



January 6, 2010

Santa Barbara County
Board of Supervisors
105 East Anapamu Street, Suite 407
Santa Barbara, California 93101

RE: Ordinance Amending Chapter 25, Petroleum Code, to Address Regulation of “High Risk” Petroleum Operations & Operators

Dear Chair Gray & Members of the Board:

The following comments on a proposed ordinance to amend the County’s Petroleum Code are submitted by the Environmental Defense Center (EDC). EDC is a non-profit public interest law firm that represents community organizations in environmental matters affecting California’s south central coast.

We appreciate the Board’s interest in increasing the effectiveness and utility of the High Risk Operations Ordinance adopted on December 9, 2008. We are concerned, however, that some proposed amendments are antithetical to the purpose and intent behind the High Risk Operations Ordinance. We therefore urge you *not* to adopt the amendments as currently drafted.

Background

The High Risk Operations Ordinance was made necessary after incidents at several facilities under common ownership/operation caused the release of more than 150,000 gallons of oil into our County’s creek systems and environment in late 2007 and early 2008. The majority of these incidents were caused by aged and failing infrastructure, faulty machinery, poor corporate and on-site management, and inefficient and/or insufficient regulatory oversight. Elected officials and the public were rightly outraged, and the County pledged to address the ongoing problem.

Staff offered five specific recommendations regarding onshore oil operations to the Board on January 15, 2008:

1. Develop a Multiple Response Ordinance.

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2. Develop a High Risk Offender Ordinance (High Risk Operations Ordinance).
3. Develop a centralized “Violation History” database.
4. Increase inspection and permitting fees for those facilities requiring extraordinary time for inspection.
5. Operational efficiency recommendations.
 - A. Direct staff to report on progress in dealing with Greka Energy every 90 days until significant progress is attained.
 - B. Direct staff to work collaboratively with other regulatory agencies to address violations and public health and safety issues with on-shore oil facilities.
 - C. Direct staff to utilize the existing Fire Code and Petroleum Code to maximum extent possible to achieve compliance.
 - D. Direct CEO’s Office to consider merging appropriate staff from Petroleum Unit and Fire Department to improve efficiencies and effectiveness of on-site inspections.

In addition, EDC offered several recommendations in January 2008:

1. The County should receive full (one hundred percent) reimbursement for all response costs, for all incidents, at any operator’s facility.
2. Provisions of the High Risk Operations Ordinance should apply to all operators in Santa Barbara County.
3. Perform increased inspections and audits so that the County can identify any problems *before* an event occurs. Facilities that are not in compliance should be shut down.
4. Prior to reopening any facility that experiences a significant release, the County should hold a public hearing on the matter.
5. As an additional deterrent to bad actors and to repeat violations, establish stronger land owner liability for spills and other incidents.
6. Include the County Energy Division in the development of these policies and subsequent regulatory oversight.

As of May 13, 2008, staff had:

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1. Revised Fire Code Section 15-103;
2. Researched and started to develop what would become the High Risk Operations Ordinance;
3. Imported data from the Fire Department and the Petroleum Unit and consolidated that data into a common database, and created common data tables for Operators, Oil Fields and Leases/Locations;
4. Revised Fire Code Section 15-103; and
5. Consolidated the County's on-site inspection program under the responsibility of the Petroleum Unit.

The High Risk Operations Ordinance was ultimately adopted in December 2008 by a 4-0 (with one recusal) vote. As noted by County staff in a Board Letter dated October 7, 2008, regarding onshore oil operations generally:

Through our inspection process it has become evident that some facilities pose a higher risk to life limb and property. In an effort to minimize these potential safety issues, the Planning and Development Department is proposing the Board adopt the [High Risk Operations Ordinance].

The [High Risk Operations Ordinance is] designed to encourage onshore Petroleum Operators to properly maintain their facilities by utilizing good workmanship and management practices to minimize code violations and oil spills to the maximum extent feasible.

EDC generally supported adoption of the High Risk Operations Ordinance, although implementation of our additional (above) recommendations would have rendered it more effective. We urge you to reconsider those recommendations as any amendment(s) move forward.

We are pleased that the County has demonstrated long-term interest in cleaning up onshore oil operations. As noted above, however, we are concerned that proposed 2011 amendments to the High Risk Operations Ordinance would hinder County oversight and may result in adverse impacts to the environment. Our specific concerns are detailed below.

Proposed Thresholds for Designating an Operation as “High Risk”

We are not aware of any operation or operator that has been deemed “High Risk” under the High Risk Operations Ordinance since its adoption more than two years ago.

