

Sohio Crude Oil Pipeline: A Case History of Conflict

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I. INTRODUCTION

On March 13, 1978, the Standard Oil Company, Ohio (SOHIO), after five years of confusing and frustrating efforts to obtain 703 permits and an expenditure of over \$50 million, decided to abandon their proposed west-to-east crude oil pipeline system for delivering Alaskan oil to the Gulf Coast and Midwest areas.¹ SOHIO gave as their official reasons the "endless government permit procedures . . . [and] pending and threatened litigation,"² what they called a "quagmire of Regulations."³

The reactions to SOHIO's announcement were immediate and divergent. The Governor of California referred to them as an "outlaw corporation" that "didn't want to clean up its garbage;"⁴ senators and congressmen demanded an immediate investigation on why California had failed to approve the project;⁵ and key regulatory agencies—still to approve the project—displayed dismay because final permits were to be is-

1. During the various phases of regulatory review this project had several other names, e.g., West Coast to Mid-Continent Pipeline Project, SOHIO Transportation Company Project, and PACTEX.

2. "SOHIO Follows DOW To Red-Tape Exile," Long Beach Independent Press Telegram, [hereinafter cited as IPT] Mar. 14, 1979.

3. SOHIO Press Release containing the statement of the Chairman, The Standard Oil Company of Ohio, announcing abandonment of the project (March 13, 1979).

4. "Last-Ditch Stabs Made at Reviving SOHIO Project," IPT, Mar. 16, 1979.

5. *Hearings on SOHIO Crude Oil Pipeline Before the Senate Comm. on Energy and Natural Resources*, 96th Cong., 1st Sess. (1979); *Hearings on Transportation of Oil by Pipeline from Long Beach, Cal., to Midland, Tex., Before the Subcomm. on Energy and Power of the House Comm. on Interstate and Foreign Commerce*, and *Before the Subcomm. on Oversight and Investigations of the House Comm. on Interior and Insular Affairs*, 96th Cong., 2d Sess. (1979).

sued "in a matter of days."⁶

After extensive meetings and hearings and a reassessment by SOHIO management and board directors, the project was "killed" for good on May 24, 1979.⁷

The abandonment of this project gives tragic testimony to the increasingly conflicting maze of regulations which controls our everyday lives and which can be so extensive and quixotic as to preclude timely development of energy projects. Since this project was of national importance, why did it take more than four years to obtain regulatory approvals? Was the project subject to unusual political and regulatory problems? Did SOHIO fail to recognize the importance of the regulatory process in California? The events indicate that although the state of California, through the California Air Resources Board, was the major negative influence, no single factor contributed to this "quagmire." Rather, it was largely the burden of "regulatory culture": the concept that completing the process in a step-by-step fashion is more important than making appropriate, reasonable and timely decisions.

II. BACKGROUND

When oil was discovered on the North Slope of Alaska, it was heralded as one of the greatest discoveries of energy in American history. The production and pipeline facilities for the Alaskan oil delivery system were approved before it was clearly determined where the oil would be used and how it would be transported to those areas with the greatest need. Final approval of the Trans Alaskan Pipeline System (TAPS), however, was based on the assumption that all the Prudhoe Bay/North Slope oil could be used in the three major refinery centers along the West Coast: Puget Sound, San Francisco, and Southern California. Today, however, there is an excess of this oil on the West Coast.

With all the accolades about how this oil would ease our energy problems, we should have been suspicious, because in today's world, no new large industrial processes or systems can evolve without full exposure in a crucible composed of economic, regulatory, political, and public review.

Until 1960-1964, the United States was essentially independent of foreign oil supplies, producing and consuming more oil than any other country.⁸ In 1970, as production of older fields peaked and new explorations

6. "Not State's Fault, say Brown Aides," IPT, Mar. 14, 1979.

7. "It's Final: SOHIO Kills the Terminal," IPT, May 25, 1979.

