

FINDING OF EMERGENCY OF THE DEPARTMENT OF INDUSTRIAL RELATIONS DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

CALIFORNIA CODE OF REGULATIONS, TITLE 8, ARTICLE 12.5, PROCESS SAFETY MANAGEMENT PROGRAM ASSESSMENT

Government Code Section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

The Acting Chief of the Division of Occupational Health and Safety (DOSH) finds that the adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows.

FINDING OF EMERGENCY

Basis for the Finding of Emergency

There are currently 18 oil refineries located in California. The majority of refineries are in or near very highly populated urban areas. Six refineries are located in close proximity to the San Francisco bay area and nine are located in the Los Angeles metropolitan area. Each day approximately two million barrels (a barrel is equal to 42 U.S. gallons) of petroleum are processed into a variety of products, with gasoline representing about half of the total product volume. Because of California's large demand for gasoline, the 13 refineries capable of producing gasoline usually operate near full capacity.

On August 6, 2012, a fire broke out at Chevron's Richmond refinery when a severely corroded pipe in the refinery's #4 Crude Unit began leaking. Chevron managers did not shut down the unit but instructed workers to remove insulation, which led to the pipe's rupture and a massive fire. While there were no serious worker injuries, a reported 15,000 residents of surrounding communities sought treatment after breathing emissions from the fire. DOSH immediately began an investigation into the fire and the leak repair procedures. In findings released in January of 2013, DOSH found that Chevron did not follow the recommendations, dating back to 2002, of its own inspectors and metallurgical scientists to replace the corroded pipe that ultimately ruptured and caused the fire. Chevron also did not follow its own emergency shutdown procedures when the leak was identified, and did not protect its employees and employees of Brand Scaffolding who were working at the leak site.

Also in January of 2013, DOSH issued close to \$1 million in fines against Chevron, the biggest penalty in the department's history and the maximum allowable under current law, for failing to replace the corroded pipe, not implementing its own emergency procedures, and violating leak-repair procedures. DOSH issued 25 citations against Chevron, 23 of which were classified as "serious" due to the realistic possibility of

worker injuries and deaths in the fire. Eleven of these serious violations were also classified as “willful” because Cal/OSHA found Chevron did not take reasonable actions to eliminate refinery conditions that it knew posed hazards to employees, and because it intentionally and knowingly failed to comply with state safety standards.

In response to the Chevron refinery incident, the Brown Administration formed an Interagency Working Group to examine ways to improve public and worker safety through enhanced oversight of refineries, and to strengthen emergency preparedness in anticipation of any future incident. The Working Group consisted of participants from 13 agencies and departments, as well as the Governor’s office. Over an eight-month period, the Working Group met internally and with industry, labor, community, environmental, academic, local emergency response and other stakeholders. In July of 2013, the Interagency Working Group on Refinery Safety released a draft report “Improving Public and Worker Safety at Oil Refineries” with a series of recommendations intended to improve refinery safety and prevent further incidents like the Chevron refinery fire.

Among the general recommendations of the Working Group was to provide the relevant agencies with sufficient resources to carry out effective regulatory oversight of refineries. One specific recommendation was the establishment of a dedicated funding source paid for by the refining industry. Labor Code section 7870 and the proposed regulations implement that recommendation.

This year’s state budget directs DOSH to use its existing fee authority to fund an additional 15 positions for inspectors in the Process Safety Management program. Effective June 27, 2013, Labor Code section 7870 requires DOSH to annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other process safety management functions conducted by DOSH pursuant to Labor Code sections 7855 through 7870, inclusive. These fees are required to be adopted by March 31, 2014.

Immediate regulatory action, on an emergency basis, is necessary in order to implement the recommendations of the Working Group, the provisions of Labor Code section 7870, and the hiring directive contained in the budget act.

Without the adoption of emergency regulations, DOSH will be unable to fulfill its statutory mandate to fund the operations of the DOSH Process Safety Management Unit by means of fee regulations to be adopted by March 31, 2014 and hire the additional personnel required by the budget act to focus on refinery safety inspections. The resulting inability of DOSH’s process safety management unit to conduct enhanced refinery safety inspections poses an immediate statewide threat to the public peace, health and safety, and general welfare.

Background

DOSH develops regulations to implement, interpret, and make specific provisions of the California Labor Code.

The Process Safety Management Unit within DOSH is tasked with preventing or minimizing the consequences of catastrophic releases of toxic, flammable, or explosive chemicals (Labor Code Sections 7855-7870).

AUTHORITY AND REFERENCE

The Acting Chief of DOSH, pursuant to the authority vested in her by Labor Code sections 60.5 and 6308 proposes to adopt Article 12.5 of Chapter 3.2, Subchapter 2, of Title 8, California Code of Regulations, sections 344.76, 344.77 and 344.78.

