

**FINAL STATEMENT OF REASONS  
FOR  
PROPOSED AMENDMENTS TO THE  
2007 CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2,  
CALIFORNIA BUILDING STANDARDS, CHAPTER 31F – MARINE OIL TERMINALS**

**UPDATES TO THE INITIAL STATEMENT OF REASONS:** (Government Code Section 11346.9(a)(1) requires an update of the information contained in the initial statement of reasons. If update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the initial statement of reasons, the state agency shall comply with Government Code Section 11347.1)

The California State Lands Commission (CSLC) proposed changes which were the subject of the first public comment period from 12/26/08 through 02/24/09. Pursuant to the comments received, changes were made to seven (7) sections of those originally proposed express terms. In responding to comments number 4, 5, 16 and 43 the Commission staff relied on a new study. The new study was also the subject of the second 15-day comment period. The second comment period was from 09/16/09 through 09/30/09 and no comments were received during this period. However, late comments are addressed on this Final Statement of Reasons.

The proposed regulatory text and initial statement of reasons were also submitted for the review and comment to the Review Subcommittee of the State Interagency Oil Spill Committee (SIOSC) pursuant to Section 8574.10 of the Government Code.

The proposed regulatory text (Express Terms) was modified after the two comment periods. The modified regulatory text was submitted and approved by the Commissioners of the California State Lands Commission on October 22, 2009. There was no testimony made by any interested parties at this Commission Meeting.

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS** (Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s))

The staff of CSLC has determined that the proposed regulatory action would not impose a reimbursable mandate to local governments, local agencies or school districts.

**OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).** (Government Code Section 11346.9(a)(3))

Forty-five comments were received during the 60-Day Public Review Comment period, which extended from December 26, 2008 through February 24, 2009. A Public Hearing was also held on February 24, 2009 at 10:00 am at the Port of Long Beach, Board Room. Comments received have been numbered, grouped and summarized for our response; copies of the comment letters are attached. One commenter, Mr. Dennis Bolt representing Western States Petroleum Association (WSPA) gave oral testimony at the public hearing and also provided the script of his testimony, which were identical to the written comments that were submitted during the initial comment period.

A 15-Day Comment Period was held from September 16, 2009 through September 30, 2009 to address the comments, which were received from commenters who submitted comments during the Initial 60-Day public comment period. In addition to the above, the Notice of Proposed Rulemaking, Initial Statement of Reasons, Express Terms, Modified Express Terms and the Final Statement of Reasons are posted on the CSLC website.

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**COMMENTS 1, 9, 17 and 45.** Comments received from Dr. K. Arulmoli of Earth Mechanics, Inc. on 2/9/2009, Mr. Ron Heffron of Moffatt & Nichol on 2/23/2009, Mr. Gayle S. Johnson of Halcrow on 2/24/2009 and Mr. Ted W. Trenkwalder of Ben C. Gerwick, Inc. on 2/24/2009, respectively.

Their comments address Item 78 (Section 3107F.4) of the proposed Express Terms and suggest that engineering peer review for short retaining walls (less than 10-12 ft high) and which are located in non-critical areas, such that failure may not result in an oil spill, need not require peer review.

**CSLC RESPONSE:** Comments are accepted. We agree with the comments and will change Section 3107F.4 as suggested. Requiring peer review for these small structures would be costly and time consuming and would provide only minuscule information in regard to the global picture of the facility engineering. Section 3101F.6.1 already requires professional review of analyses prior to submission to the Marine Facilities Division (MFD) of the California State Lands Commission (CSLC).

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**COMMENTS 2, 13, 14 and 41.** Comments were received from Mr. Ron Heffron of Moffatt & Nichol on 2/23/2009, Mr. Gayle S. Johnson of Halcrow on 2/24/2009 and Mr. Ted W. Trenkwalder of Ben C. Gerwick, Inc. on 2/24/2009, respectively. They suggested that the changes proposed in Items 42 (Section 3103F.8; Table 31F-3-12) and 43 (Section 3103F.8; Table 31F-3-13), of the proposed Express Terms, which refer to Tables 31F-3-12 & 31F-3-13, respectively, regarding load combinations should not be included in the amendments to Chapter 31F at this time. They were particularly concerned with combining earthquake, current and wind loads for Load and Resistance Factor Design (LRFD) in Table 31F-3-12 and earthquake and wind loads for Service or Allowable Strength Design (ASD) in Table 31F-3-13.

**CSLC RESPONSE:** Comments are accepted. The fact that references used in the original version of Table 31F-3-12 and 31F-3-13 (2007 Title 24, Part 2, California Building Code, Chapter 31F, Marine Oil Terminals) have changed with respect to the arguments put forth by the commenters, we have modified these two tables (see Modified 15-Day Express Terms) including their respective footnotes, so as to provide options when considering load combinations analysis.