8. Port of Long Beach and the California Public Utilities Commission Draft Environmental Impact Report [hereinafter cited as SOHIO DRAFT EIR]: SOHIO West Coast to Mid-Continent Pipeline Project, Vol. 3, Part 1, II-5 to II-6 (Sept., 1976).

and developments diminished, total domestic production declined. This declining supply, combined with an average four percent annual growth in consumption,⁹ resulted in an increasing dependence on foreign oil. Import dependency grew from eighteen percent in 1960 to almost fifty percent in 1978.¹⁰ Aside from the oil supply issues, the increase in the price of oil placed severe burdens upon our balance of payments for energy. In 1970, we paid about three billion dollars for foreign oil as compared to about forty billion dollars in 1978.¹¹

During the extensive congressional hearings and debates in the early 1970's on the construction of TAPS, the concern was expressed that Alaskan oil would be sold to Japan. Oil-industry and federal government spokesmen gave extensive assurances that this would not occur and that all the Alaskan oil would be needed on the West Coast. Congress, based on these assurances, essentially barred the export of North Slope oil.

In 1974, SOHIO, a major participant in the TAPS project, recognized that all the North Slope oil could not be used on the West Coast. Utilizing a series of studies conducted by private consultants, it tried to convince others that a west-to-east pipeline system was needed to deliver Alaskan crude oil to energy-deficient areas in the Gulf Coast and Midwest.¹² Hardly anyone agreed with SOHIO, and its initial efforts were not taken seriously.

In 1974, the foreign oil embargo resulted in extensive revisions to various energy supply and demand forecasts; gradually it was recognized that there could be a surplus supply of crude oil on the West Coast when Alaskan oil entered the market. Additionally, several environmental regulations, such as those requiring the use of low-sulfur fuel to reduce air emissions, and changes in consumer use patterns, reduced the demand on the West Coast for crude oil.¹³ In 1974, in spite of these events, no real plan existed to deal with the distribution of Alaskan oil. Also, although the increasing dependency on foreign oil and the change in consumer use patterns focused a need for state and federal energy plans, bureaucratic and political units at all levels of government responded very slowly, if at all. It was not until November, 1978, that a federal energy policy was approved by Congress,¹⁴ four years after SOHIO initiated efforts to obtain approval for its west-to-east pipeline system.

SOHIO personnel continued to push for consideration of their proposal

9. *Id.* at III-1.

10. Based on the analysis in "Twentieth Century Petroleum Statistics," Degolyer and MacNaughton (1978).

11. Based on statistical reports and press releases of the Department of Energy (1979).

12. "Petroleum Demand in PADD 5 Through 1995," The Pace Company (1975).

13. SOHIO DRAFT EIR, *supra* note 8, at Vol. 3, Part 1, I-3 to I-16.

14. National Energy Conservation Policy Act, Pub. L. No. 95-619, 92 Stat. 3206 (1978); Power Plant and Industrial Fuel Use Act of 1978, Pub. L. No. 95-620, 92 Stat. 3289 (1978); Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350 (1978).

to build a west-to-east pipeline system. During most of 1974, SOHIO had a traveling team on the West Coast urging the need for the pipeline. Most people believed if the oil was really needed in the Gulf and Midwest areas, that Congress would not have approved the TAPS project only for delivery to the West Coast. Alas, a blind faith in political, bureaucratic processes! It was this blind faith, coupled with the absence of timely, coherent and decisive action, that brought about the abandonment of the proposed project.

Because of the national significance of the abandonment of this project, and because of the multitude of public institutions which participated in the analysis of the project, and because, hopefully, there are some lessons to be learned for reviewing future projects, it is appropriate to analyze certain of the key events in the SOHIO drama.

III. SOHIO SEEKS APPROVAL

By 1974, most West Coast and federal government entities began to take SOHIO seriously; that is, they recognized there would be Alaskan oil in excess of West Coast needs. Aside from the basic problem of the extent of the West Coast surplus, SOHIO also had two other immediate problems. First, it did not own any existing oil facilities on the West Coast,¹⁵ and second, it owned about fifty-two percent of the TAPS oil.¹⁶ Economically, and from a sheer marketing position, SOHIO was at a tremendous disadvantage and its best option was to build a west-to-east pipeline system. It appeared that this option was very much in the national interest since there were no major existing west-to-east crude oil pipeline systems.

