hazardous Materials” has been added to Section 25-4 Definitions and is defined as:

“Those chemicals or substances which are physical hazards or health hazards as defined and classified in the California Fire Code, whether the materials are in usable or waste conditions.”

This definition mirrors the definition provided in the 2010 edition of the California Fire Code.

Revised Definition for “High Risk Operations”

At the same hearing, your Board also expressed concerns that the thresholds as proposed do not adequately address habitual violators who frequently spill under the volumetric threshold proposed under subsection (b) for High Risk Operations.

Staff proposes to add a new threshold for defining a High Risk Operation as one that:

“Notwithstanding sections (a) and (b) above, has had at least five separate unauthorized releases of oil, produced water, other deleterious substances and/or other hazardous materials of a quantity not less than one barrel (42 gallons) other than within secondary containment for each incident during the preceding 12 months.”

Under this new threshold, a facility will be deemed high risk if staff has responded to at least five separate spill incidents in a 12 month period, where each incident exceeded one barrel (42 gallons) outside the containment area. The one barrel minimum is the state mandated reporting criteria under California Health and Safety Code section 25270.8. “Deleterious substances” was added as part of the definition at your Board’s direction to address concern regarding other potentially injurious substances not otherwise included in this definition.

This new threshold is in addition to the other two thresholds where an operation could also be deemed “high risk” if it (1) has been in violation for more than 30 consecutive days and has been issued a Notice of Determination of Fine, or (2) has had at least two separate unauthorized releases of 15 barrels outside of the containment area.

“Owner” Defined

Lastly, your Board also raised the need to distinguish between operator and owner, and whether the “owner” as used to define a “High Risk Operator” referred to the surface land owner or the mineral rights owner.

A definition for “Owner” has been added to the Ordinance to clarify this distinction. The term “owner”, for purposes of this chapter shall be defined as:

“...the person, whether land owner, mineral estate owner, lessee or agent for the property owner, who owns or controls the mineral rights to exploit, mine and/or produce any or all of the minerals lying below the surface of the property.”

As defined, the “Owner” may include the surface land owner, as long as that owner has the rights to mine or otherwise exploit the area below the surface of the property.

CEQA Exemption

The proposed Ordinance amending Chapter 25 is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15307 (actions by regulatory agencies for protection of natural resources) and section 15308 (actions by regulatory agencies for protection of the environment). The proposed Ordinance addresses the regulation of Onshore Petroleum Operations that are considered “high risk” to the environment and to the County’s natural resources and such actions are categorically exempt from CEQA review.

Performance Measure:

N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

Costs for preparation of this ordinance amendment are funded by permit revenue in the Department’s Building and Safety Division, page D-338 of the FY 2010-11 adopted budget.

Special Instructions:

1. The Clerk of the Board shall notice the proposed ordinance amendment in a newspaper of general circulation in the County of Santa Barbara once at least 5 days prior to the first reading and again in accordance with section two of the ordinance within 15 days after its passage.
2. The Clerk of the Board shall send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Linda Liu.

Attachments:

- A. Ordinance amending Chapter 25 with strikeout/underline
- B. Ordinance amending Chapter 25 (clean copy)
- C. Notice of Exemption

Authored by:

Linda Liu, Planning & Development

cc:

Glenn Russell, Ph.D., Director, Planning & Development
Dianne Black, Director, Development Services, Planning & Development
Steve Mason, Deputy Director, Planning & Development
Jeff Thomas, Petroleum Unit Supervisor, Planning & Development
Kevin Ready, Senior Deputy County Counsel
Michael Ghizzoni, Chief Assistant County Counsel
Linda Liu, Planning & Development