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**COMMENT 3.** One comment, regarding Item 33 (Section 3103F.5.5) of the proposed Express Terms, was received from Mr. Ron Heffron of Moffatt & Nichol on 2/23/2009. He suggests adding the following sentence to the end of the last paragraph of Section 3103F.5.5, "Other methods, subject to Division approval, may also be used in the determination of passing vessel forces on a moored vessel."

**CSLC RESPONSE:** Comment is rejected. There is an existing provision in Section 3101F.2 of Chapter 31F which allows for the use of alternatives, which serves the same purpose as was requested by the commenter.

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**COMMENTS 4, 5, 16 and 43.** Comments were received from Mr. Ron Heffron of Moffatt & Nichol on 2/23/2009, Mr. Gayle S. Johnson of Halcrow on 2/24/2009 and Mr. Ted W. Trenkwalder of Ben C. Gerwick, Inc. on 2/24/2009, respectively. All comments are similar in that they suggest removing the values for "in-ground hinges" from Table 31F-7-5 (see Item 66 of the Express Terms). Comments 16 (Section 3102F.3.6.1) and 43 (Section 3103F.8, Table 31F-3-13), in particular, suggest removing the in-ground hinge strain limits for Level 2 Seismic Performance.

Those commenters believe that the Level 2 Seismic Performance criteria stated in Section 3104F.2.1 are stringent enough. Comment 5 suggests perhaps modifying Table 31F-7-5 with a footnote, stating that the given strain values are presented to prevent plastic hinges from occurring in the pile below ground and that if in-ground hinging is allowed by the (terminal) owner, the strain value for pile/deck hinges may be used.

**CSLC RESPONSE:** Comments are accepted. After discussing these comments (4, 5, 16 & 43) with those who commented and conducting further in-house discussions, we are modifying two of the in-ground hinge strain limits for Level 2 seismic performance. In the Express Terms, we proposed values of 0.015 and 0.01 for the maximum in-ground strain limits for prestressing steel tension and reinforcing steel tension, respectively. New information has recently become available, from the "Port of Long Beach Wharf Design Criteria, Version 2.0", January 30, 2009, Published by the Port of Long Beach, CA. and based on the experimental results of Professor Nigel Priestley at the University of California, San Diego. With this new information, we are updating the Level 2 maximum strain limit values for both prestressing steel tension and reinforcing steel tension to 0.025 (see the updated Table 31F-7-5, in the Modified Express Terms. There is no recent experimental data for conventional reinforcing steel strain (in-ground hinging), and therefore, we have used the same value as for prestressed steel. This has been discussed with engineering experts, and we have determined this value is rational and conservative.

**TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS:**

The Commission relied upon the following document for the changes to Table 31F-7-5, reflected in the Modification of the Express Terms: "Port of Long Beach Wharf Design Criteria, Version 2.0", January 30, 2009, Published by the Port of Long Beach, California.

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**COMMENTS 6:** This comment, from Mr. Ron Heffron of Moffatt & Nichol, received on 2/23/2009, addresses Item 31 (Section 3103F.5.3.4) of the proposed Express Terms and suggests adding a requirement to document the remaining life target for the marine oil terminal structure when considering sea level rise as required by proposed Section 3103F.5.3.4.

**CSLC RESPONSE:** Comment is rejected. Proposed Section 3103F.5.3.4 requires operator/owners of marine oil terminals to consider the predicted sea level rise as an influencing factor over the remaining life of the terminal. Typically, marine structures have a 50 year design life, but with continuing inspection, maintenance and upgrades, the design life may be extended. Therefore, we do not see the need to require adding a specific number (life target) for each terminal.

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**COMMENT 7:** This comment, from Mr. Ron Heffron of Moffatt & Nichol, received on 2/23/2009, pertains to Item 44 (Section 3103F.10.1) of the proposed Express Terms and suggests "adding" a requirement to use the proposed mooring line MBL (minimum breaking load) formula (3-21) as the ultimate load and no load factors needed to be applied per table 31F-3-12. Also (suggests), if the service load combinations per Table 31F-3-13 are used, the proposed MBL formula (3-21) need not be used.

**CSLC RESPONSE:** Comment is rejected. Item 44 – 3103F.10.1 is concerned with mechanical systems (quick release hooks (QRH)) that are attached to the marine oil terminal structures and as such the discussion primarily revolves around the strength of the QRH to withstand the MBL of ropes that may be attached to it (them). The QRH system is a subset of the Mooring/Breasting (M) load to be considered in Table 31F-3-12 and Table 31F-3-13 and to designate the mooring line MBL as the ultimate load and no load factor would be over stating the effect of that subset on

the overall structural loading of a berthing system. Acceptance of this comment would not provide best achievable protection as required by Section 8750(c)(1) of the Public Resources Code. The comment is therefore rejected.

