

Hazardous Materials Commission

Draft Minutes

Planning and Policy Development Committee

December 18, 2019

Members and Alternates:

Present: Don Bristol, Jonathan Bash, Mark Hughes, Jim Payne, George Smith, Tim Bancroft (alternate), Leslie Stewart

Absent: Mark Ross, Frank Gordon (represented by alternate)

Staff: Michael Kent, Randy Sawyer

Members of the Public: Shoshana Wechsler, Greg Karras, Tyler Earl, Jan Warren, Charlie Davidson

1. Call to order, introductions and announcements

Commissioner Payne called the meeting to order at 4:07.

Announcements:

Michael Kent announced:

- The Chair of the Chemical Safety Board spoke at the CAER Safety Summit on December 12th at the Shell Clubhouse. She emphasized that there are both lots of vacancies of staff positions and soon-to-be lots of vacancies on the Board itself.
- At their December 9th meeting, the Sustainability Committee of the Board of Supervisors voted to recommend that a new Environmental Justice seat be added to the Commission, rather than replace an existing Environmental Seat as was recommended by the Commission. This recommendation will go to the full Board of Supervisors in January.
- At their December 9th meeting, the Internal Operations Committee of the Board of Supervisors recommend to reappointment Jim Payne and Tracy Scott in their Labor seat and appoint Ed Morales for the vacant Environmental Seat alternate. The Board of Supervisors approved these appointments on December 17th.
- The annual meeting with Supervisor Burgis on December 11th went well.

2. Public Comments:

None

3. Approval of Minutes:

The minutes from the November 20, 2019 meeting were moved by Commissioner Smith, seconded by Commissioner Hughes and approved 6-0.

4. Old Business:

- a) Continue discussion of a proposed resolution from the Blue Green Alliance for the Board of Supervisors to adopt on the Western States Petroleum Association's lawsuits pertaining to new CalARP/PSM regulation amendments.**

Michael Kent began the discussion by noting that Mike Wilson from the Blue Green Alliance had sent an amended proposed resolution that was in the packet. He also handed out a statement that WSPA sent the Commission concerning the lawsuit.

Randy Sawyer, Hazardous Materials Program director, then summarized his understanding of the lawsuits. He said the State lawsuit mainly focused on employee participation and the definition of a "Major Change" in operation. He said that Cal OSHA is in the process of submitting a "form 9" change to the Standards Board to try to have this definition amended. Mr. Sawyer said that he thought that industry is concerned that informal interpretations won't work. He thinks CalOSHA is hoping that this might help resolve the suit. Another issue raised was whether the State even has the right to write CalARP regulations. A third major issue concerned the definition of "highly hazardous". He is concerned that the Federal definition is not as clear as the as the current definition. He said WSPA also has concerns about the scope of the requirement to look at all public documents related to both refining and the chemical industry. They are also concerned about the different requirements in the PSM and CalARP regulations. He thinks these differences come about because the focus of the regulations are different; the PSM regulations focus on worker safety and the CalARP regulations focus on community safety.

Commissioner Smith asked Mr. Sawyer if he thought the state could work with WSPA to address their concerns. Mr. Sawyer said that he thinks they are in discussions, and that trying to address some of the issues through the Standards Board might help, but he didn't know if this would satisfy WSPA's concerns.

Commissioner Payne said the issue WSPA has with employee participation is that the regulations say non-union representatives have to be qualified, but there is not the same requirement for union representatives. He said the unions do not have a problem with the regulations saying the union representatives have to be qualified.

Mr. Sawyer then described his understanding of the Federal lawsuit. He said his understanding of this lawsuit is it says these regulations are invalid because federal labor relations laws preempt them. He is not sure if the County's Industrial Safety Ordinance would be impacted if this lawsuit is settled in favor of WSPA. Commissioner Payne agreed with this assessment, and said the State Attorney General is fighting the Federal lawsuit and the United Steel Workers are intervening in both lawsuits.

Commissioner Payne said that he is supportive of using the "form 9" process to ask the Standards Board to address the concerns in the state lawsuit, but he does not agree with all of the concerns in the lawsuit. Commissioner Payne said he thought the employee participation process was working well, but Chevron currently has a citation from Cal OSHA against them for not following the process. The effort to amend the regulations originated in the wake of the 2012

Chevron fire, and there was a five year process to come up with the amendments to the PSM and CalARP regulations requested by the Chemical Safety Board.

Commissioner Hughes said that he thinks lawsuits stifle communication. If there is a chance to move towards compromise he would be against the Commission supporting the proposed resolution because it would also stifle communication. He thought that two wrongs don't make a right. Commissioner Payne responded that the lawsuits were WSPA's first attempt to fix the problems they saw in the amended regulations, and they didn't try to fix them before that. Commissioner Bristol said the committee didn't ask that of Clyde Trombettas from Cal OSHA at the last committee meeting.

Commissioner Bristol wanted to know if other parties can be involved in this process. Commissioner Payne said he thought that Mr. Trombettas had said that industry can appeal issues in the regulations to the Standards Board as well as the agencies. Commissioner Bristol said he wasn't aware of this process before. Commissioner Payne said he wasn't aware of it either. Commissioner Payne also noted that during the hearings on the amended regulations the Standards Board said that employee participation language wasn't strong enough and so changes were made to the final version to strengthen them.