After extensive marketing, preliminary engineering and design analyses, SOHIO determined that it would require a transportation system consisting of marine transport from Valdez, Alaska, to a terminal on the West Coast, and from that site, a pipeline system leading to Midland, Texas.¹⁷

In 1974, SOHIO conducted discussions with El Paso Natural Gas Company (El Paso) about the possibility of obtaining long-term use of two existing thirty inch diameter natural gas lines. These pipelines extended from Ehrenberg, Arizona, to Jal, New Mexico. Subsequently, SOHIO began discussions with the Southern California Gas Company (So-Cal) about the use of two, thirty inch diameter pipelines extending from Beaumont, California, to the Colorado River. Ultimately, both El Paso and So-Cal agreed to provide these gas lines for use by SOHIO.

SOHIO conducted a study of about fifty possible terminal sites and re-

15. Historically, SOHIO was a midwest and East Coast refining and marketing company. They were "newcomers" on the West Coast whose principal stockholder would be The British Petroleum Company, Ltd.

16. Part of the agreement with The British Petroleum Company, Ltd.

17. West Coast to Mid-Continent Pipeline Project Description, The Standard Oil Company (SOHIO) (Jan., 1975).

lated pipeline systems, and concluded that the "best" site, using an offshore unloading facility, was near Camp Pendleton, in the northernmost portion of San Diego County, California.¹⁸ However, it appeared almost impossible to obtain approvals from the California Coastal Commission for such a facility, to say nothing of the attendant problems of obtaining approvals for constructing a pipeline through military, residential, and open space areas. Consequently, SOHIO picked San Pedro Bay because it contained existing ports, and provided reasonable ways of constructing a pipeline leading toward the Colorado River.

In 1975, SOHIO concluded agreements with both ports in San Pedro Bay (Port of Long Beach and Port of Los Angeles) whereby each would initiate the preparation of an Environmental Impact Report (EIR) to meet the requirements of the California Environmental Quality Act (CEQA).¹⁹ In December, 1975, SOHIO determined that the Port of Long Beach (Port) represented the most appropriate location for their marine terminal, and negotiations with the Port of Los Angeles were terminated.

At this point, SOHIO established the basic character of its proposed system: a transportation system consisting of marine transport from Valdez, Alaska, to Long Beach, California, using eleven "dedicated" tankers,²⁰ a 700,000 barrel per day capacity marine terminal,²¹ and a pipeline system from Long Beach, California, to Midland, Texas. This pipeline was to be 1,027 miles long with almost 800 miles of pipeline already in place as part of the existing El Paso and So-Cal systems²² (see Figure 1).

After this long period of study and consultation, SOHIO was pleased, for at last it had acceptance of its view on the West Coast surplus problem and, in turn, had established public awareness of its proposal to build a west-to-east pipeline system utilizing a new modern marine terminal in the Port of Long Beach.

SOHIO, although it was a small company, put together a strong team of management and engineering personnel to participate in the TAPS project. However, that effort drained it of personnel to orchestrate the west-to-east pipeline system. Accordingly, they hired Williams Brothers Engineer-

18. Williams Brothers Environmental Services, Environmental Impact Assessment [hereinafter cited as SOHIO EIA]: West Coast to Mid-Continent Pipeline Project, Vol. 4, § 9, 9-164 (1976).

19. CAL. PUB. RES. CODE, § 21000 (1970) *et. seq.* and 14 Cal. Admin. Code, § 15000 *et. seq.*

20. Tankers under continual charter to SOHIO moving oil from Alaska to California.

21. This was later reduced to 500,000 barrels per day when SOHIO was not given air quality credit for delivery of oil which replaced oil delivered on older vessels to existing terminals. The premise was that 200,000 barrels per day of Alaskan oil could be received at existing terminals without construction of the SOHIO terminal. Since such oil would be delivered on modern tankers to its modern terminal, SOHIO felt it should receive credit for the emission reductions associated with the reduced delivery of oil by others.

22. *Supra* note 17.

ing Company, Tulsa, Oklahoma, to do the preliminary engineering and to complete the preparation of the federal Environmental Impact Assessment.²³ SOHIO established an affiliate company on the West Coast, SOHIO Transportation Company, and provided certain individuals to coordinate permit activities. They did not establish a management organization on the West Coast, and major decisions were made by a corporate management team in Cleveland. Consequently, SOHIO did not have consistent management "ears" on the West Coast to help interpret the intricacies of the California regulatory process. The initial absence of resident decision-level management on the West Coast contributed to project problems.

