

VII.E.10

INTERNAL CORRESPONDENCE

PLAINTIFF'S EXHIBIT

UC-3921

METALS DIVISION

P. O. BOX 578 - 4625 ROYAL AVE., NIAGARA FALLS, NEW YORK 14301

To (Name)	Mr. J. L. Myers	Date	July 9, 1979
Division	UCC - Metals	Originating Dept.	"Calidria" Asbestos
Location	Niagara Falls, NY	Answering letter date	
Copy to	Mr. G. F. Rouse Mr. J. J. Sibley	Subject	California SB-678 Nejedly

This is in response to your request July 3, 1979 for comments on the above-noted subject. The California waste disposal regulations dated October 11, 1977 list asbestos as a hazardous material under Article 9, Section 60281(d). Drilling fluids are listed under paragraph (e) of the same section as subject to inclusion if they contain a hazardous material.

The legislation includes the exemption:

"This subdivision does not prohibit the deposit on or passage into the waters of the ocean or any bay or inlet thereof of drilling cuttings or drilling mud which are free of oil and materials that are deleterious to marine life if such activities are under authorization of a regional water quality control board."

It also defines hazardous substance as:

"(f) As used in this section, 'hazardous substance' means any such substance defined in paragraph (2) of subsection (b) of Section 1321 of Title 33 of the United State Code."

I do not have a copy of Title 33 U.S.C. but suspect that asbestos is included. Perhaps John Sibley could check this out. Even if it is not, it seems likely that the regional water quality boards would have problems with it.

Specifically, in answer to your question, it appears that the addition of asbestos to otherwise "clean" drilling fluids would render them no longer "clean" and subject them to the new restrictions in the legislation. Fluids which contain hydrocarbons or other hazardous materials would already be covered and asbestos would be just another ingredient. I have no idea of the proportion of drilling fluids which is "clean".

In any case, I don't think this is an area where we have the knowledge to become directly involved. Perhaps it would be useful to inform Montello of the legislation for their actions if they deem it appropriate.

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/rmm

UCC 014210

H. B. Rhodes
Harrison B. Rhodes

HBR
AMENDED IN SENATE MAY 16, 1979 *Is this any problem for*

AMENDED IN SENATE MAY 3, 1979 *as ? JSM*

SENATE BILL

No. 678 *7/2/79*

Introduced by Senator Nejedly

March 21, 1979

An act to add Section 5660 to the Fish and Game Code, to ~~repeat~~ amend Section 135 of the Harbors and Navigation Code, and to amend Section 6873 of the Public Resources Code, relating to water pollution, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 678, as amended, Nejedly. Water pollution: oil transfers, clean drill cuttings.

(1) Existing law provides, subject to specified exemptions, that it is unlawful to cause or permit any petroleum, chemical, or other hazardous substance, as defined, to be transferred between a vessel and a shore facility or another vessel by means of a pipeline or similar conduit unless the flow is continuously monitored by a properly installed, operated, and maintained mechanism that will warn of the imminent occurrence of an overflow so that the flow can be terminated in time to avert the overflow, and unless the vessel and shore facility are each equipped with a properly installed, operated, and maintained mechanism that will warn whenever any person is no longer properly discharging his duties in connection with the transfer, is inattentive, or becomes disabled. Such provisions become operative with respect to a tank vessel that is subject to Coast Guard examination not later than the first occasion after January 1, 1979, that it is required to be drydocked or hauled out for such examination, and become operative on July 1, 1979, with respect to other

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vessels and any shore facility. Existing law also makes it a defense to any prosecution if the mechanism was properly installed and was at all times properly operated and maintained by the person responsible for the mechanism, and specifies the operative date of such provisions with respect to specified vessels and facilities. It makes the violation of such requirement a misdemeanor.

This bill would remove the enforcement responsibility for such provisions from the Department of Boating and Waterways and transfer it to the Department of Fish and Game. The bill would also delay such operative dates to January 1, 1980, and July 1, 1980, respectively.

(2) Existing law requires that, when the State Lands Commission prepares an oil and gas lease for leasing tide or submerged lands or beds of navigable rivers or lakes, such lease shall contain specified provisions regarding the pollution and contamination of such waters.

This bill would provide that such provisions do not prohibit the deposit in waters of the ocean or any bay or inlet thereof of drill cuttings or drilling mud which are free of oil and materials that are deleterious to marine life if such activities are under authorization of a regional water quality control board.

(3) The bill would make additional technical changes in existing law.

