



**Western States Petroleum Association**  
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October 19, 2004

BOARD OF SUPERVISORS  
COUNTY OF SANTA BARBARA  
105 East Anapamu Street  
Santa Barbara, CA 93101

Re: Amendments to Oil Transportation Policies & Regulations  
Hearing Date: October 19, 2004  
Case Nos. 04GPA-00000-00014 & 00015  
04ORD-00000-00014 & 00015

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Dear Chair Centeno, Members of the Board:

The following comments are submitted on behalf of the Western States Petroleum Association (WSPA). These comments do not address any constitutional issues (such as Commerce Clause or federal preemption issues) created by the proposed amendments, other than with respect to the territorial jurisdiction of Santa Barbara County as more fully explained below. These comments also do not address any issues related to the legal non-conforming use status of Venoco's Ellwood Marine Terminal.

The proposed amendments would primarily accomplish the following:

1. Eliminate existing policies and regulations that would allow construction of marine terminals on the South Coast of Santa Barbara County; and
2. Require that a) all oil produced anywhere offshore which lands in Santa Barbara County, and b) all oil produced from any reservoir offshore Santa Barbara County, regardless of landing location, must be transported by pipeline from production facilities to processing facilities and from there to the ultimate refining destinations. There are three narrow exceptions to these requirements.

WSPA has the following concerns at this time:

1. The proposed amendments purport to regulate oil production in federal waters, including OCS production offshore Santa Barbara County, which does not come ashore in Santa Barbara County.
2. The amendments purport to require pipeline transportation of oil once it leaves Santa Barbara County until it reaches its ultimate refinery destination.

It is one thing for Santa Barbara County to regulate oil and gas production, which is produced, processed and/or transported within Santa Barbara County. It is quite another for the County to attempt to reach beyond its territorial boundaries.

In general, a county cannot exercise its police powers beyond its own territory. "A county or city may make and enforce within its limits all local police, sanitary, or other ordinances and regulations not in conflict with general laws." Cal. Const. Art. XI § 7. "A municipal corporation has generally no extraterritorial powers of regulation. It may not exercise its governmental functions beyond its corporate boundaries." *City of Oakland v. Brock* (1937) 8 Cal.2d 639, 641. "A city's police power under this provision [art. XI § 7] can be applied only within its own territory . . ." *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140. Any attempt to regulate beyond its authority is of no effect. It is void. See e.g., *Ex Parte Pfirrmann* (1901) 134 Cal. 143, 145.

The State's seaward territorial boundaries are defined under California law as extending three nautical miles beyond the outer most islands, reefs and rocks, and including all waters between those islands and the coast, i.e. including the entire Santa Barbara Channel. Cal. Const., art. III, § 2; Gov. Code §§ 170-171. By contrast, federal law defines California's territorial boundaries more narrowly. Under federal law, California's territorial boundaries extend only three nautical miles from the coast, and include a three mile band around the islands off the coast, but exclude waters between the islands and the coast. This excludes the central portion of the Santa Barbara Channel. Federal law boundaries take precedent where operation of federal law is at issue, for example, where federal and state law conflict. *Tidewater Marine Western, Inc., v. Bradshaw* (1996) 14 Cal.4th 557, 654; citing *People v. Weeren* (1980) 26 Cal.3d 654, 670.

The County's effort to regulate beyond its territorial boundaries would also exceed the parameters of the County's Coastal Zoning Ordinance. The introductory provisions of the ordinance state that its purpose is to implement the County's Land Use Plan as certified in 1981 by the California Coastal Commission. This is to be achieved "by classifying and regulating the uses of land, buildings, and structures within the Coastal Zone." Art. II, Section 35-50 of the County Code; emphasis added). "Coastal Zone" is defined in the Ordinance as follows:

"That land and water area of the County of Santa Barbara extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland to the boundary shown on the official Coastal Zoning Maps, as amended from time to time."  
Emphasis added.

Section 35-51 of the Ordinance ("Applicability and Exemptions") describes the scope of its applicability as follows:

"Any person (including County, any utility, and any federal, state, local government or special district or any

agency thereof) wishing to perform or undertake any development within the Coastal Zone of the unincorporated area of the County of Santa Barbara shall comply with the provisions of this Article with the following exceptions:

- "1. Lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents. 16 U.S.C. §1453, Federal Coastal Zone Management Act 1972." Emphasis added.

Thus, consistent with the California Constitution, the County's ordinance only applies to non-exempt lands within the territorial jurisdiction of the County of Santa Barbara. Facilities such as platforms, which reside in federal waters of the OCS and are regulated by the federal government, are properly excluded.

WSPA believes that the County can achieve its goals by limiting its regulatory reach to matters within its territorial jurisdiction. WSPA urges your Board to clarify that the new pipeline transportation requirements only apply with respect to the following:

1. Oil produced by production facilities over which Santa Barbara County has permit authority, or which uses processing or transportation facilities over which Santa Barbara County has permit authority; and
2. Transportation of crude oil within the territorial jurisdiction of Santa Barbara County, i.e. not to any final refining destination outside of the County.

Thank you for this opportunity to comment.

Respectfully submitted,

**Bob Poole**  
Coastal Coordinator