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SANTA BARBARA COUNTY
BOARD OF SUPERVISORS
105 E. Anapamu St.
Santa Barbara, CA 93101

**Subject: Proposed Amendments to Chapter 25 (Petroleum Code)
“High Risk” Petroleum Operations and Operators
First Reading: February 1, 2011**

Dear Board Members:

My family has owned and operated farm and ranch lands in the Los Olivos area since the 1930s. During much of this time relatively small portions of our property have been used for oil and gas operations. This has provided revenue to help support our farming and ranching activities and the preservation of our land. Without revenue from natural resource development this may not have been possible for us or for many other rural landowners in Santa Barbara County. We are troubled by what we see as unreasonable regulations in the proposed “High Risk Operator” ordinance.

Much of the County Petroleum Code is well designed. It is grounded in good policy and common sense. The same cannot be said about parts of the High Risk Ordinance. The proposed reduction in the spill threshold from three spills of 25 barrels each, to two spills of 15 barrels each, is an example. The idea that one could be swept into the High Risk offender category for having two accidental spills of 15 barrels, comprising mostly produced water - - where there is no impact to riparian habitat or groundwater - - is alarming. If the County insists upon singling out the oil industry for special negative treatment, then at least the regulations ought to make sense. A spill threshold that presents no harm to public health, safety or the environment does not make sense.

According to staff, the initial 25 barrel threshold was borrowed from the federal definition of “minor discharge.” This threshold is found in CERCLA. It applies to all businesses, not just the oil industry. The federal law focuses, as it should, on the harm presented by the spill. Where the harm is substantial, then the discharge is considered to be “major,” whatever the volume. By contrast, where there is no substantial threat of harm, a spill of less than 1,000 gallons is considered to be a “minor discharge,” **even where the spill is to inland waters.** (See attached.)

The County proposes to take a sledgehammer approach. Without considering whether the discharge presents any harm, a 630 gallon spill of mostly produced water to isolated dry

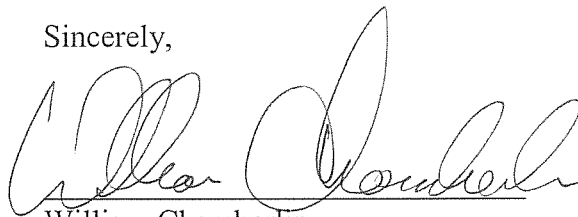
ground would be treated as one of the two pillars of a major event. This is unreasonable. It also breeds disrespect for the law.

The ordinance should also clearly distinguish between those persons actually engaged in oil and gas operations ("Operators") on the one hand, and surface owners and mineral owners who are not engaged in operations on the other hand. Mineral owners who sign leases with oil companies generally do not retain any right to control operations. These mineral owners, as well as surface owners, should not be at risk for operations over which they have no control. The California Legislature has recognized the importance of this distinction in a similar context (Public Resource Code 3237(c), attached).

Please step back and take a look at the big picture. County, state and federal agencies already have many effective tools available to protect health, safety and the environment and to penalize those who act irresponsibly. We ask that you not only reject the proposed threshold reduction, but take a fresh look at other parts of the High Risk Ordinance and rewrite or eliminate other unreasonable regulations.

Thank you for considering these comments.

Sincerely,



William Chamberlin

Attachments (2)

CERCLA 40 CFR 300

Environmental Protection Agency

§ 300.5

amending the Internal Revenue Code is also known as the "Superfund Revenue Act of 1986."

Sinking agents means those additives applied to oil discharges to sink floating pollutants below the water surface.

Site inspection (SI) means an on-site investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected in the preliminary assessment and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate.

→ *Size classes* of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D. They are not meant to imply associated degrees of hazard to public health or welfare of the United States, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

→ (1) Minor discharge means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(2) Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(3) Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

Size classes of releases refers to the following size classifications which are provided as guidance to the OSC for meeting pollution reporting requirements in subpart B. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of the particular release (e.g., size, location, impact, etc.):

(1) Minor release means a release of a quantity of hazardous substance(s),

pollutant(s), or contaminant(s) that poses minimal threat to public health or welfare of the United States or the environment.

(2) Medium release means a release not meeting the criteria for classification as a minor or major release.

(3) Major release means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern.

Sorbents means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it; absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material; or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

(1) Organic products—

(i) Peat moss or straw;

(ii) Cellulose fibers or cork;

(iii) Corn cobs;

(iv) Chicken, duck, or other bird feathers.

(2) Mineral compounds—

(i) Volcanic ash or perlite;

(ii) Vermiculite or zeolite.

(3) Synthetic products—

(i) Polypropylene;

(ii) Polyethylene;

(iii) Polyurethane;

(iv) Polyester.

Source control action is the construction or installation and start-up of those actions necessary to prevent the continued release of hazardous substances or pollutants or contaminants (primarily from a source on top of or within the ground, or in buildings or other structures) into the environment.

