



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: 04/12/2011  
Placement: Departmental  
Estimated Tme: 1 Hour  
Continued Item: Yes  
If Yes, date from: 02/01/2011  
Vote Required: Majority

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**TO:** Board of Supervisors

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

**SUBJECT: Ordinance Amending Chapter 25, Petroleum Code**

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**County Counsel Concurrence**

As to form: N/A

**Auditor-Controller Concurrence**

As to form: N/A

**Other Concurrence:** N/A

**Recommended Actions:**

That the Board of Supervisors:

1. Receive and file this staff report regarding outreach to stakeholders regarding potential amendments to the Petroleum Code as it relates to the ongoing regulation of High Risk Operations; and
2. Direct staff to return to the Board on May 10, 2011 with a draft ordinance amendment as outlined in this Board letter to:
  - a. Amend the High Risk Operation Definition (a);
  - b. Amend the High Risk Operation Definition (b);
  - c. Amend the Remediation Requirements for High Risk Operations;
  - d. Make other minor amendments as necessary to effectively enforce the Petroleum Code.

**Summary Text and Background:**

The existing High Risk Operations Ordinance as incorporated into Chapter 25, the Petroleum Code, was adopted by the Board of Supervisors on December 9, 2008. During the May 11, 2010 Board hearing, staff provided the Board of Supervisors with a status update related to 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 amendments to the Ordinance to ensure its effectiveness.

Following internal review and external outreach to the petroleum industry, staff presented a draft ordinance amendment to the Board of Supervisors on January 11, 2011. Based on issues identified during that hearing, the Board directed staff to return to the Board with other recommendations on February 1, 2011. At the February 1, 2011 Board hearing, the Board continued the item to April 12, 2011 for staff to obtain stakeholder input regarding the potential amendments to the Petroleum Code. This staff report provides a summary of those discussions as it relates to the previously proposed amendments.

**High Risk Operation Definition (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. Staff previously recommended that this definition be amended so that it is compatible with other County Codes (i.e. County’s Administrative Fine Ordinance). The proposed amendment would have defined an operation as high risk if it has been in violation for more than 30 consecutive days and a Notice of Determination of Fine had been issued. The 45 cumulative day timeline was proposed for deletion as it was not compatible with the timelines allowed under the County’s Administrative Fine Ordinance, which is the primary tool used by staff for enforcement.

The following table summarizes the comments received from stakeholders regarding this recommended change:

<b><u>Petroleum Industry Comments</u></b>	<b><u>Environmental Community Comments</u></b>
✓ Supports proposed changes presented to the Board in January and February.	✓ Supports proposed changes as long as Chapter 24A-5(c) is part of staff’s primary tool usage.
✓ The administrative fine process is working.	✓ Listing of violation sections should say “or” not “and”. Intent is to identify operators who violate any of these provisions, not just operators who violate all of them.
✓ Consider using a calendar year period rather than a rolling 12-month period.	
✓ Petroleum Administrator should be allowed to use discretion before designating an operation as high risk.	

Discussions with the Petroleum Industry and the Environmental Community have resolved the issues regarding this proposed amendment, and both sides are now in support of the proposed changes presented during the January and February Board hearings. Therefore, staff recommends amending this definition such that a High Risk Operation shall be defined as an operation that has been in violation for more than 30 consecutive days and has been issued a Notice of Determination of Fine. This will ensure that the High Risk Operation definition is compatible with the County’s Administrative Fine Ordinance. Additionally, staff recommends amending the section to read “or” instead of “and” after the listed code sections to accurately reflect the intent of this definition.

Staff is not proposing to change the measuring period from a rolling 12-month period to a calendar year at this time. The rolling 12-month period allows staff to track compliance on an ongoing basis more

effectively than a calendar year would allow for. Changes to a calendar year monitoring period would not effectively address multiple violations that could occur between December and January.

**High Risk Operation Definition (b)**

Under subsection (b), an operation is also deemed “high risk” if it has had three separate unauthorized releases exceeding 25 barrels (1050 gallons) during a twelve month period. During the May 11, 2010 Board hearing, the Board of Supervisors indicated that this threshold of 25 barrels appears inadequate towards protecting the County’s resources and directed staff to recommend alternatives.

Under the current federal threshold, a release of 25 barrels constitutes a minor discharge (40 CFR § 300.5). The federal standard does not specifically differentiate between spills occurring inside or outside of containment. The current threshold is based on this federal standard. The proposed amendment presented at the January and February Board hearings would have revised this definition such that an operation would be deemed “high risk” if it had two spills over 15 barrels (630 gallons) outside of any secondary containment area.

The following table summarizes the comments received from stakeholders regarding this proposed change:

<b><u>Petroleum Industry Comments</u></b>	<b><u>Environmental Community Comments</u></b>
✓ Supports proposed changes.	✓ Supports proposed changes. ✓ No specific comments noted.
✓ Differentiation between inside and outside containment is important.	
✓ Reduction in volume is too arbitrary.	
✓ Definition for “Hazardous Materials” should conform to the California Health & Safety Code.	
✓ Consider using a calendar year period rather than a rolling 12-month period.	

