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PLAINTIFF'S EXHIBIT

UC-3921

INTERNAL CORRESPONDENCE

METALS DIVISION

P. O. BOX 379 - 4625 ROYAL AVE., NIAGARA FALLS, NEW YORK 14302

To (Name) Mr. J. L. Myers
Division UCC - Metals
Location Niagara Falls, NY

Date July 9, 1979

Originating Dept. "Calidria" Asbestos

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.

A08763

H. B. Rhodes

/rmm

UCC 014210

Harrison B. Rhodes

HBR
Is this any problem for us ? DSW
7/2/79

AMENDED IN SENATE MAY 16, 1979

AMENDED IN SENATE MAY 3, 1979

SENATE BILL No. 678

Introduced by Senator Nejedly

March 21, 1979

An act to ~~add Section 5660 to the Fish and Game Code, to repeal~~ *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: ⅔. Appropriation: no. Fiscal committee: ~~yes~~ *no.* State-mandated local program: no.

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

~~SECTION 1. Section 5660 is added to the Fish and Game Code, to read:~~

~~5660. (a) It is unlawful to cause or permit any petroleum, chemical, or other hazardous substance 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~~

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~~warn of the imminent occurrence of an overflow of the substance being transferred so that the flow can be terminated in time to avert the overflow, and unless the vessel and the 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 for any reason. Violation of this section is a misdemeanor. However, it shall be a defense to any prosecution for a violation of this section if the mechanism was properly installed and was at all times properly operated and maintained by the person responsible for the mechanism.~~

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

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

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

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

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~~(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 States Code.~~

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

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

135. (a) It is unlawful to cause or permit any petroleum, chemical, or other hazardous substance 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 of the substance being transferred so that the flow can be terminated in time to avert the overflow, and unless the vessel and the 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 for any reason. Violation of this section is a misdemeanor. However, it shall be a defense to any prosecution for a violation of this section if the mechanism was properly installed and was at all times properly operated and maintained by the person responsible for the mechanism.

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

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

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

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

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

(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.

~~SEC. 3.~~

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

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

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

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

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

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

This subdivision does not prohibit the deposit on or passage into the 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.

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

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

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

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

~~SEC. 4.~~

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

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

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