



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: 01/04/2011
Placement: Set Hearing
Estimated Tme: 1 Hour on 1/11/2011
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Glenn Russell, Ph.D., Director, Planning and Development
Director(s)
Contact Info: Dianne Black, Director of Development Services

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 set a hearing for January 11, 2011 to:

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 1, 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; and
 - c. Consider the adoption (second reading) of 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, to be effective 30 days from adoption.

Summary Text:

During the Board hearing of May 11, 2010, staff provided the Board of Supervisors with an update regarding the ongoing inspection program of onshore oil and gas facilities. At that hearing, the Board directed staff to revisit the High Risk Operations Ordinance and propose recommendations to increase its effectiveness and utility.

The proposed ordinance amendment seeks to amend Chapter 25, the Petroleum Code, to:

1. Amend the threshold for designating an operation as “high risk”; and
2. Elaborate on and clarify the requirements necessary for high risk operators remediating these operations.

If adopted, the ordinance shall be applied in a prospective manner only in order to reduce the likelihood for any legal challenges on the face of the Ordinance.

Background:

Prompted by several unauthorized releases of crude oil that occurred in late 2007, the Board of Supervisors directed staff to develop a High Risk Operations Ordinance. The intent of the ordinance is to ensure that Onshore Petroleum Operators are in compliance with the Petroleum Code, minimizing potential health and safety issues that pose a significant risk to our County’s environment and its resources.

The High Risk Operations Ordinance was adopted on December 9, 2008 and went into effect on January 9, 2009.

Current Thresholds for Designating an Operation as “High Risk”

Staff proposes to amend the current definition for a “High Risk Operation” to better meet the intent of the High Risk Operations Ordinance. As currently defined, an onshore petroleum operation is deemed “high risk” if:

1. The operation has been in violation for more than 30 consecutive days or 45 days during the preceding 12 months (*Section 25-4, Definitions, High Risk Operation subsection (a)*); or
2. The operation has had three unauthorized releases of more than twenty five barrels (one thousand fifty gallons) for each release during the preceding 12 months (*Section 25-4, Definitions, High Risk Operation, subsection (b)*).

Proposed Thresholds for Designating an Operation as “High Risk”

High Risk Operation Subsection (a)

Under subsection (a), a High Risk Operation is currently defined as those operations that have been in violation for more than 30 consecutive days, or more than 45 days during a twelve month period. The 30 and 45 day thresholds do not adequately address situations where an operator, in good faith, cannot realistically achieve compliance within the 30 day timeline, and the Petroleum Administrator has granted an extension because additional time is necessary to cure a specific violation.

Staff proposes to redefine a High Risk Operation under subsection (a) as an operation that:

“Has been in violation for more than thirty consecutive days ~~or 45 days~~ and resulted in the issuance of a Notice of Determination of Fine during the preceding 12 months”.

Allowing the High Risk Operation designation to be triggered by the issuance of a Notice of Determination will allow the Petroleum Administrator to grant an extension to an operator to correct a violation when the additional time is necessary to cure the violation outside the thirty day window, e.g. part availability. Under this new threshold, an operation will be deemed high risk if the thirty day timeframe has passed, the violation has not been cured, an extension has not been granted by the Petroleum Administrator, and a Notice of Determination of Fine has been issued. This new threshold will not seek to penalize those Operators that are trying in good faith to bring their operations into compliance with the Petroleum Code, but are unable to realistically comply within the thirty day window. Extensions are not granted in significant violation cases.

High Risk Operation Subsection (b)

Under the current definition, subsection (b), a facility may also be deemed “high risk” if it has had three separate unauthorized releases that exceed 25 barrels (1050 gallons). During the May 11, 2010 Board hearing, your Board indicated that this threshold of 25 barrels appears inadequate towards protecting our County’s resources and directed staff to re-visit this threshold.

The intent of the Ordinance is to ensure compliance with the Petroleum Code and to minimize potential health and safety issues that pose a significant risk to our County’s environment and its resources. The current threshold of 25 barrels was originally adopted because it is the current federal threshold for when an oil release constitutes a minor discharge as defined in federal regulations, 40 CFR Part 300 § 300.5. However, given the County’s need to protect our environment and resources, and at the Board’s direction, staff proposes to redefine a “high risk” operation under subsection (b) as one that:

“Has had ~~three~~ at least two unauthorized releases of more than ~~twenty five~~ fifteen barrels (~~one thousand fifty six hundred thirty~~ gallons) other than within secondary containment for each release during the preceding twelve months.”

This revised threshold reduces the number of incidents and the release amounts from twenty five barrels to fifteen barrels in order to trigger a “high risk” declaration. The release amounts triggering “high risk” declaration are limited to measurable amounts outside of designated containment areas in order to further prevent significant impact to the environment and resources. Definitions for containment and secondary containment have also been added to the Ordinance for reference purposes.

Staff believes that this revised threshold addresses the Board’s concern for adequate protection of our County’s environment and resources.

Remediation Requirements of High Risk Operations

During the May 11, 2010 Board hearing, your Board further directed staff to re-visit our procedures for the management and oversight of “high risk” operations to ensure that staff maximizes the tools available in order to gain compliance from all operators, particularly those in the “high risk” category. Staff has completed a review of the current remediation requirements for high risk operations under the

Petroleum Code and proposes additional amendments to Section 25-43 to elaborate on and to clarify the requirements for remediating a high risk operation. Staff believes that the proposed amendments will enhance staff's ability to carry out the original intent of the High Risk Operations Ordinance.

As currently written, once an operation is declared "high risk", the Petroleum Administrator must approve a mandatory plan to remediate the high risk operation with the intent of bringing the facility within normal, safe operating standards in order to protect the public's health, safety and welfare. The Ordinance does not currently specify who is responsible for the preparation, management and implementation of the remediation plan. The current ordinance also does not provide sufficiently clear guidelines for the preparation and implementation of the remediation plan.

Staff proposes to amend the Petroleum Code to clarify responsibilities as it relates to the remediation of these high risk operations as well as to provide minimum requirements for a remediation plan. If adopted, the Ordinance will require the High Risk Operator to prepare the remediation plan, subject to approval by the Petroleum Administrator. The plan will include a remediation schedule and an audit of the facility's overall operations. The audit shall be conducted by an independent third party, and shall identify and analyze the root cause(s) leading to the high risk designation, as well as identify and analyze other potential areas in overall facility operations that could impact the facility's ability to operate within normal and safe operating standards (e.g. personnel training, operational policies, etc). Once approved by the Petroleum Administrator, the High Risk Operator shall comply with the approved schedule for remediation and notify the Petroleum Administrator as each milestone in the remediation schedule is satisfied. Petroleum staff may perform independent verification of the compliance upon such notification, and all costs associated with the implementation of the remediation plan, including the compliance verification, shall be borne by the High Risk Operator.

This additional audit requirement under the remediation plan is a useful tool towards ensuring that health and safety standards are met and that potential threats to the County's environment and its resources are sufficiently minimized to the extent possible.

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 tracked changes
- B. Ordinance amending Chapter 25 (clean copy)
- C. Notice of Exemption

Authored by:

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CC:

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Jeff Thomas, Petroleum Unit Supervisor, Planning & Development
Kevin Ready, Senior Deputy County Counsel
Michael Ghizzoni, Chief Assistant County Counsel