(4) The bill would go into immediate effect as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5660 is added to the Fish and
- 2 Game Code, to read:
- 3 5660. (a) It is unlawful to cause or permit any
- 4 petroleum, chemical, or other hazardous substance to be
- 5 transferred between a vessel and a shore facility or
- 6 another vessel by means of a pipeline or similar conduit
- 7 unless the flow is continuously monitored by a properly
- 8 installed, operated, and maintained mechanism that will

1 warn of the imminent occurrence of an overflow of the
2 substance being transferred so that the flow can be
3 terminated in time to avert the overflow; and unless the
4 vessel and the shore facility are each equipped with a
5 properly installed, operated, and maintained mechanism
6 that will warn whenever any person is no longer properly
7 discharging his duties in connection with the transfer, is
8 inattentive, or becomes disabled for any reason. Violation
9 of this section is a misdemeanor. However, it shall be a
10 defense to any prosecution for a violation of this section
11 if the mechanism was properly installed and was at all
12 times properly operated and maintained by the person
13 responsible for the mechanism.

14 (b) This section does not apply to any transfer of fuel
15 to any self-propelled vessel of less than 65 feet in length
16 at any facility equipped with dispensing nozzles of the
17 automatic shut/off type that do not have catch/locks and
18 meet all federal standards.

19 (c) This section does not apply to any on/shore
20 receiving tankage if appropriate containment or
21 diversionary structures, or both, or other equipment that
22 is adequate to prevent the overflowed substance from
23 reaching the waters of the state is provided.

24 (d) This section shall become operative with respect
25 to a tank vessel that is subject to examination by the
26 United States Coast Guard not later than the first
27 occasion on or after January 1, 1980, that it is required to
28 be drydocked or hauled out for such examination, as
29 provided in Section 31.10/20 of Title 46 of the Code of
30 Federal Regulations. This section shall become operative
31 on July 1, 1980, with respect to any vessel that is not
32 subject to any such examination; any tank barge,
33 regardless of whether it is subject to such an examination;
34 and any shore facility not made exempt by subdivision
35 (e).

36 (e) As used in this section, "vessel" means every
37 description of watercraft or other contrivance used, or
38 capable of being used, as a means of transportation
39 through or on water, including, but not limited to, a
40 barge.

1 ~~(f)~~ As used in this section, "hazardous substance"
2 ~~means any such substance defined in paragraph (2) of~~
3 ~~subsection (b) of Section 1321 of Title 33 of the United~~
4 ~~States Code.~~

5 ~~SEC. 2. Section 135 of the Harbors and Navigation~~
6 ~~Code is repealed.~~

7 SECTION 1. *Section 135 of the Harbors and*
8 *Navigation Code is amended to read:*

9 135. (a) It is unlawful to cause or permit any
10 petroleum, chemical, or other hazardous substance to be
11 transferred between a vessel and a shore facility or
12 another vessel by means of a pipeline or similar conduit
13 unless the flow is continuously monitored by a properly
14 installed, operated, and maintained mechanism that will
15 warn of the imminent occurrence of an overflow of the
16 substance being transferred so that the flow can be
17 terminated in time to avert the overflow, and unless the
18 vessel and the shore facility are each equipped with a
19 properly installed, operated, and maintained mechanism
20 that will warn whenever any person is no longer properly
21 discharging his duties in connection with the transfer, is
22 inattentive, or becomes disabled for any reason. Violation
23 of this section is a misdemeanor. However, it shall be a
24 defense to any prosecution for a violation of this section
25 if the mechanism was properly installed and was at all
26 times properly operated and maintained by the person
27 responsible for the mechanism.

28 (b) This section does not apply to any transfer of fuel
29 to any self-propelled vessel of less than 65 feet in length
30 at any facility equipped with dispensing nozzles of the
31 automatic shut-off type that do not have catch-locks and
32 meet all federal standards.

33 (c) This section does not apply to any on-shore
34 receiving tankage if appropriate containment or
35 diversionary structures, or both, or other equipment that
36 is adequate to prevent the overflowed substance from
37 reaching the waters of the state is provided.

38 (d) This section shall become operative with respect
39 to a tank vessel that is subject to examination by the
40 United States Coast Guard not later than the first

1 occasion on or after January 1, ~~1979~~ 1980, that it is
2 required to be drydocked or hauled out for such
3 examination, as provided in Section 31.10-20 of Title 46 of
4 the Code of Federal Regulations. This section shall
5 become operative on July 1, ~~1979~~ 1980, with respect to any
6 vessel that is not subject to any such examination; any
7 tank barge, regardless of whether it is subject to such an
8 examination; and any shore facility not made exempt by
9 subdivision (c).

10 (e) As used in this section, "vessel" means every
11 description of watercraft or other contrivance used, or
12 capable of being used, as a means of transportation
13 through or on water, including, but not limited to, a
14 barge.

15 (f) As used in this section, "hazardous substance"
16 means any such substance defined in paragraph (2) of
17 subsection (b) of Section 1321 of Title 33 of the United
18 State Code.