The Petroleum Industry and the Environmental Community are supportive of the proposed changes previously recommended by staff. Therefore, staff recommends amending this definition such that the volume for high risk is reduced to 15 barrels for each spill but only limited to the amount spilled outside of any secondary containment area. In addition, staff also recommends adding a definition for “Hazardous Materials” that conforms to the California Health and Safety Code.

Staff is not proposing to change the measuring period from a rolling 12-month period to a calendar year at this time. The rolling 12-month period allows staff to track compliance on an ongoing basis more effectively than a calendar year would allow for. Changes to a calendar year monitoring period would not effectively address multiple violations that could occur between December and January.

**High Risk Operation Definition (c)**

During the January 11, 2011 Board hearing, the Board of Supervisors directed staff to review options to address operations that habitually spill just under the thresholds set in the other two high risk definitions. Staff attempted to craft a definition deeming an operation as “high risk” as one that has had five or more

unauthorized releases of more than one barrel (42 gallons) outside of containment since the one barrel coincides with the one barrel reporting requirement pursuant to California Health and Safety Code § 25270.8.

The following table summarizes stakeholders’ comments related to this definition of High Risk Operations:

<u><b>Petroleum Industry Comments</b></u>	<u><b>Environmental Community Comments</b></u>
✓ Adamantly opposes having another threshold	✓ Supports having an additional threshold
✓ New threshold is unnecessary and places undue burden on onshore operators	✓ Open to a different cumulative threshold if Petroleum Industry would agree
✓ Additional threshold could cause operators not to report spills; counter-productive	✓ Board should consider broadening ability to refer cases to District Attorney’s office for criminal prosecution
✓ Threshold amounts are incompatible to those in definition (b)	
✓ Board should consider whether the concern is over the frequency of spills, or the volume of each spill.	
✓ Reduction in threshold in (b) and staff’s use of the administrative fine process is sufficient to regulate and deter “high risk” behavior.	

Based on feedback received from both the Petroleum Industry and the Environmental Community, as well as historical data collected, staff does not foresee a need for an additional threshold, and thus recommends that an additional threshold not be considered at this time. Staff will continue to monitor compliance of onshore oil and gas facilities and will propose a new threshold to the Board of Supervisors for consideration if circumstances warrant.

Egregious cases of willful negligence are referred to District Attorney’s office for criminal prosecution, in addition to any enforcement actions that are available under the Administrative Fine Ordinance and the Petroleum Code.

**Remediation Requirements of High Risk Operations**

During the May 11, 2010 Board hearing, the Board of Supervisors also directed staff to revisit our procedures for the management and oversight of “high risk” operations. The purpose of that exercise was to ensure that staff maximizes the tools available to gain compliance from “high risk” operators. Staff proposed recommendations to amend the existing remediation requirements at the January 11, 2011 Board hearing under Section 25-43 (Remediation of High Risk Operations) to expand and clarify existing requirements for remediation of these facilities. As currently written, existing remediation plans only require the operator to remediate the causative problems, and do not require an overall review of facility operation as a whole. Proposed changes presented at the January hearing would require an additional audit of overall facility operations to the remediation plan. As such, staff also proposed to allow any shut down orders to be lifted by the Petroleum Administrator once the causative problems of the shut down orders have been corrected. The designation as a “high risk operation”, however, would remain in effect until the remediation plan (including the facility audit) is fully satisfied.

The following table summarizes comments received from stakeholders regarding this proposed change:

<u>Petroleum Industry Comments</u>	<u>Environmental Community Comments</u>
<ul style="list-style-type: none"> <li>✓ Generally supports this change.</li> <li>✓ No specific comments noted.</li> </ul>	<ul style="list-style-type: none"> <li>✓ Generally supports changes proposed.</li> </ul>
	<ul style="list-style-type: none"> <li>✓ It is important that the Petroleum Administrator retains the discretion in determining whether “the cause of the shut down order has been remediated”.</li> </ul>

Discussions with the Petroleum Industry and the Environmental Community have resolved the issues regarding this proposed amendment, and both sides are now in support of the proposed changes to this section of the Petroleum Code. Therefore, staff recommends that the Board direct staff to amend this section so that an audit of overall facilities may be required as part of the remediation plan and any shut down orders issued may be lifted once the causative problems of the shut down order orders have been corrected.

Other Minor Amendments

In addition to the proposed amendments listed in this staff report, staff also recommends making other minor amendments to the Petroleum Code. These amendments include:

1. Striking the outdated references to Article 79 of the California Fire Code;
2. Adding definitions for “Containment”, “Secondary Containment”, and “Owner”;
3. Clarifying the reference to the Petroleum Administrator under section 25-6 Permit Procedures; and
4. Ensuring that section 25-7 Fees allows for recovery of costs for all drilling permit applications submitted for review.

**Performance Measure:**

N/A

**Fiscal and Facilities Impacts:**

Budgeted: Yes

**Fiscal Analysis:**

Costs for preparation of this staff report and subsequent ordinance amendment are funded by permit revenue in the Department’s Building and Safety Division, page D-338 of the FY 2010-2011 budget.

**Attachments:**

- A. Chapter 25, Petroleum Code
- B. Chapter 24A, Administrative Fine Ordinance

**Authored by:**

Linda Liu, Planning & Development  
(805)568-2035