

September 29, 2010

To: Members, Assembly Environmental Safety & Toxic Materials Committee

From: Pedro Nava, Chairman

Subject: September 30th oversight hearing on long term and legacy environmental hazards from coastal oil drilling and production

The Assembly Committee on Environmental Safety & Toxic Materials (AESTM) is conducting oversight hearings throughout the State on the public health and environmental protections needed to adequately regulate oil drilling and production in California. On Thursday, September 30th, the AESTM Committee will be meeting at the Goleta City Council Chambers to review the policies and actions of California state and local agencies needed to reduce and remediate the environmental hazards, habitat damage and public health impacts of oil drilling and production in California's coastal zone.

The September 30th hearing is the third in a series of hearings held by the AESTM Committee on the environmental hazards of oil production facilities in California. The first hearing was held on April 30, at the Hermosa Beach City Council Chambers in the City of Hermosa Beach and the second hearing was held on May 14, 2010 in Culver City at Culver City, City Hall.

The AESTM Committee will examine a range of legacy environmental issues including:

- The status of aging offshore oil platforms and undersea pipeline systems in the Santa Barbara Channel area.
- The ability of small or mid-sized oil companies to maintain adequate reserves and other resources to respond to emergency situations, as well as to provide funds to insure the clean-up of production facilities that have been in operation for many years.
- The ability of the State to require dedicated financial guarantees to cover local liabilities and losses in the event of an explosion, release, spill or other major accidental release.
- What is the Department of Conservation (DOC) does about the legacy sealed old wells along the seabed and the near-shore tidelands waters?

- How the California State Lands Commission (CSLC) and the DOC manage the orphaned oil-works (pipelines, motors, encased sumps, well housings, metal straps, bulwarks and pier pilings) that dot the state tidelands, recreational beaches and coastal headlands.

Part 1. Background.

Since 1969 when over 3.2 million gallons of crude oil spilled off the coast of Santa Barbara County, Californians have been concerned about offshore oil drilling. This concern has resulted in a series of oil and gas leasing prohibitions, which are included in the California Coastal Sanctuary Act of 1994.

California's ocean waters are home to four important marine sanctuaries: the Monterey Bay National Marine Sanctuary; the Gulf of the Farallones National Marine Sanctuary; the Cordell Bank National Marine Sanctuary; and the Channel Islands National Marine Sanctuary. These sanctuaries are, by definition, areas of special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, and esthetic qualities; and are particularly sensitive to the impacts of oil development.

Offshore and onshore drilling, be it for oil or gas, generates large amounts of pollution in the form of toxic drilling muds, produced waters, and air emissions. A catastrophic spill, like the one which occurred off the coast of Santa Barbara in 1969, can devastate the ecology of the area and wreak havoc on coastal economies. Additionally, oil and gas drilling is the slowest, dirtiest, and most expensive way to produce energy. There are cleaner and more efficient long term energy solutions, such as energy efficiency and clean renewable energy that will save consumers money and protect our beaches, marine waters, and coastal economies.

Part 2. Existing California Statutory Authority.

California State Lands Act. On June 11, 1938, the State Lands Act created the California State Lands Commission (CSLC) and assigned it jurisdiction over State-owned offshore tide and submerged land leases. In response to the Santa Barbara Oil Spill that was caused by the January 28 blowout at Union Platform A the CSLC placed a moratorium on all development of offshore oil leases. Since December 1973, the moratorium has been lifted on a lease-by-lease basis, following review of the proposed development programs and completion of the CEQA process. In particular, pursuant to Public Resources Code section 6873.5(b), the Commission considers potential impacts of proposed lease development on fisheries and marine habitat.

Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. Under this Act, the OSPR was created, with the California Department of Fish and Game becoming the lead State agency in spill response. The Act requires that persons causing a spill begin immediate cleanup, follow approved contingency plans, and fully mitigate impacts to wildlife. Under an Interagency Agreement with OSPR, the California Coastal

Commission (CCC) operates an oil spill program and maintains an oil spill staff. Before and after a spill, CCC staff are involved in review and comment to both State, e.g., OSPR, and Federal, e.g., U.S. Coast Guard, agencies on contingency plans and regulations related to marine vessels, marine facilities, and marine vessel routing.