High Risk Operation Subsection (a)

The stated purpose of the proposed amendments to the High Risk Operations Ordinance is to “increase its effectiveness and utility.” The High Risk Operations Ordinance is effective when it is used to dissuade pollution and to hold culpable polluters liable for their actions or inaction.

Staff has proposed to revise the definition of “High Risk Operation,” because the current “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.” In other words, the Ordinance would be amended to relax the definition of “High Risk Operation” and exclude certain polluters from the regulatory scheme. The proposed amendment is therefore diametrically opposed to the purpose and intent of the original High Risk Operation Ordinance, and it contravenes the stated purpose of this entire exercise (“to increase its effectiveness and utility”). The proposed amendment would decrease the Ordinance’s effectiveness and preclude its utilization.

The purpose of the proposed amendment is questionable in the first place, because there has been no demonstrated instance where an operator or operation has been deemed “High Risk” despite “good faith” efforts to achieve compliance. In other words, the proposed amendment would have no practical benefit to the regulated community, while it would improperly weaken the regulator’s authority.

Remediation Requirements of High Risk Operations

Staff has proposed changes to Section 25-43 that would clarify responsibilities for the preparation and implementation of remediation plans. These changes are welcome. However, there are two problems with the proposed language.

Subsection 25-43(b)(2)(b)(i)

The phrase “High Risk Operator” should be edited to simply read “Operator.” A “High Risk Operator” is defined as “the owner or operator of two or more petroleum production, processing or storage facilities fitting the definition of High Risk Operation, as designated by Section 25-43(e).” However, the requirements in Subsection 25-43(b) refer to a singular “High Risk Operation,” which may or may not be owned or operated by a High Risk Operator.

Subsection 25-43(h)

The proposed amendments would revise Subsection 25-43(f) of the current High Risk Operations Ordinance, purportedly in order to “enhance staff’s ability to carry out the original intent of the High Risk Operations Ordinance.” Subsection 25-43(f) currently reads: “Any shut-down order issued under this section shall be cancelled when the goals and guidelines of the remediation plan are achieved for that facility.”

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The proposed amendment would renumber Subsection 25-43(f) to Subsection 25-43(h) and say: “Any shut-down order issued under this section shall be cancelled when the cause of the shut down order has been remediated.” The proposed amendment will *not* enhance staff’s ability to carry out the original intent of the High Risk Operations Ordinance, because it would limit the County’s authority to comprehensively address endemic and facility-wide deficiencies.

“Goals and guidelines of the remediation plan” might include a number of objectives that are related to the cause of a shut-down but that are not the direct “cause of the shut-down order.” For example, the High Risk Operations Ordinance augments the County’s ability to inspect at-risk facilities for failing infrastructure and inadequate management. It is possible that a remediation plan would proactively address noted deficiencies *before* they lead to an incident which requires shut-down of the facility. Cancelling a shut-down order prematurely would obviate the authority otherwise provided to the County under the High Risk Operations Ordinance.

Subsection 25-43(f) should be left “as is” in order to maximize the County’s ability to protect human health and the environment.

California Environmental Quality Act (CEQA) Exemption

Proposed amendments to the High Risk Operator Ordinance may actually decrease statutory protections for human health and the environment and thereby lead to impacts on the environment. If the proposed amendments are considered for adoption, a more robust analysis under CEQA is necessary.

Centralized “Violation History” Database

As noted above, an initial recommendation in response to the spill incidents of 2007-08 was the creation of a publicly accessible database of violations of the Petroleum Code and other relevant environmental and human safety laws. As of May 2008, the database was reportedly near completion. In fall 2009, staff indicated (in informal conversations) that the database was almost ready for public use. As of January 2011, there still is no database.

The database will be an invaluable tool for both the public and regulators to coordinate and comprehensively deal with onshore oil pollution. The County must follow through on pledges that it made almost three years ago, or it will risk a serious erosion of the public trust and confidence.

Conclusion

Proposed amendments to the High Risk Operations Ordinance will *not* increase its effectiveness or utility. In fact, the proposed amendments would weaken implementation

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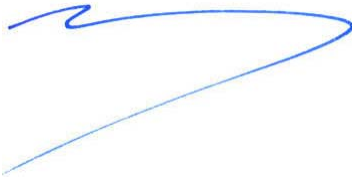
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of this important statute. Consequently, you must vote against adoption of the proposed amendments.

We do appreciate the intent behind the proposed amendments, and we appreciate the time that staff has put into tackling the issue of onshore oil pollution. We look forward to continuing a conversation about how to best improve the High Risk Operations Ordinance.

Please feel free to contact me with any questions or concerns. Thank you for considering our recommendations.

Respectfully submitted,



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Environmental Defense Center