During the regulatory review process, the issues originally perceived as major—dredging and disposal of dredged material—were replaced by concerns about earthquakes, oil spills, and air quality. SOHIO demonstrated an unparalleled willingness to provide technical information. However, as the air quality issue emerged as the key concern at the state level, SOHIO increasingly encountered difficulty in finding regulatory staff who both understood oil operations and had rapport with their decision-makers. Because of this, SOHIO's efforts were split into a series of technical discussions, preparation of related documents and guidelines, and a series of top level discussions on how to work through the decision-making portion of the regulatory process. It was this splitting of effort that initiated major difficulties in the approval of the SOHIO project.

Thereafter, regulatory, political, and public processes got into full swing and almost immediately, a series of issues evolved which indicated the potential for delay, extensive modification, or ultimate denial of the project. These same problems continued for four years, 1975-1979, during the federal, state, and local review of the permits required for the project (see Tables 1 and 2). There were 703 permits required for project approval, of which eighty-nine²⁴ were critical.²⁵

IV. ISSUES

After SOHIO established the character and quality of the proposed west-to-east pipeline system, it initiated the processes necessary to accomplish the project. During the federal, state, and local review of the 703 permits required for the project, certain issues were resolved, but in almost every instance, new issues emerged which jeopardized project approval.

Certain issues which were widely debated during the approval process

23. SOHIO EIA, Vol. 1, i.

24. Fifty-nine were environmental permits and 30 were construction permits.

25. Critical in the sense that the related decisions were discretionary as opposed to ministerial.

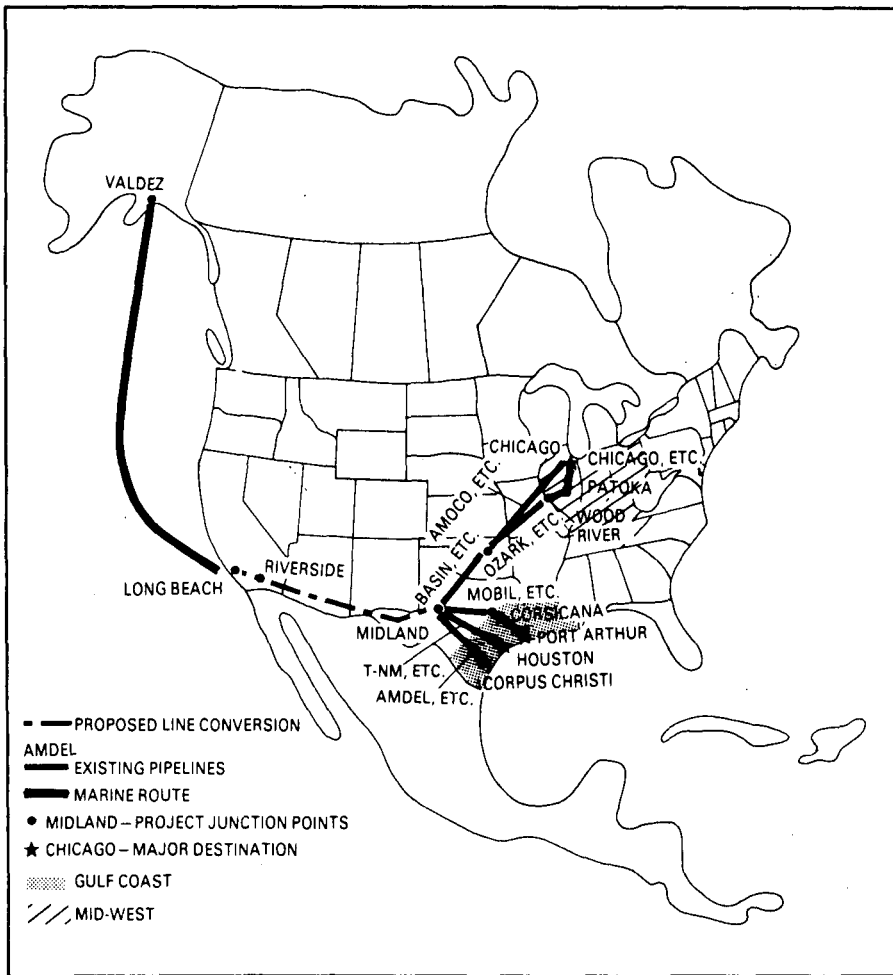


Figure 1. SOHIO Project Components Including Connecting Pipelines and Target Markets

controlled the destiny of the SOHIO project. Generalized discussions on key issues follow.