Source control maintenance measures are those measures intended to maintain the effectiveness of source control actions once such actions are operating and functioning properly, such as the

CAL. Public Resources Code

3236. Any owner or operator, or employee thereof, who refuses to permit the supervisor or the district deputy, or his inspector, to inspect a well, or who willfully hinders or delays the enforcement of the provisions of this chapter, and every person, whether as principal, agent, servant, employee, or otherwise, who violates, fails, neglects, or refuses to comply with any of the provisions of this chapter, or who fails or neglects or refuses to furnish any report or record which may be required pursuant to the provisions of this chapter, or who willfully renders a false or fraudulent report, is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000), or by imprisonment for not exceeding six months, or by both such fine and imprisonment, for each such offense.

Penalty for
refusing access


3236.5. (a) A person who violates this chapter or a regulation implementing this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each violation. Acts of God and acts of vandalism beyond the reasonable control of the operator shall not be considered a violation. The civil penalty shall be imposed by an order of the supervisor upon a determination that a violation has been committed by the person charged, following notice to the person and an opportunity to be heard. The notice shall be served by personal service or certified mail, and shall inform the alleged violator of the date, time, and place of the hearing, the activity that is alleged to be a violation, the statute or regulation violated, and the hearing and judicial review procedures. The notice shall be provided at least 30 days before the hearing. The hearing shall be held before the supervisor or the supervisor's designee in Sacramento or in the district in which the violation occurred. The hearing is not required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The imposition of a civil penalty under this section shall be in addition to any other penalty provided by law for the violation. When establishing the amount of the civil penalty pursuant to this section, the supervisor shall consider, in addition to other relevant circumstances, (1) the extent of harm caused by the violation, (2) the persistence of the violation, (3) the pervasiveness of the violation, and (4) the number of prior violations by the same violator.

Civil penalty
by Supervisor

(b) Notwithstanding this chapter, an order of the supervisor imposing a civil penalty shall not be reviewable pursuant to Article 6 (commencing with Section 3350). A person upon whom a civil penalty is imposed by a final order of the supervisor may obtain judicial review of that final order by seeking a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of that final order. When the order of the supervisor has become final, and the penalty has not been paid, the supervisor may apply to the appropriate superior court for an order directing payment of the civil penalty. The supervisor may also seek from the court an order directing that production from the well or use of the production facility that is the subject of the civil penalty order be discontinued until the violation has been remedied to the satisfaction of the supervisor and the civil penalty has been paid.

Civil penalty review

(c) Any amount collected under this section shall be deposited in the Oil, Gas, and Geothermal Administrative Fund.

 **3237. (a) (1)** The supervisor or district deputy may order the plugging and abandonment of a well that has been deserted whether or not any damage is occurring or threatened by reason of that deserted well. The supervisor or district deputy shall determine from credible evidence whether a well is deserted.

Deserted wells -
abandonment ordered

(2) For purposes of paragraph (1), "credible evidence" includes, but is not limited to, the operational history of the well, the response or lack of response of the operator to inquiries and requests from the supervisor or district deputy, the extent of compliance by the operator with the requirements of this chapter, and other actions of the operator with regard to the well.

(3) A rebuttable presumption of desertion arises in any of the following situations:

(A) If a well has not been completed to production or injection and drilling machinery have been removed from the well site for at least six months.

(B) If a well's production or injection equipment has been removed from the well site for at least two years.

(C) If an operator has failed to comply with an order of the supervisor within the time provided by the order or has failed to challenge the order on a timely basis.

(D) If an operator fails to designate an agent as required by Section 3200.

(E) If a person who is to acquire a well that is subject to a purchase, transfer, assignment, conveyance, exchange, or other disposition fails to comply with Section 3202.

(F) If an operator has failed to maintain the access road to a well site passable to oilfield and emergency vehicles.

(4) The operator may rebut the presumptions of desertion set forth in paragraph (3) by demonstrating with credible evidence compliance with this division and that the well has the potential for commercial production, including specific and detailed plans for future operations, and by providing a reasonable timetable for putting those plans into effect. The operator may rebut the presumption set forth in subparagraph (F) of paragraph (3) by repairing the access road.

(b) An order to plug and abandon a deserted well may be appealed to the director pursuant to the procedures specified in Article 6 (commencing with Section 3350).

(c) (1) The current operator, as determined by the records of the supervisor, of a deserted well that produced oil, gas, or other hydrocarbons or was used for injection is responsible for the proper plugging and abandonment of the well. If the supervisor determines that the current operator does not have the financial resources to fully cover the cost of plugging and abandoning the well, the immediately preceding operator shall be responsible for the cost of plugging and abandoning the well.

(2) The supervisor may continue to look seriatim to previous operators until an operator is found that the supervisor determines has the financial resources to cover the cost of plugging and abandoning the well. However, the supervisor may not hold an operator responsible that made a valid transfer of ownership of the well prior to January 1, 1996.

(3) For purposes of this subdivision, "operator" includes a mineral interest owner who shall be held jointly liable for the well if the mineral interest owner has or had leased or otherwise conveyed the working interest in the well to another person, if in the lease or other conveyance, the mineral interest owner retained a right to control the well operations that exceeds the scope of an interest customarily reserved in a lease or other conveyance in the event of a default.

(4) No prior operator is liable for any of the costs of plugging and abandoning a well by a subsequent operator if those costs are necessitated by the subsequent operator's illegal operation of a well.

Seriatim