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**COMMENT 8:** This comment, from Mr. Ron Heffron of Moffatt & Nichol, received on 2/23/2009, regarding Item 34 (Section 3103F5.7) of the Express Terms, suggests changing language to include that the Tsunami Warning is not the (marine oil terminal) operator responsibility, but the plan to react to a Tsunami warning, is the operator's responsibility.

**CSLC RESPONSE:** Comment is rejected. We do not agree with the suggested change to amendment Item 34, that language in Section 3103F.5.7 of the MOTEMS should indicate that the operator is not responsible for a tsunami warning, but is responsible to react to a tsunami warning. That section provides information about tsunamis and requires that a terminal have a "Tsunami Plan" spelling out their response to a distant tsunami that may affect the local coastal area. These are maritime facilities and they are aware of this type of event and the warnings that are issued by the Pacific Marine Environmental Laboratory (PMEL) of the National Oceanic and Atmospheric Administration (NOAA). The awareness of this warning system can be included in their Tsunami Plan. We have, however, made a change in the 5<sup>th</sup> sentence of the proposed Section 3103F.5.7 to make the text more explicit.

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**COMMENT 10:** This comment, regarding Item 16 (Section 3102F.3.6.1) of the Express Terms, was received from Mr. Peter G. Bonnebakker, of ConocoPhillips and was dated 24 February 2009. Mr. Bonnebakker of ConocoPhillips recommends changing the proposed wording "MAX ARRIVAL DRAFT" in Figure 31F-2-1 to "Maximum Displacement on Berthing".

**CSLC RESPONSE:** Comment is rejected. In order to better define the information requested in Figure 31F-2-1, we are changing the wording on two items. "MAX ARRIVAL DRAFT" is changed to "MAX DRAFT AT BERTH" and "MIN DRAFT (BALLAST CONDITION)" is changed to "MAX FREEBOARD AT BERTH" in Figure 31F-2-1. The "MAX DRAFT AT BERTH" is a request for information regarding the maximum draft (depth of the tank vessel in water) of the tank vessel when moored at a marine oil terminal. The "MAX FREEBOARD AT BERTH" is a request for the maximum distance from the main continuous deck to the waterline of the tank vessel moored at the terminal.

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**COMMENT 11:** This comment, regarding Item 9 (Section 3102F.3.5.2) of the Express Terms, was received from Mr. Gayle Johnson of Halcrow, Inc., in a letter dated 2/24/2009. The commenter recommends that that the deletion of Footnote 2 under Table 31F-2-4 not be included. In the proposed Express Terms, we are eliminating Footnote1 and therefore renumbering Footnote 2 as Footnote 1. We can only assume that the commenter was suggesting we not eliminate Footnote 1.

**CSLC RESPONSE:** Comment is rejected. Section 3102F.3.2, allows for a rational and representative sampling of piles at wharves with very large numbers of piles.

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**COMMENT 12:** This comment was received from Mr. Gayle Johnson of Halcrow, Inc., in a letter dated 2/24/2009. Regarding Item 34 (Section 3103F.5.7) of the proposed Express Terms, the commenter suggests changing the next to last sentence in the 5<sup>th</sup> paragraph to read: "For San Francisco Bay, in order to determine the maximum run-up at a MOT, the largest values should be added to the maximum high mean tide". He then discusses his reasoning for this suggestion,

including that tsunami run-up should be considered at mean tides so that probabilities of occurrence are closer to those of Level 2 seismic events, in the area.

**CSLC RESPONSE:** Comment is rejected. We are making a change to the 5<sup>th</sup> paragraph of proposed amendments to Section 3103F.5.7. We are changing, “maximum high tide” to “mean high tide”. We believe making this change is more reasonable than the commenter’s suggestion. His suggestion would add the predicted tsunami run-up to the average (mean) tide, whereas our change, adds the predicted tsunami run-up to the mean high tide in San Francisco Bay. The maximum run-up value from our calculation should be somewhat higher and therefore somewhat more conservative, as compared to the commenter’s.

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**COMMENT 15:** This comment, regarding Item 44 (Section 3103F.10.1) of the Express Terms, received from Mr. Gayle S. Johnson of Halcrow on 2/24/2009; suggests changing the 6<sup>th</sup> paragraph of Section 3103F.10.1 to read: “The capacity, **limited by structural collapse**, of the supporting structures must be larger the  $F_d$  (see Section 3107F.4.3).

**CSLC RESPONSE:** Comment is rejected. The addition of the phrase, **limited by structural collapse**, is not necessary because the Section (3107F.4.3) referenced in the parenthetical phrase at the end of the paragraph provides all the information (further references) necessary to analyze the capacity of Quick Release Hook(s) (QRH) supporting structure(s), so as to determine if they are larger than  $F_d$ .