A. NATIONAL AND STATE ENERGY POLICIES

Although U.S. oil and gas production increased modestly after 1977,²⁶ the position of the United States regarding oil still is precarious. The U.S., with six percent of the world's population, consumes more than thirty-three percent of the energy consumed worldwide and about the same percentage of the world's oil.²⁷ About three-fourths of the energy con-

26. "Energy Supply Alternatives", California Energy Seminar, Arthur D. Little, Inc. (1977).

27. *Sierra*, vol. 64, No. 2, 31 (1979).

sumed in the United States is in the form of oil and gas—the energy resources that are in short supply. Because of America's increasing energy appetite and declining U.S. production of crude oil and gas, we face a substantial social and political dilemma.

Why didn't the federal or state government provide solutions? The state of California still does not have a clearly stated energy policy, although the often-criticized California Energy Commission has attempted to establish a number of procedures and rules governing future development of energy projects.²⁸ The federal government grappled with the character and quality of a federal energy policy for many years. The version approved in 1978 can not be considered totally responsive.²⁹ Why have national and state policies been so slow in evolving and why have they failed to provide effective, efficient solutions? The answer is simple: the energy shortage has not reached the point where energy sources are so scarce as to threaten our very existence, and the public is not accustomed to pinching and saving to protect the future. Thus, to solely criticize the government for its failure to respond would be remiss; yet, preparing to meet future energy crises will take a concerted government-business effort to decrease energy use and provide realistic alternative energy sources. For the immediate future, the next thirty to forty years, oil is and will continue to be the major energy source.

The average citizen subscribes to dichotomous energy goals: a strong interest in conservation and enhancement/restoration of environmental quality versus a strong unwillingness to change to less energy-demanding lifestyles. Our lifestyles support energy waste.³⁰

Where does SOHIO fit into this picture of confused governmental and public goals? With no consistent, realistic state or federal energy policy, it was impossible for the SOHIO project to be viewed as a significant component in achieving equitable distribution of domestic oil throughout the country. In essence, the neophytic condition of state and national energy policies precluded the project from being considered as significant or appropriate in achieving, even in a small way, energy independence.

B. ALTERNATIVES

A number of pipeline projects have been proposed for the movement of surplus oil from the West Coast to the central United States (Figure 2). At one time, in addition to SOHIO's, there were eight other proposed projects.³¹ In addition to these eight pipeline projects, three additional

28. CAL. STATE ENERGY COMM'N, CAL. ENERGY TRENDS AND CHOICES, Vol. 1, 1-194 (1976).

29. *Supra* note 14.

30. Each step, from the production of crude oil to moving a car, loses energy, that is, only a small portion of the potential energy, about six percent, is converted into a useful form of energy.

31. (1) Kitimat Pipeline from Kitimat, British Columbia to Edmonton, Alberta: this project was

transportation routes were proposed and rejected because of a combination of engineering, environmental, and economic problems.³²

Exchange of Alaskan oil for foreign oil also has been proposed. Alaskan oil could be sent to Japan in exchange for other oil being redirected to the Gulf Coast, or Alaskan oil could be sold to Mexico in exchange for delivery of Mexican oil to Gulf Coast ports. Sending oil to Japan requires sensitive federal approvals; and exchanging oil with Mexico, although allowed by the Trans-Alaska Pipeline Authorization Act,³³ appears unlikely because of strained relations.

C. ENERGY WINDOW

California has traditionally been isolated from the rest of the country with respect to receipt and distribution of crude oil. That is, California has traditionally been able to produce almost all the oil needed to maintain petroleum product availability. The major exception has been the importation of low-sulphur crude oil to meet regulatory requirements for minimizing air quality impacts. Because California has not played a role in the receipt and distribution of crude oil to other parts of the U.S., there was no initial interest in receipt of Alaskan oil beyond West Coast needs. This somewhat parochial view persists, in spite of the fact that California traditionally depends upon a large supply of natural gas from Texas, Oklahoma, Colorado, Utah, Arizona, and New Mexico.³⁴ From 1974 to 1978, SOHIO repeatedly was told that California was not interested in serving as an energy window for the rest of the nation.³⁵

