

# LEGAL FRAMEWORK

Presented By County Counsel

As Part Of Agenda Item #7:  
“Onshore Oil Facilities Update”

Hearing Date: January 13, 2009

# ONSHORE OIL ENFORCEMENT OPTIONS

- Litigation Options
- Criminal Enforcement
- Enforcement Orders
- Administrative Fines
- Civil Penalties

# WHAT IF OIL COMPANY SUED COUNTY FOR “SELECTIVE ENFORCEMENT?”

Court would use this Equal Protection liability analysis:

- Disparate treatment from others similarly situated?
- Does the disparate treatment bear a rational relationship to a legitimate state interest?
- Forbidden pretext?
  - ◆ Can use enforcement to bring about code compliance
  - ◆ Cannot use enforcement to drive company out of business

# OPTIONS THROUGH DISTRICT ATTORNEY

- “Public nuisance” injunction
- “Unfair Competition” injunction
- Fish & Game Code § 5650 injunction
- Criminal enforcement: infractions or misdemeanors

# “PUBLIC NUISANCE” INJUNCTION

- Brought by District Attorney
- County must show:
  - Harm immediately likely; &
  - Absence of plain and speedy remedy at law
    - ◆ Impacted by 2008 “High Risk Operation” amendments to County Petroleum Code, which provided more remedies at law

# “UNFAIR COMPETITION” INJUNCTION

- Brought by District Attorney
- County must show threatened future harm or continuing violation
- Defendant may assert equitable defenses, as they also could in “public nuisance” litigation

# FISH & GAME § 5650 INJUNCTION

- Brought by District Attorney
- Limited to discharges into surface or ground “waters of this state”
- Statute requires Court to tailor injunction to allow defendant to continue business in a lawful manner

# FIRE CODE § 15-122 INJUNCTION

- Brought by District Attorney or County Counsel
- As with “public nuisance” injunction, County must show:
  - Harm immediately likely; &
  - Absence of plain and speedy remedy at law
    - ◆ Impacted by 2008 “High Risk Operation” amendments to County Petroleum Code, which provided more remedies at law



# “STOP ORDERS” & “CORRECTIVE ORDERS”

- Source is Fire Code §§ 103.3.1.3 and 103.4.
- Issued by County Fire Chief
- Applicable to work or conditions contrary to Fire Code provisions
- Usually used with imminent threats to health and safety
- Board of Supervisors is 2<sup>nd</sup>-level appeal body

# “IMMEDIATE CESSATION OF OPERATIONS” ORDER

- Source is Petroleum Code § 25-14
- Issued by County Petroleum Administrator
- Applicable to compliance with any terms of Petroleum Code
- Usually used with imminent threats to health and safety
- Board of Appeals’ decisions are “final” and subject to judicial review

# “MITIGATION ORDER”

- Source is Petroleum Code § 25-35
- Issued by Petroleum Administrator
- Applicable to imminent threats to public health, safety or the environment
- Board of Appeals’ decisions are “final” and subject to judicial review

# MANDATORY REMEDIATION PLAN FOR HIGH RISK OPERATIONS

- Source is Petroleum Code § 25-43
- Issued by Petroleum Administrator
- Applicable to “High Risk Operation:”
  - Violations for more than 30 consecutive days or 45 total days in preceding 12 months; or
  - 3 or more unauthorized release of 1050 gallons or more in 12 months
- Board of Appeals’ decisions are “final” and subject to judicial review

# ADMINISTRATIVE FINES

- Source is County Code Chapter 24A
- Amounts:
  - Initial notice of violation: \$100, per violation, per day
  - Second notice of violation: \$200, per violation, per day
  - Third/subsequent notices: \$500, per violation, per day
- Appeal decision by Fire Chief or P&D Director are “final” and subject to judicial review

## FIRE CODE § 15-123 CIVIL PENALTIES

- Court may impose civil penalty of up to \$25,000, per violation, per day
- Applies to violations of Fire Code, or rules, orders or permits issued under the Fire Code