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**COMMENT 18:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. The commenter explains that Tesoro is concerned that several of the proposed changes to Chapter 31F of the State Building Code are not minor and would result in significant costs to businesses, but he gives no examples. He also suggests that the justification statements in the Initial Statement of Reasons are not consistent with the changes being proposed.

**CSLC RESPONSE:** Comment is rejected. This is a general comment and does not specify a particular item in the proposed Express Terms. While it is not necessary to respond to the this type of comment (see Government Code Section 11346.9(a)(3)), we nonetheless will respond in regard to the process. The existing Chapter 31F was codified through the appropriate rulemaking process and became effective on 2/6/2006. That rulemaking procedure addressed costs to businesses and determined that in fact there could be substantial costs in the conduct of the initial engineering audit required and/or if major problems were discovered. The changes proposed to the existing Chapter 31F could generate some costs, but they would be miniscule, at best, in regard to the original effects of Chapter 31F. Chapter 31F requires that marine oil terminals, determined to be in a high risk category (See Section 3102F.1.2) complete an initial engineering audit by 8/2008. All the high risk terminals completed the audits on time and Tesoro was among those. The proposed changes to Chapter 31F will not be effective until late 2010. Chapter 31F requires periodic inspections; the proposed changes will be incremental to the subsequent audits and inconsequential monetarily in our estimation.

We indicated in the Initial Statement of Reasons that there would be no economic impact on small businesses, because none of the marine oil terminals in California are small businesses by definition (Government Code Section 11342.610). Incrementally, we indicated that each of the proposed changes to Chapter 31F would not have an adverse impact on any business. In fact, we believe that the overall impact will be beneficial, in that the life of the wharf structures and associated systems will be, depending on the results of the audits and repairs/upgrades as deemed necessary, increased. The proposed regulatory action meets the legislative intent of Section 8750 of the Public Resources Code.

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**COMMENT 19:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. The commenter is apparently referring to Item 75 (Section 3107F.3.3.3; Table 31F-7-9) in the Express Terms, which entails proposed changes in Table 31F-7-9. The commenter states that by reducing the limiting strain values for timber in half, as proposed, that Tesoro would incur significant additional costs in order to comply, but doesn't define "significant additional cost" or give an example.

**CSLC RESPONSE:** Comment is rejected. We are aware that the displacement values will be one-half of those in the original Table 31F-7-9 of Chapter 31F. These proposed changes were made to avoid extreme lateral displacement of isolated piles. The strain levels for isolated piles are different than those for grouped or tied together piles on a timber wharf/pier. As such, if the original (in existing Chapter 31F) strain numbers are used for an entire wharf or pier, the lateral displacement becomes so extreme (typically, on the order of 8') that the wharf likely would collapse or at least create havoc for all equipment or items located on or attached to the deck. Reducing the strain values by half, results in more reasonable and realistic results. The Chapter 31F required engineering audits have already been completed for the Tesoro marine oil terminals (Amorco and Avon) and follow-up discussions on this issue explained. The analyses, using the smaller strain values, dictate a more conservative and realistic displacement for their wharves. No additional costs should be incurred for meeting this proposed change in the code. The comment is therefore rejected.

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**COMMENT 20:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. The commenter is apparently referring to Item 66 (Section 3107F.2.5.4; Table 31F-7-5) in the Express Terms, which entails proposed changes in Table 31F-7-5. The commenter states that by reducing the Level 1 (seismic performance) limiting strain values (20%) for concrete from (0.005 to 0.004) in the table, that Tesoro would incur significant additional costs in order to comply with the required reduce displaced. "Significant additional costs" are not defined.

**CSLC RESPONSE:** Comment is rejected. This change, proposed in the Express Terms, is a correction of a typographical error from both of the following references:

M.J.N. Priestley, M.J.N, Seible, Frieder, Gian Michele Calvi, "Seismic Design and Retrofit of Bridges," 1996, New York.

Ferritto, J., Dickenson, S., Priestley N., Werner, S., Taylor, C., Burke D., Seelig W., and Kelly, S., 1999, "Seismic Criteria for California Marine Oil Terminals, Vol.1 and Vol.2," Technical Report TR-2103-SHR, Naval Facilities Engineering Service Center, Port Hueneme, CA.

These documents occur as references [7.1] and [7.2], respectively in the existing Chapter 31F. Ferritto,et.al. indicates that the concrete extreme fiber compression strain (the Maximum Concrete Compression Strain for a Level 1 earthquake in Table 31F-7-5) is 0.004, which should prevent spalling of covering concrete during a Level 1 earthquake. Any crack would be so small as to not need remedial grouting (repair). Even the limit of strain value, 0.005, likely will also not result in extensive damage following a Level 1 seismic event. The commenter's company has already completed its engineering audit, as required by Chapter 31F and this proposed change should have no effect on the results or future analyses. The comment is therefore rejected.