essentially killed by the Canadian government's determination that there was no need for a West Coast oil port now or in the foreseeable future. (2) Trans-Mountain Pipeline Partial Reversal from Cherry Point, Washington, to Edmonton, Alberta: this project was withdrawn as a result of federal legislation which precluded essential activities in Puget Sound. (3) Northern Tier Pipeline from Puget Sound, Washington, to Clearbrook, Minnesota: this project is still alive but faces extensive review before approvals to start construction are obtained. (4) North Central Pipeline from Puget Sound, Washington, to Sidney, Nebraska: this project never really left the drawing board. (5) Central Pipeline from Moss Landing, California, to Sidney, Nebraska: this also was not a viable option. (6) Guadalupe Dunes Pipeline from San Luis Obispo Bay, California, to Midland, Texas: the environmental problems associated with this proposal were insurmountable. (7) Trans-Guatemala Pipeline extending from Buena Vista on the Pacific Coast to Golfo de Honduras in the Caribbean: this project still is viable but the problem of shallow draft in the Gulf of Mexico makes it less preferable to the present system of transporting oil through the Panama Canal.

32. These routes are (1) moving North Slope oil by rail in the Northern Tier area (Washington, Idaho, Montana, North Dakota and Minnesota) and the Southern Tier area (across Southern California, Arizona, and into Texas); (2) combined movement by ship and use of existing small diameter pipelines in the Panama Canal; and (3) the movement of oil around Cape Horn on Very Large Crude Carriers (VLCC's) for delivery into the Gulf of Mexico.

33. Trans-Alaska Pipeline Authorization Act, § 101, 30 U.S.C. § 185 (1973).

34. SOHIO EIA, *supra* note 18, Vol. 1, III-27 to III-88.

35. Discussions between staffs of SOHIO, California Air Resources Board (CARB), California

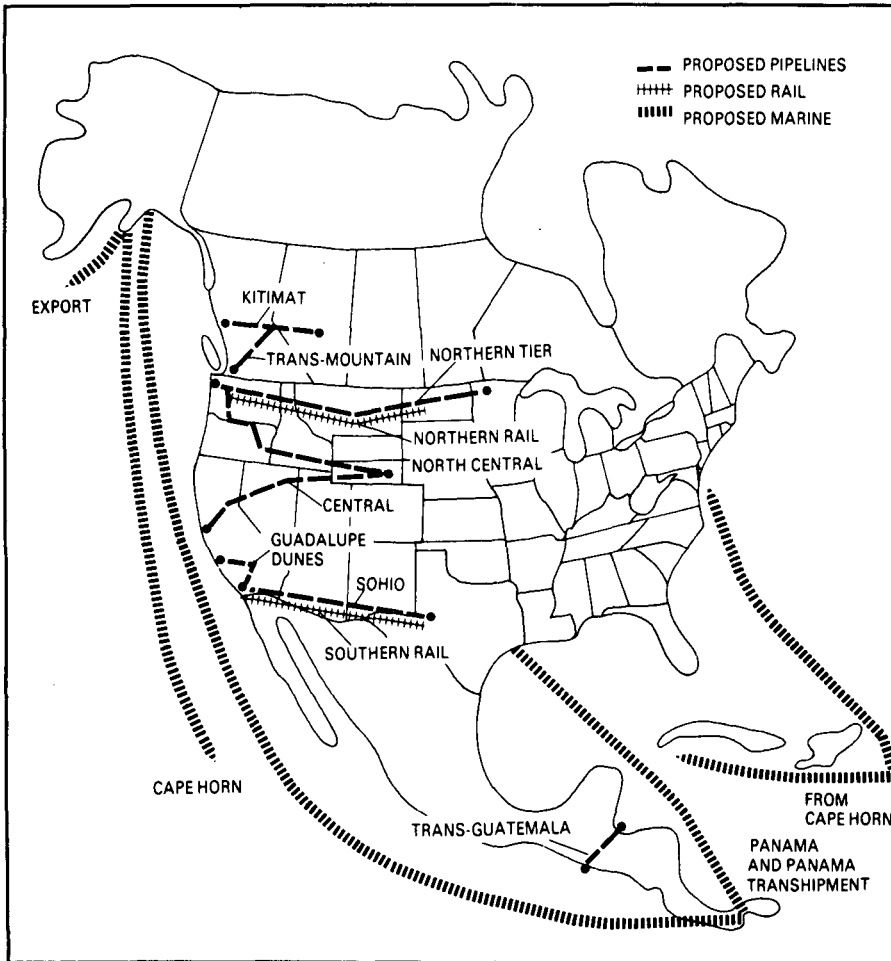


Figure 2. Proposed Routes for Distribution of Alaskan Crude Oil.