19 ~~SEC. 3.~~

20 SEC. 2 Section 6873 of the Public Resources Code is
21 amended to read:

22 6873. When leasing tide or submerged lands or beds
23 of navigable rivers or lakes, the commission shall prepare
24 a form of lease which shall contain, in addition to other
25 provisions deemed desirable and necessary by the
26 commission, appropriate provisions contained in this
27 chapter and the following:

28 (a) Each well drilled pursuant to the terms of the lease
29 may be drilled or slant-drilled to and into the subsurface
30 of the tide or submerged lands or beds of navigable rivers
31 or lakes, covered by the lease from upland, riparian or
32 littoral drill sites owned or controlled by the state or
33 owned by or available, at any time, to the lessee, or from
34 drill sites located upon any filled lands heretofore or
35 hereafter filled, whether contiguous or noncontiguous to
36 the riparian or littoral lands or uplands, or from any pier
37 heretofore or hereafter constructed owned by or
38 available to the lessee and available for such purpose, or
39 from platforms or other fixed or floating structure in, on
40 or over the tide or submerged lands or beds of navigable

1 rivers or lakes, covered by the lease or otherwise
2 available to the lessee.

3 (b) Such lease shall prohibit the pollution or
4 contamination of the ocean, tidelands, or navigable rivers
5 or lakes, and shall prohibit the impairment of and
6 interference with bathing, fishing, or navigation in the
7 waters of the ocean, any bay or inlet thereof, or any
8 navigable river or lake, and shall prohibit the impairment
9 of and interference with developed shoreline
10 recreational or residential areas. In addition, no oil, tar,
11 residuary product of oil, or any refuse of any kind from
12 any well or works shall be permitted to be deposited on
13 or pass into the waters of the ocean, any bay or inlet
14 thereof, or any navigable river or lake.

15 This subdivision does not apply to the deposit on or
16 passage into such waters of water not containing any
17 hydrocarbons or vegetable or animal matter.

18 This subdivision does not prohibit the deposit on or
19 passage into the waters of the ocean or any bay or inlet
20 thereof of drill cuttings or drilling mud which are free of
21 oil and materials that are deleterious to marine life if such
22 activities are under authorization of a regional water
23 quality control board.

24 (c) If the lessee, as disclosed by information submitted
25 with his bid, proposes to drill one or more wells from
26 filled lands, whether contiguous or noncontiguous to the
27 riparian or littoral lands or uplands, or from any pier or
28 from platforms or other fixed or floating structures to be
29 constructed for such purpose, and if permission from any
30 federal or state agency is legally required in order to
31 construct any such filled land or structures, the lessee
32 shall be allowed a reasonable time following the
33 execution of the lease within which to secure the
34 necessary permission from such federal and state
35 agencies as shall be legally required, and, upon the
36 securing of such permission, a further reasonable time,
37 determined with regard to the nature of the filled lands
38 or structure or structures to be constructed, within which
39 to commence operations for the drilling of such well or
40 wells. The drilling term of the lease shall be extended by

(1 the commission by a period equal to such reasonable time
2 to secure such permission, and, if necessary, to the date
3 to which the time to commence operations for the
4 drilling of such well or wells has been extended.

5 (d) Any offshore filled lands or structure or structures
6 constructed for the purpose of drilling pursuant to this
7 section shall conform to the rules and regulations of the
8 commission in effect at the time of invitation for bids in
9 pursuance of which the lease is awarded. Drilling,
10 whether from upland, riparian, littoral or offshore
11 locations, shall be conducted in conformance with such
12 rules and regulations in effect at the time of invitation for
13 bids in pursuance of which the lease is awarded.

14 In the case of any existing lease of tide or submerged
15 lands, the commission may, with the consent of the other
16 party thereto, amend the same so as to contain or
17 conform with subdivisions (a), (b), (c) and (d) hereof, or
18 any of them, except that the provisions of said subdivision
19 (d) when incorporated into such a lease by such an
20 amendment shall refer to the rules and regulations in
21 effect at the time such amendment is made rather than
22 to those in effect at the time of invitation for bids in
23 pursuance of which the lease is awarded and said
24 subdivision (a) may not be incorporated into such a lease
25 without also incorporating said subdivision (d) therein.

26 ~~SEC. 4.~~

27 *SEC. 3.* This act is an urgency statute necessary for
28 the immediate preservation of the public peace, health,
29 or safety within the meaning of Article IV of the
30 Constitution and shall go into immediate effect. The facts
31 constituting such necessity are:

32 It appears that some portions of the affected industries
33 may not be able to comply in a timely manner with the
34 requirements of law enacted in 1978 as Section 135 of the
35 Harbors and Navigation Code. In addition, the scope of
36 the prohibition set forth in subdivision (b) of Section 6873
37 of the Public Resources Code is in need of prompt
38 clarification. Accordingly, it is necessary that this act take
39 effect immediately.

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