According to OSPR there are over twice as many inland oil spills as there are marine spills, but the state responds to less than one third of all inland spills reported.

Recently, spills have occurred on the central coast and in Suisun Marsh, impacting water supplies and sensitive marsh ecosystems. In Santa Barbara County, Greka Oil and Gas reportedly has spilled more than 500,000 gallons of oil and contaminated material since 2002 due to a failure to adequately maintain its facilities. In 2008 and 2009, OSPR reported 159 and 105 onshore spills (of 42 gallons or more), respectively, from oil exploration and production activities most likely in DOGGR's jurisdiction. Collectively, nearly 590,000 and 270,000 gallons of oil, drill waste, or oily/water mixtures were spilled, respectively.

Local regulation of oil and gas production. The State regulatory system overseen by the Division of Oil, Gas, and Geothermal Resources (DOGGR) of the Department of Conservation may set standards for oil and gas wells. Local agencies, cities and counties may generally establish more stringent standards for oil and gas production as part of local land use planning or in order to provided public health or environmental protection. The Attorney General's 1976 opinion on the role of State and local regulation follows:

"Counties and cities may regulate the drilling, operation, maintenance and abandonment of oil, gas and geothermal wells with respect to phases of such activities not covered by state statute or regulation so long as that regulation does not conflict with state regulation concerning other phases of such activities."¹

Part 3. Recent Related California Legislation.

AB 1960 (Pedro Nava) -- State standards for oil production facilities

Assembly Bill 1960 (Nava, Chapter 562, Statutes of 2008), which became effective January 1, 2009, expands DOGGR's oversight of oil and gas production facilities. AB 1960 requires that DOGGR promulgate regulations prescribing minimum maintenance standards for all oil and gas production facilities in the state. The production facility maintenance standards established by DOGGR must address, at a minimum, leak detection, corrosion prevention, tank inspection and cleaning, valve and gauge maintenance, and secondary containment maintenance.

AB 1960 provides DOGGR with new enforcement authorities and enhancement of existing authority. The new authorities include the authority to impose a life-of-well or life-of-production facility bond on any operator that has a history of violations or that has outstanding liability in connection with its oil and gas operations.

¹ Opinion No. 76-32

AB 1960 establishes various recordkeeping and reporting requirements related to production facility including the reporting to DOGGR any construction, alteration, or decommissioning of a production facility; reporting to DOGGR any acquisition of a production facility; and submitting a spill contingency plan to DOGGR.

Status: Signed into law, Chapter 562, Statutes of 2008

AB 2503 (John A. Perez) – Rigs to Reefs

Under current state and federal law, as well as leases authorized by the state and federal government, owners of offshore oil platforms are required to fully remove platforms at the end of their lease term. There are 27 oil platforms off the California coast (four are in state waters and 23 are in federal waters). Federal law allows for partial removal of oil platforms, provided that certain conditions are met, including the enactment of a law allowing for partial removal in the adjacent state.

AB 2503 establishes a program under which an offshore oil platform owner is allowed to partially remove a platform, leaving behind some of the underwater structure for marine habitat.

This bill establishes a program to allow for the partial removal of existing off-shore oil platforms. Any cost savings realized from partial removal would be split between the state and the platform owner. This bill specifies that any state proceeds would largely be provided to a new endowment corporation and would be used for various ocean-related purposes.

Status: Approved by the Legislature, August 31, 2010, awaiting Governor's action.

SB 550 (Dean Florez) - Oil, mineral, and gas extraction

This bill requires an operator to provide the surface rights owner with written notification and legal documentation of any underlying oil, mineral, or gas extraction operation agreement to the owner of the subsurface or mineral rights within 10 days of execution of the agreement. If the owner of surface property cannot be located or determined, the operator shall provide notice of that agreement by publication.

There is currently no requirement that an oil and gas exploration company have liability insurance in order to get a permit from DOGGR to drill. A small bond is required by DOGGR to cover shut-in costs, but the bonds are not “lifetime of facility” bonds and, in any case, the amounts are insufficient to cover the clean-up of a large accident.

Status: Approved by the Legislature on August 30, 2010, awaiting Governor's action.