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**COMMENT 21:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. The commenter is apparently referring to Item 34 (Section 3103F.5.7; Table 31F-3-8) in the Express Terms, and particularly to Table 31F-3-8. In essence, the commenter

suggests further evaluation and that the proposed changes to the table could result in additional costs or operational restrictions in order to comply with the proposed amendments. Examples of “additional costs” or “operational restrictions” are not defined.

**CSLC RESPONSE:** Comment is rejected. The proposed changes to Table 31F-3-8 are a part of the overall proposed amendments to Section 3103F.5.7 and provide the most recent and best available potential tsunami run-up values for the Bay area. The existing Chapter 31F, Section 3103F.5.7 provides information about tsunamis. The proposed version of that section updates that information and adds the requirement that MOTs shall have a “tsunami plan” that describes actions to be taken in the event of the generation of a distant tsunami that may impact it (the MOT). This plan should prevent or mitigate damage to the terminal structure in at least the event of a distant tsunami. The comment is therefore rejected.

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**COMMENT 22:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. The comment is apparently in regard to Item 31 (Section 3103F.5.3.4) of the Express Terms. In brief, the commentator states that the proposed addition of Section 3103F.5.3.4 to Chapter 31F does not provide specific values for estimated sea level rise (SLR), that a specific methodology is not provided to determine SLR and that this could result in additional costs. Costs in “addition” to what is not defined.

**CSLC RESPONSE:** Comment is rejected. According to the EPA, the earth’s global surface temperature is slowly warming; since the mid-70s, it has increased 1° F. And it is increasing at a rate of about 0.32° F/decade (<http://www.epa.gov/climatechange/science/recenttc.html>). Sea level is also rising. Causes of global sea-level rise are the expansion of ocean water due to warming and to a lesser extent, the melting of glaciers and ice sheets. Changes in coastal geology can also influence sea-level rise. Given this type of information and the concern for the potential effects on coastal developments and the environment, we are directing the MOTS, in Section 3103F.5.3.4, to merely consider the predicted changes over the life of their terminals. This means they should be aware of changes over time and be able/ready to take corrective measures if necessary. The methodology is left open. This type of change is dynamic and any coastal business should be aware and concerned for its continued safe and economic operation. MOTs typically have a design life of about 50 years and with upgrades may have that extended perhaps another 50 years. Obviously, a time frame of this magnitude has the potential to perceive sea level change impacts. The comment is therefore rejected.

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**COMMENT 23:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. It addresses no particular item of the proposed express terms, but expresses concern on the public review process of the proposed regulatory action.

**CSLC RESPONSE:** Comment is rejected. This rulemaking process is in accordance with the Administrative Procedures Act (Chapter 3.5, Part 1, Division 3, Title 2, California Government Code) as administered by the California Building Commission and the Office of Administrative Law.

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**COMMENT 24:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. It addresses no particular item, but concurs with comments from the Western States Petroleum Association (WSPA) and incorporates them by reference.

**CSLC RESPONSE:** Comment is rejected. No item in the proposed Express Terms is mentioned, therefore no response is required. The WSPA comments are addressed in this Final Statement of Reasons. Therefore no separate response is required.

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**COMMENT 25:** This comment was received from Mr. Michael M. De Leon of Tesoro in a letter dated 2/24/2009. It addresses no particular item in the proposed Express Terms, but does express concern regarding the consideration of costs impacts of the proposed changes. However, it presents no example of a cost impact.

**CSLC RESPONSE:** Comment is rejected. No item in the proposed Express Terms is mentioned, therefore no response is required. We have analyzed the effects of these proposed amendments to Chapter 31F adequately and determined these are incrementally miniscule compared to the effects of the initial version of Chapter 31F, which became effective on 2/6/2006. The commenter's company, Tesoro, has already completed its required initial engineering audit and these proposed changes to the Code will have little if any, economic impact on their MOT operations. The comment is therefore rejected.

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**COMMENT 26:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association in a letter dated 2/24/2009. This comment addresses no specific item in the proposed Express Terms, but expresses points that there has not been adequate "collaboration and input" from stakeholders. It also offers that the proposed changes to Chapter 31F of the Code are substantive (not a "cleanup") and portend the risk of business disruption and increased costs of doing business. No estimate of the increase in cost of doing business is given.

**CSLC RESPONSE:** Comment is rejected. The rulemaking action has followed the process outlined in the Administrative Procedure Act. Two comment periods; one initial 60-day during which a public hearing was held, and also a second 15-day comment period was provided for input from the stakeholders and the public in accordance with the law. The comment is therefore rejected.