Commissioner Payne said that the United Steel Workers will be asking the Supervisors on the Ad Hoc ISO/CWS committee of the Board of Supervisors, Supervisors Gioia and Glover, to support the resolution. Commissioner Smith raised the questions of whether the Commission had ever been involved in a lawsuit before. Commissioner Stewart thought that this seems to be more of asking the Board of Supervisors to take an alternate approach, rather than an opinion on the merits of the lawsuit. Commissioner Payne added that the Commission did recommend to the Board of Supervisors that they ask Tosco to shut down after their fatal fire in 1999. Greg Karras from Communities for a Better Environment said that they support the resolution.

Commissioner Payne asked Mr. Sawyer if the County is intervening in the lawsuit. Mr. Sawyer said he didn't think so, but they have given their input.

Commissioner Smith said that he was unclear what WSPA meant in the statement they sent the Commission when they said the specific regulations they are targeting in the lawsuit weaken safety procedures. Commissioner Payne said he thought this was in reference to the fact that the language in the regulations doesn't say that the union representatives have to be qualified. But he doesn't think this omission makes refineries less safe because there would be resistance if the unions appointed unqualified people. He thinks the problem at Chevron is that they want to pick the person to represent the union rather than let the union pick the person.

Commissioner Hughes thought that since CalOSHA is making headway through the Standards Board that he doesn't support the proposed resolution because it could stifle progress. Commissioner Bristol felt that more people need to be involved in the "Form 9" process with the Standards Board. But if there is a citation at Chevron, then both sides will be dug in.

Commissioner Smith asked Mr. Sawyer if he is optimistic about the "form 9" process. Mr. Sawyer said he has heard from Mr. Trombettas at CalOHSa that it might work. Commissioner

Smith then put forward the question of whether waiting 30 days to decide about supporting the resolution would have a negative impact. Commissioner Payne said that he didn't think the lawsuit is moving forward very fast. Mr. Sawyer said he didn't know how long the legal process will take. Greg Karras said that he didn't think Chevron would utilize the "form 9" process because of the lawsuit, but waiting a month might reveal their willingness.

Commissioner Payne then asked for, and received, consensus to wait until the next committee meeting to decide whether or not to support the resolution to see if additional progress had been made to resolve the concerns raised in the lawsuits.

5) New Business:

a) Discuss a recommendation from Communities for a Better Environment that the County perform an independent analysis of process hazards associated with the recent and foreseeable future introduction of new types of oil feed stocks at the Phillips 66 San Francisco Refinery facility in Rodeo.

Greg Karras from Communities for a Better Environment said that his organization wants the Hazardous Materials Commission to advise the Board of Supervisors to look at process safety issues for projects at Phillips 66 that include recent and foreseeable use of new feedstock. He said their use of heavy feedstock is already increasing, and the wharf project is being done to accommodate this. Using a new feedstock requires a safety analysis.

Commissioner Smith asked what the status is of the permit application. Commissioner Bristol said that because there are no physical changes being asked for at the wharf, the land use ordinance requirement for a land use permit isn't triggered, and the County doesn't have jurisdiction. He further added that this means the Air District will be the lead agency and will start the EIR process by getting input on the scope of the investigation.

Greg Karras said he knew that Phillips 66 went to the Air District 2 ½ years ago to ask for a permit revision, and that the Air District started and stopped the scoping process. He said the Air District has previously said they wanted the County to do the EIR and that the County was considering it. This was the first time he had heard that the Air District had agreed to review the permit and do the EIR.

Commissioner Bancroft asked if it is possible for anyone to look at the permit application. Commissioner Bristol said that it is possible, but Phillips 66 has added commitments to what they are willing to do that are not in the application. These are the commitments that the refinery manager mentioned at the December 5th Commission meeting. He added that the EIR would look at the environmental impacts of the crude slate.

Randy Sawyer added that the Department of Conservation and Development would conduct the EIR if the County were the lead agency, and that the Hazardous Materials Program would assist them. But the County would only be the lead agency if a land use permit was required. Mr. Sawyer's understanding from his initial review of the project is that it appears that a land use

permit would not be required by the ISO, but this determination will be made by the Department of Conservation and Development.

Commissioner Hughes said that it sounds like this dispute involves a trust issue, and there is a difference of opinion about Phillip 66's intent. He would like to someone to justify that difference. Greg Karras affirmed that clearly Phillips 66 and CBE are in dispute about the nature of the project. But CBE can prove that new feedstock is being introduced at the refinery and Central Valley crude is decreasing by 3% a year and likely into the future.

Due to time constraints, Commissioner Payne continued the discussion until the next meeting, and in the meantime directed staff to contact the Air District and the Department of Conservation and Development to get confirmation about which agency is conducting the EIR.

b) Consider "Principle" statements for hazardous material-related issues for the County's legislative platform.

This item was continued till the next meeting due to time constraints.

6) Items of Interest: None

7) Plan Next Agenda: The committee will continue to review and discuss the lawsuits pertaining to the CalARP /PSM regulations, consider draft language on principle statements for the County's Legislative Platform and discuss the issue of needing a process hazard analysis of the crude feedstock at Phillips 66.

8) Adjournment – The meeting was adjourned at 5:30.