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Date Filed: 2/9/18
180th Day: 8/8/18
Staff: TL-SF
Staff Report: 2/22/18
Hearing Date: 3/9/18

STAFF REPORT
REGULAR CALENDAR

Application No.:	**9-18-0089**
Applicant:	**Dynegy Morro Bay, LLC**
Project Location:	Coastal waters of Estero Bay, County of San Luis Obispo.
Project Description:	Permanently authorize pigging and flushing of marine terminal pipelines and removing offshore pipeline components that were previously conducted under Emergency Permit No. G-9-17-0049, and authorize development undertaken to prepare for the pipeline pigging and removal as well as oil spill cleanup activities undertaken at Morro Rock Beach.
Substantial File Documents:	See Appendix A

SUMMARY OF STAFF RECOMMENDATION

The applicant seeks after-the-fact authorization of unpermitted development and is also applying for the required follow-up permit to emergency coastal development permit ("CDP") number G-9-17-0049. The unpermitted and emergency activities were conducted to partially remove a retired marine terminal in the nearshore waters of Estero Bay, San Luis Obispo County.

Dynegy Morro Bay, LLC ("Dynegy") owns and operates the Morro Bay Power Plant ("MBPP"). Dynegy is preparing to decommission the facility's marine terminal, which was formerly used to deliver fuel oil from ships anchored offshore to the power plant. The marine terminal consists primarily of two pipelines that extend from the power plant to about 3700 feet offshore in Estero Bay. The terminal has been retired since 1995 when MBPP switched from using fuel oil to using natural gas. At that time, the pipelines were purged and filled with a fluid meant to inhibit corrosion.

The California State Lands Commission is currently conducted CEQA review of the proposed full marine terminal decommissioning (see Draft Mitigated Negative Declaration at: http://www.slc.ca.gov/Info/CEQA/Dynegy.html). To prepare for decommissioning, Dynegy in September and October 2017 conducted pigging and flushing operations meant to remove the corrosion-inhibiting fluid and any residual fuel oil within the pipelines. These activities resulted in the release of a small amount (approximately five to 10 gallons) of residual oil from the pipelines into coastal waters and onto Morro Rock Beach. Dynegy notified the Morro Bay Harbor District and started conducting cleanup operations. Upon hearing of this release, Commission staff determined that Dynegy had not applied for the coastal development permit needed to conduct the pigging and flushing operations.

Although these activities done in preparation for decommissioning may be considered repair and maintenance, which in certain instances are exempt from coastal development permit requirements (per Coastal Act Section 30610), Section 13252 of the Commission's administrative regulations (CCR Title 14) requires a CDP for any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, or within 20 feet of coastal waters or streams, that includes the placement or removal, whether temporary or permanent, of any solid materials and/or the presence of mechanized equipment or construction materials. Dynegy's activities took place within coastal waters and involved the use of mechanized equipment and therefore required a coastal development permit.

During discussions with Commission staff, Dynegy stated that it had noticed during these activities that the two hoses connecting the pipelines had deteriorated significantly during their several decades of non-use and that further releases could occur if the pipelines were not stabilized. Dynegy expressed concerns about needing to stabilize the system and complete the pigging and flushing during the next several weeks before the start of the winter storm season. It requested that the Commission's Executive Director approve an emergency coastal development permit allowing Dynegy to complete the pigging and flushing work. On October 5, 2017, Dynegy applied for the emergency CDP, which was issued on October 9, 2017 (CDP #G-9-17-0049). It completed the work in October 2017, and on December 8, 2017, submitted the required application for an after-the-fact and follow-up CDP to fully authorize the activities.

Commission staff has determined the proposed work conforms to Coastal Act Sections 30230, 30231, and 30232 (marine biological resources), and 30211, 30214, and 30220 (public access and recreation). Staff therefore recommends the Commission **approve** the proposed permit.

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EXHIBITS

Exhibit 1 – Location Map
Exhibit 2 – Schematic Drawing of Marine Terminal
Exhibit 3 – Emergency CDP G-9-17-0049

I. MOTION AND RESOLUTION

Staff recommends the Commission **approve** coastal development permit application 9-18-0089.