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**COMMENT 27, 28, 29, 30:** These comments (see attached) were received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. The overarching comment requests a meeting with the Marine Facilities Division of the CSLC, in order to: further understand the proposed amendments, how they would be put into effect, how they would be applied to maintenance and repair activities and how they would affect upgrades specified in audits already completed.

**CSLC RESPONSE:** Comments are rejected. These comments do not identify a particular item in the proposed Express Terms and therefore, no response is required, per Section 11346.9 of the Government Code. The comment is therefore rejected.

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**COMMENT 31:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. It relates to the cost effects of the proposed amendments to Chapter 31F on businesses. This comment suggests that all the costs to all businesses should be calculated and the aggregate outlay to all businesses discussed.

**CSLC RESPONSE:** Comment is rejected. Once again there is no specific item, in the proposed Express Terms, referred to in this comment, but we will address this comment for completeness

of discussion. The CSLC has received no indication or estimate of costs for implementation of the proposed amendments from those that may be affected by them.

As defined by Government Code Section 11342.610, there are no small businesses directly affected by these proposed amendments. We believe that the incremental effects of the proposed amendments to Chapter 31F will be extremely insignificant compared to those of the original Marine Oil Terminal code (existing Chapter 31F), which became effective on 2/6/2006. The proposed amendments are typically corrections and updates to various references and provisions to the existing code (Chapter 31F) and as such will have very little, if any, economic impact on businesses.

There are several amendments, which may seem on the surface to cause an economic impact to businesses. However, when taken in context of the overall Chapter 31F, are miniscule. Also, all high risk MOTs have already completed their initial engineering audits and these amendments will have little or no impact on them. The medium and low risk MOTs have yet to have their initial engineering audits completed, although some of the medium risk facilities have started the process. These proposed amendments will not be codified in time to directly affect those audits (medium risk MOTs) due in early 2010. The amendments effects will be miniscule and incremental to the required engineering audits for the low risk MOTs.

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**COMMENT 32:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. This comment repeats the 3<sup>rd</sup> sentence in the Public Resources Code (PRC) Section 8755(a), which states, “The Commission shall ensure that the rules, regulations, guidelines, and commission lease covenants provide the best protection of the public health and safety and the environment.” It then suggests the Initial Statement of Reasons falls short in explaining how the proposed amendments are necessary to meet this requirement. The comment then requests that the CSLC provide scenarios outlining where each provision (proposed amendment) to Chapter 31F, except for minor corrections, is necessary to meet the statutory requirement and which amendment would apply to each.

**CSLC RESPONSE:** Comment is rejected. Once again there is no specific item, of the proposed Express Terms, referred to in this comment.

The CSLC (or any agency) is not required to provide scenarios for each provision of a regulation it is proposing to amend. Section 11346.2(a)(2) of the Government Code requires a notation following the express terms (the proposed amendment) listing the specific statutes authorizing the adoption of the regulation and listing the specific statutes being implemented. The CSLC has complied with this code.

The CSLC (or any agency) is required (Section 11346.2(b)(1) of the Government Code) to provide a statement of specific purpose and rationale for each item being proposed in the Express Terms. The CSLC has complied with the government code and has found that Comment 32 is moot. The comment is therefore rejected.

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**COMMENT 33:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. This comment is addressing Item 9 (Section 3102F.3.5.2; Table 31F-2-4) of the proposed Express Terms, specifically, the changes to footnotes of Table 31F-2-4. It requests reinsertion of Footnote 1.

**CSLC RESPONSE:** Comment is rejected. Footnote 1 for Table 31F-2-4 has been removed because in light of the changes to Section 3102F.3.2 (Item 4 of the Express terms) it is not necessary. There is a typographical error in the third sentence of the “Statement of Specific

Purpose and Rationale for Item 9 of the proposed Text of Regulations (Express Terms) and Initial Statement of Reasons. Item 3 should be item 4. Other than correction of this typographical error, Item 9 will not be changed to accommodate this comment.

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**COMMENT 34:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. This comment relates to Item 31 (Section 3103F.5.3.4) of the Express Terms and requests the CSLC remove proposed “Section 3103F.5.3.4 Sea Level Rise (SLR)”.

**CSLC RESPONSE:** Comment is rejected. Item 31, requires that MOTs consider predicted sea level rise over the life of the terminal. This requirement is aimed at ensuring MOTs are aware that sea level changes are dynamic and that being sensitive to that fact is good from a business, safety and environmental perspective, thereby perhaps having a beneficial economic effect in the long run. Also see the CSLC Response to Comment 22, above. The comment is therefore rejected.

