

MINUTE ITEM
This Calendar Item No. 59 was approved as
Minute Item No. 59 by the California State Lands
Commission by a vote of 3 to 0 at its
06-18-02 meeting.

**CALENDAR ITEM
C59**

A)	06/18/02
)	W9777.104
S)	Kloman
		Prabhu
		Hermanson

**CONSIDER EXTENSION OF EMERGENCY REGULATIONS
IMPLIMENTING A PHYSICAL SECURITY PROGRAM
FOR MARINE OIL TERMINALS IN THE STATE OF CALIFORNIA**

PROPOSAL:

On January 30, 2002, the Commission adopted emergency regulations establishing a minimum physical security program at all marine oil terminals within the state. The emergency regulations were intended as an initial phase towards implementing more comprehensive security measures for deterring terrorist activity at these terminals in the near future. Under Government Code Section 11346.1(e), the emergency measures remain in effect for only 120 days. However, more permanent security regulations will not be ready for the Commission's consideration by the time the temporary measures expire. Commission Staff therefore proposes that the Commission extend the existing emergency regulations for another 120 days.

BACKGROUND

In light of the recent tragic terrorist events of September 11, 2001, future terrorist activity has the real potential for causing catastrophic damage to public health and safety and the environment. Among the facilities most at risk in this State are the 80 marine oil terminals falling under the jurisdiction of the Commission. With transfers of 1.8 million barrels of oil or product each day and the consequent risk of fire, explosion and uncontrolled spills, these facilities present logical targets for attack.

In response to these concerns, on January 30, 2002, the Commission adopted emergency regulations establishing new physical security requirements for all marine oil terminals in the State. These emergency measures provide a basic framework for addressing potential terrorist action.

As emergency measures, however, the existing regulations were intended solely to provide an initial temporary security framework until more permanent regulations can be developed. To that end, the Commission Staff is consulting

with an advisory committee comprised of representatives from the regulated community, related industries, port authorities, the U.S. Coast Guard, and other law enforcement and public safety organizations. Several meetings of the advisory committee have been planned for the preparation of a comprehensive final draft of proposed regulations. A permanent regulatory program is therefore not expected to be ready for Commission consideration for several months.

In light of these efforts, the existing temporary measures must be readopted if they are to remain in place until the permanent regulations are adopted. Without that extension, the existing measures will expire on July 6, 2002. The proposed extension would allow them to remain in place until the end of the current year. Given the potential damage that could result, Commission Staff believes that urgent and immediate action is necessary to ensure that all marine oil terminals in California remain in a state of organized readiness to deter terrorist activity.

STATUTORY AND OTHER REGULATIONS:

A: Public Resources Code §§8750 through 8758

PERMIT STREAMLINING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 CCR §10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA guidelines.

Authority: P.R.C. §21084 and 14 CCR §15300.

2. The proposed emergency regulations do not affect small businesses as defined in Gov. Code §11342, sub.(h), because all affected businesses are transportation and warehousing businesses having annual gross receipts of more than \$1,500,000, as specified under Gov. Code §11342, sub.(h)(2)(l)(vii).

EXHIBITS:

A: Text of the proposed emergency regulations.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, §15061, BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE §21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, §15378.
2. FIND THAT AN EMERGENCY EXISTS AND THAT THE REGULATIONS ARE NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH AND SAFETY AND GENERAL WELFARE BY ENSURING THAT SECURITY PRECAUTIONS ARE TAKEN TO PREVENT TERRORIST ACTIVITIES AT MARINE OIL TERMINALS, WHERE SUCH ACTIVITIES COULD CAUSE OIL SPILLS, FIRES OR EXPLOSIONS AND RESULT IN DIRECT AND SUBSTANTIAL HARM THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT.
3. FIND THAT THE REGULATIONS WILL NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE §11342(h), BECAUSE ALL AFFECTED BUSINESSES ARE TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAT \$1,500,000, AS SPECIFIED UNDER GOVERNMENT CODE §(h)(2)(l)(vii).
4. FIND THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OF NEW OR EXISTING BUSINESSES WITHIN CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESS IN OTHER STATES.
5. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE REGULATIONS ARE PROPOSED OR WOULD BE AS EFFECTIVE AND BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.
6. ADOPT THE PROPOSED REGULATIONS, WHICH WOULD ADD SECTION 2351, TO TITLE 2, DIVISION 3, CHAPTER 1, ARTICLE 5, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A".
7. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE REGULATIONS IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.

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8. DIRECT THE COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVSIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF THE REGULATIONS AND AMENDMENTS AND TO ENSURE THAT THE REGULATIONS BECOME EFFECTIVE.
9. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE REGULATION AT SUCH TIME AS THEY BECOME EFFECTIVE.