Motion:

I move that the Commission approve proposed coastal development permit 9-18-0089.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the coastal development permit and adopts the findings set forth below on grounds that the development will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the amended permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION AND BACKGROUND

Project Description: Dynegy Morro Bay, LLC ("Dynegy") is the current owner/operator of the Morro Bay Power Plant ("MBPP"). The power plant was built in the 1950s and included an offshore marine terminal used to deliver fuel oil to the facility. In 1995, the MBPP switched from using fuel oil to using natural gas, and the marine terminal was retired. At that time, the pipelines were purged and filled with a solution of freshwater and sodium hydroxide to inhibit corrosion. The marine terminal has not been used since then.

The marine terminal consisted primarily of two intake pipelines – one 24-inch diameter and one 16-inch diameter – along with rubber/steel hoses that connected the two pipelines offshore and that allowed for fluid to circulate after fuel delivery to clear the pipelines. The pipelines extend from the power plant to a location about 3700 feet offshore in Estero Bay (see Exhibits 1 and 2). They are buried beneath the beach and seafloor until they emerge offshore in coastal waters about a quarter-mile north of Morro Rock.

Dynegy is planning to decommission and remove components of the marine terminal from under the beach and in nearshore waters. It has started the necessary environmental review process with the State Lands Commission as lead CEQA agency (see http://www.slc.ca.gov/Info/CEQA/Dynegy.html). To prepare for the decommissioning, Dynegy in June 2017 tested the fluid within the pipelines and found that it contained some residual oil and other contaminants. In August 2017, Dynegy developed a work plan to purge the fluid from the pipelines, which included pigging and flushing the lines to ensure there would be no residual oil within the pipelines during this planned removal. In late September 2017, Dynegy started conducting the activities needed to prepare for the pigging, which included installing a temporary wastewater treatment system and vacuum pumps within the power plant site, anchoring a work boat over the end of the pipelines, and disconnecting one of the two hoses connecting the two pipelines. When the divers separated the hose from the pipeline, it released approximately five to 10 gallons of residual oil into the water column, some of which reached Morro Rock Beach. Dynegy notified the Morro Bay Harbor District, and then conducted cleanup activities on the beach by raking the oil/sand mixture and using a tractor to remove the material.

On Monday, October 2nd, Commission staff became aware of the spill through a Central Coast news report. Commission staff contacted Dynegy and determined that Dynegy had conducted these development activities without the coastal development permit required from the Commission, which is the subject of a separate enforcement matter. Although these activities may have been considered repair and maintenance, which in certain instances are exempt from coastal development permit requirements (per Coastal Act Section 30610), Section 13252 of the Commission's administrative regulations (CCR Title 14) requires a CDP for any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, or within 20 feet of coastal waters or streams, that includes the placement or removal, whether temporary or permanent, of any solid materials and/or the presence of mechanized equipment or construction materials. Dynegy's activities took place within coastal waters and involved the use of mechanized equipment and therefore required a coastal development permit.

On Tuesday, October 3rd, Commission staff held a conference call with Dynegy to discuss the violation and Dynegy's need for an after-the-fact coastal development permit.
During this call, Dynegy stated that in conducting these activities, it had determined the two hoses had deteriorated significantly during their past couple of decades of non-use (at other similar, active facilities, hoses of this type are generally replaced on five-year cycles). Dynegy stated that the degraded state of the hoses could lead to additional, and possibly larger, releases of any other residual oil that may be remaining in the pipelines if the hoses were damaged during the upcoming winter storm season. Dynegy stated that it would likely be able to conduct the work needed to stabilize and clean the pipelines only during the next few weeks before the expected arrival of winter storms and unfavorable sea conditions.

On Thursday, October 5th, Dynegy submitted an application for an emergency CDP to authorize the remaining activities needed to purge any remaining oil from the pipelines and to stabilize the marine terminal components until they can be fully removed, presumably later in 2018. On Monday, October 9, the Executive Director issued an emergency CDP to Dynegy (see Exhibit 3) that allowed Dynegy to complete the planned pigging and flushing work, to remove the two deteriorated hoses, and to cap and stabilize the ends of the pipelines.