INFORMATIVE DIGEST

Summary of Existing Laws

Labor Code section 142.3 provides that the Occupational Safety & Health Standards Board may adopt, amend or repeal occupational safety and health standards and orders.

Labor Code section 7856 requires the Occupational Safety & Health Standards Board to adopt process safety management standards for refineries, chemical plants, and other manufacturing facilities that handle acutely hazardous material and pose a significant likelihood of accident risk. These standards are set forth in Title 8, California Code of Regulations section 5189, and are intended to prevent or minimize the consequences of catastrophic releases of toxic, reactive, flammable or explosive chemicals and eliminate to a substantial degree, the risks to which employees are exposed in petroleum refineries, chemical plants and other facilities.

Labor Code section 6307 provides that DOSH has the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary adequately to enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment.

Labor Code section 7870 requires DOSH to annually fix and collect reasonable fees for consultation, inspection, adoption of standards, and other process safety management functions conducted by DOSH pursuant to Labor Code sections 7855 through 7870.

Consistency and Compatibility with Existing State Regulations

DOSH has reviewed and evaluated this regulatory proposal and has determined it is not inconsistent nor incompatible with existing state regulations.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON

“Improving Public and Worker Safety at Oil Refineries”, a draft report of the Interagency Working Group on Refinery Safety, July 2013.

SUMMARY OF PROPOSED REGULATIONS

Section 344.76. Determination of the Annual Process Safety Management Program Assessment

This section sets forth the methodology for the determination of the annual process safety management program assessment.

(a) On or before September 1 of each year, DOSH will determine the total amount of funds required to support the direct and indirect expenses and cash flow requirements of the DOSH process safety management program for the following fiscal year. The DOSH process safety management program includes, but is not limited to, the provision of consultation services, conduct of inspections, and the adoption of standards. This amount will be the process safety management assessment collected for the following year.

(b) On or before October 1 of each year, DOSH will obtain the following data from the California Energy Commission, for the prior calendar year, as reported to the Energy Commission and the United States Energy Information Administration:

(1) the aggregate total amount of crude oil (USEIA product code 050) and unfinished oil (USEIA product code 812) input to all oil refineries located in the state of California, and

(2) the aggregate total amount of crude oil (USEIA product code 050) and unfinished oil (USEIA product code 812) input to each oil company’s refinery (or refineries) located in the state of California.

(c) On or before (November 1) of each year, DOSH will determine, for each oil company with an oil refinery (or refineries) located in California, the total crude oil (USEIA product code 050) and unfinished oil (USEIA product code 812) input to each individual oil company divided by the aggregate total amount of crude oil and unfinished oil input to all oil companies located in California. The result of this calculation shall be the process safety management assessment factor for that company.

(d) The process safety management assessment to be collected for each oil refinery located in California will be determined by multiplying the total assessment amount calculated in subdivision (a) of this section by the assessment factor calculated in subdivision (c) of this section for each oil company with an oil refinery or refineries located in California.

Section 344.77. Collection of the Process Safety Management Assessment.

This section sets forth the methodology for collection of the annual process safety management program assessment.

(a) On or before December 1 or each year, DOSH will levy each company owning an oil refinery (or refineries) subject to this assessment for the total amount due from that company for its proportional share of the Process Safety Management Assessment as determined in section 5189.1(d) of these regulations. The levy shall include the calculations used to determine the company's proportional individual assessment.

(b) The full amount of the assessment must be paid to DOSH within 30 days of the billing. Payment shall be made by using the Process Safety Management Assessment electronic payment option on DOSH's electronic payment portal at: http://www.dir.ca.gov/dosh/Payment_options.html

Small Business Effect

DOSH has determined that there will be no adverse impact on small business. The Proposed Rulemaking does not affect small businesses, because Government Code section 11342.610(b)(10) provides that the term "small business" does not include "A petroleum producer, a natural gas producer, a refiner, or a pipeline".

Policy Statement Overview

The objective of the proposed emergency regulations is to establish the methodology and manner of collection of the Process Safety Management Program Assessment.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

None.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DOSH has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

FISCAL IMPACT STATEMENT (attached Form 399)

- A. Cost or Savings to any state agency: **NONE**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NONE**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NONE**
- E. Cost or savings in federal funding to the state: **NONE**

**STATEMENT OF CONFIRMATION OF MAILING OF FIVE-DAY EMERGENCY
NOTICE**

(Title 1, CCR section 50(a)(5)(A))

DOSH complied with the provisions of Government Code section 11346.1(a)(2), regarding the mailing of the notice of proposed emergency regulatory action to every person who has filed a request for notice of regulatory action. The notice was mailed on October 4, 2013, at least five working days prior to submission to the Office of Administrative Law on October 14, 2013.