EXHIBIT "A"

Section 2351. Marine Terminal Physical Security Program

- (a) In addition to the definitions in §2315 of this Article 5, the following definitions shall govern the construction of this section:
- (1) "Crisis Situations" means any occurrences that present unique and growing physical security problems such as bomb threats, terrorist acts, civil disorders, loss of electrical power, fires and natural catastrophes.
 - (2) "Marine Oil Terminal Security Officer" or "MOTSO" means a person appointed by the terminal operator to be responsible for terminal security.
 - (3) "Marine Oil Terminal Security Plan" means a written document describing the practices, procedures, responsibilities, equipment, and structures that provide for the security of the terminal.
- (b) Each terminal operator must implement a marine oil terminal security program that, at minimum:
- (1) Provides for the safety and security of persons, property and equipment on the terminal and along the dockside of vessels moored at the terminal;
 - (2) Prevents and deters the carriage of any weapon, incendiary, or explosive on or about any person inside the terminal, including within his or her personal articles;
 - (3) Prevents and deters the introduction of any weapon, incendiary, or explosive in stores or carried by persons onto the terminal or to the dockside of vessels moored at the terminal; and
 - (4) Prevents or deters unauthorized access to the terminal and to the dockside of vessels moored at the terminal.
- (c) Each MOTSO must, at a minimum, ensure that:
- (1) An initial comprehensive physical security survey has been conducted, documented and maintained at the terminal.
 - (2) The comprehensive physical security survey has been used to formulate a security plan.

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- (3) The Marine Oil Terminal Security Plan is implemented and maintained.
 - (4) Personnel responsible for security are trained in all aspects of the Marine Oil Terminal Security Plan.
 - (5) Periodic security inspections of the terminal are conducted.
 - (6) Vigilance and security awareness by terminal employees is emphasized.
 - (7) All occurrences or suspected occurrences of unlawful acts and related activities are reported to National Response Center, telephone (800) 424-8802, and other local agencies having jurisdiction at the marine oil terminal. Records of such occurrences shall be maintained at the marine oil terminal for 10 years.
 - (8) Timely notifications regarding security incidents are provided to terminal and vessel personnel.
- (d) Each Marine Oil Terminal Operator shall develop and maintain, in writing, a Marine Oil Terminal Security Plan, the contents of which shall, at minimum, set forth all of the following:
- (1) Policies and procedures for reacting to crisis situations, which shall include:
 - (A) Establishment of restricted areas;
 - (B) Control of movement; and
 - (C) Investigation of security breaches.
 - (2) The designation of a MOTSO by name.
 - (3) The responsibilities of the MOTSO.
 - (4) Security measures for the terminal, which include:
 - (A) A communications system capable of being operated during electrical power failure.
 - (B) Protective lighting that provides a minimum illumination standard of one foot candle at one meter above the ground and illuminates the following areas:

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1. Access points to the terminal;
 2. The waterfront and dock area; and
 3. Any vessels moored alongside the terminal.
- (C) Terminal perimeter fencing or other barriers constructed so as to prevent the introduction of persons, dangerous substances or devices. Fencing shall not be less than eight feet high or of sufficient height and durability to deter unauthorized passage. Fencing shall have barbed or razor wire tops.
- (D) Marine oil terminal access control including:
1. Use of locking devices;
 2. Visitor photo identification/pass control;
 3. Marine oil terminal personnel identification cards;
 4. Escort procedures for visitors;
 5. Vehicle entry, parking, and exit; and
 6. Vehicle and stores inspections.
- (E) Marine oil terminal security organization including:
1. Employee assignments;
 2. Layout of the terminal with emphasis on means of access;
 3. Patrol routes and frequency;
 4. Fixed and mobile security posts;
 5. Procedures for prompt reporting of security breaches;
 6. Procedures for calling out additional security; and
 7. Procedures for coordinating security measures with federal, state, and local authorities.

- (F) A training program administered by the MOTSO that provides for competent security within the terminal. The training program shall include initial training with provisions for annual refresher training and shall, at a minimum, include the contents of the Marine Oil Terminal Security Plan. In addition, all contractor personnel shall undergo security awareness and emergency procedures indoctrination specific to the terminal, prior to commencing work at the terminal.

- (e) The MOTSO shall amend the Marine Oil Terminal Security Plan to address any known deficiencies and submit the amendment to the Division as prescribed in subsection (h) of this section.

- (f) The Marine Oil Terminal Security Officer must restrict the distribution, disclosure, and availability of information contained in the Marine Oil Terminal Security Plan to employees, contractors, and competent authorities who have a need to know the contents of the Plan.

- (g)
 - (1) The operator of the marine oil terminal must ensure completion of a Marine Oil Terminal Security Plan within 60 days of the effective date of these regulations and notify the Division, in writing, of its completion.

 - (2) The Division shall conduct a general on-site inspection of marine oil terminal security arrangements and approve any Marine Oil Terminal Security Plan that meets the requirements of these regulations.

 - (3) If Division finds that the Marine Oil Terminal Security Plan does not meet the requirements of these regulations, then it shall notify the terminal operator within 30 working days of the Division's on-site inspection.

- (h)
 - (1) Terminal operators shall amend their Marine Oil Terminal Security Plan when directed by the Division.

 - (2) Marine oil terminal operators shall notify the Division, in writing, of any proposed amendments to an approved Marine Oil Terminal Security Plan. Any such proposed amendments shall be submitted to the Division for approval at least 30 working days prior to the changes being adopted.

Authority: Sections 8755 and 8756, Public Resources Code.

Reference: Sections 8750, 8751, 8752, 8755 and 8756, Public Resources Code.