Dynegy provided with its application for its emergency CDP a revised Technical Plan for conducting the activities. This revised Plan included several additional mitigation measures meant to reduce the potential for any additional spills, including:

- To help contain any potential releases, divers would attach "seep tents" above the areas of the marine terminal where hoses would be detached from the pipelines.
- The "cradle" used to lift the removed components from the seafloor to the work boat would be attached to the seep tents instead of the work boat. Part of the reason for the initial release was that the hose was pulled upward due to the pitching of the boat in the surface waves.
- Work would be conducted only during calm sea states.

During October 2017, Dynegy completed the work allowed under the emergency CDP, and on December 8, 2017 submitted an after-the-fact and follow-up permit application to the Commission to authorize the completed work.

The specific activities Dynegy conducted are more fully described in Dynegy's August 15, 2017 *Technical Plan – Pigging and Flushing Maintenance Activity* as modified by Dynegy's October 3, 2017 revised *Section 6 – Procedures* and *Section 12 – Oil Spill Response Plan*, and included:

- **Staging and Equipment Installation:** Dynegy used a work boat anchored over the ends of the pipeline for equipment staging and to deploy divers that prepared the seafloor work area at the end of each pipeline. The divers installed separate "seep tents" over each pipeline/hose connection to capture any residual oil that might be released during the hose removal. Working on one pipeline/hose connection at a time, divers removed the existing fittings that seal the ends of the pipelines and replaced them with new flanges that allowed the installation of two pig launchers – one about 12 feet long and one about 18 feet long. Dynegy deployed a special submarine hose "cradle" and hoist system to ensure the deteriorated hoses could be safely lifted to the work boat. To further reduce

the potential for spills or releases, work was done only during calm sea states, and Dynegy installed a vacuum pump on the onshore end of each pipeline to create a positive flow of liquids in the landward direction.

- **Flushing and treatment activities:** Dynegy used three pigs in each pipeline – the first was made of a stiff foam material, the second made of urethane discs, and the third a foam pig similar to the first. The divers installed the first pigs and then pumped surfactant solution behind it to push the pigs forward about 150 feet into each pipeline. The divers then installed the second and third pigs and then pumped seawater into each pipeline, forcing the pigs and surfactant through the pipelines to pig receivers installed at the inland end of the pipelines. All liquid removed from the pipelines – about 260,000 gallons total – was routed to a temporary treatment system installed at the power plant. Dynegy then used blind flanges to cap the end of each pipeline.

- **Demobilization:** Once flushing and treatment was complete, Dynegy removed the offshore seep tents and pig launchers and the temporary treatment system.

B. COASTAL COMMISSION JURISDICTION AND STANDARD OF REVIEW

Components of the marine terminal in coastal waters are within the Commission's retained jurisdiction. The standard of review for these project components is Chapter 3 of the Coastal Act.

C. PROTECTING MARINE RESOURCES AND WATER QUALITY

Coastal Act Section 30230 states:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Coastal Act Section 30231 states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Coastal Act Section 30232 states, in relevant part:

> *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.*

Dynegy is seeking after-the-fact approval for work it conducted in the coastal waters of Estero Bay and cleanup activities on the Morro Rock Beach. Although these activities have already taken place, because they were not authorized through a coastal development permit, they are analyzed by the Commission as if the development had not occurred.

Dynegy's proposed oil spill cleanup work consists of collecting the oil/sand mixture using rakes and using a tractor to remove the material from the beach for proper disposal. Although the work results in disturbance to the beach and to public access and recreation on the beach, removing the oil was necessary because of the harm it causes in the marine environment. Oil can cause direct harm and death to marine life due to ingestion or exposure to the oil, and can also result in indirect harm due to it bioaccumulating in prey species, coating the feathers of marine birds, or other similar effects. Oil on the beach also reduces public enjoyment and recreational opportunities. Using hand-raking to collect the oil/sand mixture and using a small tractor to transport it from the beach is an effective and the least environmentally damaging method to accomplish the necessary cleanup and is therefore consistent with the above-cited Chapter 3 policies. Dynegy's cleanup actions are also subject to review by the San Luis Obispo County Health Department, which will help ensure the oil is adequately removed.