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**COMMENT 35:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. This comment pertains to Item 34 (Section 3103F.5.7) of the Express Terms and discusses the role of the U.S. Coast Guard in regard to tsunami plans, alerts and jurisdiction. It suggests that the CSLC already addresses structural integrity in the event of a tsunami and then indicates that the CSLC has no jurisdiction over vessel movements or how the USCG might direct them in the event of a tsunami. The comment also suggests that the CSLC should add language to allow the consideration of alternatives to the information presented in the subject Section. It then requests the CSLC remove the requirement for a “Tsunami Plan” and add language that the Marine Facilities Division of the CSLC, at its discretion, approve alternative calculations to those prescribed in the section (3103F.5.7).

**CSLC RESPONSE:** Comment is rejected. The changes to Chapter 31F proposed in the Express Terms do not duplicate, overlap or conflict with any Coast Guard requirements, nor do they purport to direct vessel movements in the event of a tsunami alert or any other exercise. It does indicate that an early warning of a distant event may allow time to move a vessel, thereby mitigating potential damage to the MOT wharf from the effects of a tsunami. The proposed changes update the existing Chapter 31F and do require a “tsunami plan”, but does not specify what is to be in that plan. This should stimulate generation of a plan to prevent or mitigate damage to the terminal structure in at least the event of a distant tsunami that may impact the local area.

Section 3101F.2 (last paragraph) of the existing Chapter 31F already allows that alternatives (such as the calculations referred to in the comment) may be used, that provide an equal or better protection of the public health, safety and the environment, subject to the CSLC approval. The comment is therefore rejected.

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**COMMENT 36:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. This comment raises a question about the proposed MRSTS (maximum Reinforcing Steel Tension Strain) values for a Level 1 and Level 2 seismic event in Table 31F-7-5.

**CSLC RESPONSE:** Comment is accepted. See the CSLC Response to Items 4, 5, 16 and 43 above for changes we are proposing.

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**COMMENT 37:** This comment was received from Mr. Dennis Bolt of the Western States Petroleum Association (WSPA) in a letter dated 2/24/2009. In short, the comment discusses the proposed requirement change, that fire hydrants on wharves should be spaced 150' apart instead of 300'. It then requests that the change be deleted.

**CSLC RESPONSE:** Comment is rejected. In the existing Chapter 31F, the spacing requirement between fire hydrants pertains to new facilities, as indicated by the "(N)" at the end of the last sentence in the first paragraph of that section. Note, that the (N) should follow the first sentence of the paragraph and not be within the last sentence. The change from 300' to 150' spacing being proposed, still only pertains to new facilities and obviously should be considered in the design of the fire water system. It is not obvious in the ISOR (Initial Statement of Reasons), the "(N)" having been omitted, along with the last portion of the section, for brevity. For clarity, the entire Section 3108F.6.2 with proposed amendments was presented in the 15-day Modified Express Terms comment period. The hydrant spacing at existing MOTs are basically grandfathered and allowed to maintain the status quo, unless the fire water system is upgraded or modified, wherein the spacing should be reduced to 150', if at all possible. If this is not possible, Section 3103F.2 of Chapter 31F allows for alternatives in special circumstances.

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**COMMENT 38:** This comment was received from Mr. Kevin Reinertson of the Office of the State Fire Marshal (OSFM) in a letter dated 12/17/2008. The comment indicates that the OSFM has reviewed the proposed amendments to Chapter 31F and found them to promote fire and panic safety.

**CSLC RESPONSE:** Comment is accepted. The commentor supports this regulatory action.

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**COMMENT 39:** This comment was received from Mr. Ted Trenkwald of Ben C. Gerwick, Inc. in a letter dated 2/24/2009. It identifies Item 33 (Section 3103F.5.5), but upon further investigation, actually pertains to Item 31 (Section 3103F.5.3.4) of the proposed Express Terms. The comment suggests limiting the application of predicted sea level rise to New Marine Terminals only, because the possible limited remaining life of existing terminals may not be long enough for it (sea level rise) to be problematic.

**CSLC RESPONSE:** Comment is rejected. Please see the responses to Comments 22 and 34 above. The comment is therefore rejected.

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**COMMENT 40:** This comment was received from Mr. Ted Trenkwald of Ben C. Gerwick, Inc. in a letter dated 2/24/2009. It addresses Item 34 (Section 3103F.5.7) of the proposed Express Terms and suggests clarifying the application of the run-up and current values and recommends that a tsunami load factor be added in Table 31F-3-12 and 31F-3-13 to simulate an occurrence probability similar to an earthquake event.

**CSLC RESPONSE:** Comment is rejected. Please see the CSLC response to comments 8, 12 and 21, above. We have clarified that the run-up should be added to the "mean" high tide. By requiring Tsunami Plans, we are encouraging MOTs to consider all the possibilities that may occur during a tsunamigenic event and take appropriate steps to prevent or mitigate damage to the wharf or other structures at the terminal. As such, we see no need to add a tsunami load factor to Tables 31F-3-12 and 31F-3-13. The comment is therefore rejected.