After undertaking the unpermitted activities described above, Dynegy needed to pig the lines and remove them from the nearshore environment. It received CDP No. G-9-17-0049 to conduct this development. After receiving the emergency CDP, Dynegy conducted the work consistent with the permit's Special Conditions, which required Dynegy to adhere to activities and best management practices identified in its Fall 2017 *Technical Work Plan* and its modified *Oil Spill Response Plan*. These practices included working only during calm sea conditions, installing seep tents to reduce the potential for uncontrolled releases into coastal waters, attaching rigging and cradles used for removing the hoses to the stationary seep tents instead of the moving work boat, and others (See Exhibit 3 for the emergency CDP). Dynegy also met the emergency CDP requirements to submit evidence of Dynegy's contract with a spill response and cleanup provider and to notify the Coastal Commission's spill response staff of any further releases during the activities.

Dynegy additionally scheduled its work to be completed before the onset of the winter storm season, thereby reducing the risks of releases or further damage to the marine terminal due to higher storm and wave energy.

Conclusion: As proposed and conditioned, the Commission finds that the project will adequately protect marine resources and is therefore consistent with Sections 30230, 30231, and 30232 of the Coastal Act.

D. PUBLIC ACCESS AND RECREATION

Coastal Act Section 30211 states:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30214 states, in relevant part:

> *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place and manner of public access…*

Coastal Act Section 30220 states:

> *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland areas shall be protected for such use.*

Dynegy is conducting its beach remediation activities by collecting the oil/sand mixture using hand-held rakes and by transporting the material by small tractor for removal from the beach and proper disposal. As noted previously, these activities are necessary and the least environmentally damaging methods for removing the oil from the beach so as not to further inhibit public access and recreation.

Dynegy's marine terminal work activities took place in coastal waters used for public access and recreation. However, they were several thousand feet offshore from the City's Morro Rock Beach so as not to cause significant adverse effects to public access to, or recreational use of, the beach. Work took place over a period of approximately two weeks, so any disruption of recreational fishing in the immediate area was minimal.

Conclusion: As proposed and conditioned, the Commission finds that the project will be protective of recreation and public access to the shoreline. For the reasons above, the Commission therefore finds that the project is consistent with Sections 30211, 30214, and 30220 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

The development activities conducted without the required coastal development permit include anchoring a work boat over the end of the marine terminal and using mechanized equipment to remove components of the marine terminal and to remediate the oil released onto the beach. Coastal Act Section 30600(a) requires that any person wishing to undertake development in the coastal zone shall obtain a coastal development permit from the Commission or the local government (in addition to any other permit required by law). Development is defined in Section 30106 of the Coastal Act as "on land, in or under water, the placement or erection of any solid material or structure;" and "construction, reconstruction, demolition, or alteration of the size of any structure."

Although development occurred prior to the submission of permit applications, consideration of the applications by the Commission has been based solely on the Chapter 3 policies of the Coastal Act. Commission review and action on the permit applications does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an admission as to the legality of any development undertaken as part of the project without a coastal development permit.

III. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's administrative regulations requires Commission approval of CDP applications to be supported by a finding showing the application to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of the CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. As proposed and conditioned in the emergency permit issued by the Commission's Executive Director, mitigation measures that minimized or avoided all significant adverse environmental impacts were required during project activities. In addition, as described in Section III(C) above, alternative cleanup methods were considered and the least environmentally damaging alternative chosen. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act and to conform to CEQA.

APPENDIX A:
SUBSTANTIVE FILE DOCUMENTS

File for Coastal Development Permit No. 9-18-0089

File for emergency Coastal Development Permit No. G-9-17-0049

Dynegy's October 3, 2017 Project Work and Safety Plan 15-002-PWSP-001

Dynegy's October 3, 2017 Project Work and Safety Plan – Oil Spill Response Plan

Dynegy's Fall 2017 Technical Plan – Pigging and Flushing Maintenance Activity