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**COMMENT 41:** This comment was received from Mr. Ted Trenkwalder of Ben C. Gerwick, Inc. in a letter dated 2/24/2009. It addresses Items 42 (Section 3103F.8; Table 31F-3-12) and 43 (Section 3103F.8; Table 31F-3-13) of the Proposed Express terms.

**CSLC RESPONSE:** Comment is accepted. Please see the CSLC response to comments 2,13,14 and 41, above.

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**COMMENT 42:** This comment was received from Mr. Ted Trenkwalder of Ben C. Gerwick, Inc. in a letter dated 2/24/2009. It addresses Item 44 (Section 3103F.10.1) of the proposed Express Terms and suggests that the proposed changes are too onerous for new MOT structures. It then recommends that Quick Release Hooks and the associated support structures be designed for 1.8 times the calculated mooring line loads. The comment states that having the mooring hardware load be approximately 2.25 times the safe mooring load is excessive.

**CSLC RESPONSE:** Comment is rejected. We believe that the hook system should be substantially stronger than the mooring lines. Obviously, 2.25 is about 25% stronger than 1.8, which is substantially stronger. Also see the CSLC responses to comments 7 and 15, above. The comment is therefore rejected.

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**COMMENT 43:** This comment was received from Mr. Ted Trenkwalder of the Ben C. Gerwick, Inc. in a letter dated 2/24/2009. It speaks to Item 66 (Section 3107F.2.5.4; Table 31F-7-5) of the proposed Express Terms and recommends that the in-ground hinge strain limits for Level 2 be removed from Table 31F-7-5.

**CSLC RESPONSE:** Comment is accepted. Please see the CSLC responses to comments 4,5,16 and 43 above.

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**COMMENT 44:** This comment was received from Mr. Ted Trenkwalder of Ben C. Gerwick, Inc. in a letter dated 2/24/2009. Regarding Item 75 (Section 3107F.3.3.3; Table 31F-7-9) of the proposed Express Terms, this comment recommends retaining present allowable timber strain values and that the amendment to the existing Chapter 31F will require timber testing to substantiate the proposed revisions.

**CSLC RESPONSE:** Comment is rejected. From the CSLC responses to comment 19, above. We are aware that the displacement values will be one-half of those in the original Table 31F-7-9 of Chapter 31F. These proposed changes were made to avoid extreme lateral displacement of isolated piles. The strain levels for isolated piles are different than those for grouped or tied together piles on a timber wharf/pier. As such, if these the original (in existing Chapter 31F) strain numbers are used for an entire wharf or pier, the lateral displacement becomes so extreme (typically, on the order of 8') that the wharf likely would collapse or at least create havoc for all equipment or items located on or attached to the deck. Reducing the strain values by half, results in more reasonable and realistic results. The comment is therefore rejected.

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**COMMENT 45:** This comment was received from Mr. Ted Trenkwalder of Ben C. Gerwick, Inc. in a letter dated 2/24/2009. It relates to Item 78 (Section 3107F.4) of the proposed Express Terms and recommends eliminating the portion of the last sentence in Section 3107F.4, stating "...and are subject to peer review prior to submission to the Division."

**CSLC RESPONSE:** Comment is accepted. Please see CSLC response to comments 1, 9, 17 and 45, above.

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**LATE COMMENTS RECEIVED AFTER THE CLOSING OF 15 – DAY COMMENT PERIOD:**

**COMMENT 46, 47:** This comment was received from Mr. Dennis Bolt of Western States Petroleum Association in an e-mail dated 10/01/2009 and a letter dated 10/02/2009. It recommends a word change as follows: “MAX FREEBOARD AT BERTH” should be “MAX WATERLINE TO MANIFOLD DISTANCE”, on the proposed Express Terms.

**CSLC RESPONSE:** Comment is rejected. As this subject is covered in existing California Code of Regulation, Title 2, Division 3, Chapter 1, Article 5, Marine Terminals Inspection and Monitoring regulations, which serves the same purpose.

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**COMMENT 48, 49, and 50:** These comments were received from Mr. Dennis Bolt of Western States Petroleum Association in a letter dated 10/02/2009. These comments are: Questioning the significant facility changes, applicable MOTEMS version for Subsequent Audits, Plan approval for audit findings, significant changes/modifications, and alternative compliance options.

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**CSLC RESPONSE:** These comments are rejected. CSLC staff finds that these comments are not relevant to the proposed express terms.

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**DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS**

(Government Code Section 11346.9(a)(4))

The State Lands Commission has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

**REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:** (Government Code Section 11346.9(a)(5))

This is not applicable, as there are no small businesses, as defined by Government Code Section 11342.610, affected by these proposed regulations.