D. DISTRIBUTION OF ALASKAN OIL

Major crude oil transmission systems exist in the Gulf Coast region and in the Midwest (Figure 3), while the West Coast—in particular California—is isolated from these systems. Therefore the SOHIO project would have established the ability to move oil from the West Coast to those areas in the Gulf Coast and Midwest which now are deficient in indigenous crude oil supply and are increasingly dependent upon foreign oil.

Public Utilities Commission (CPUC) and Port of Long Beach (Port) and "Overview: SOHIO—West Coast to Mid-Continent Pipeline Project," Port of Long Beach (1977).

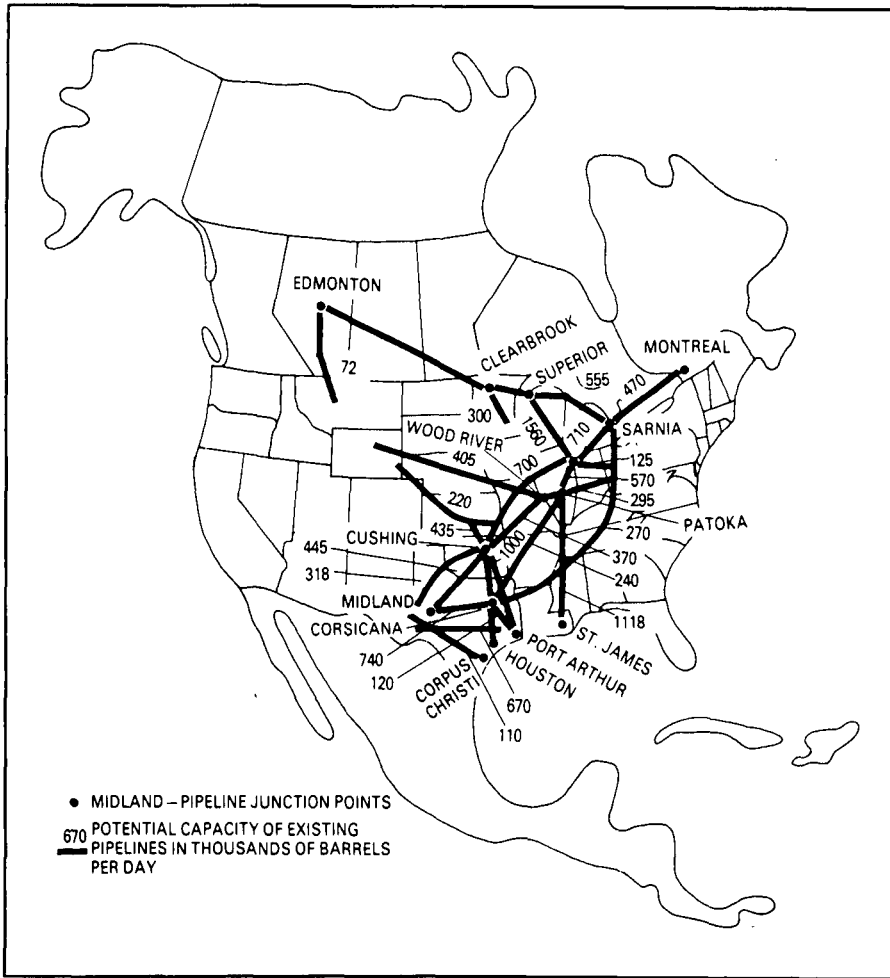


Figure 3. Existing Major Crude Oil Pipelines in the Central United States

If another oil embargo were to occur, many areas dependent upon foreign oil to maintain daily energy requirements would be heavily impacted. Interestingly, because of the availability of North Slope crude oil, the West Coast area might not suffer. For example, if all foreign oil imports on the West Coast were withdrawn, and certain refinery modifications achieved, the present production of Alaskan crude oil would replace all but 100,000 barrels of the daily requirement.³⁶

At the present, North Slope oil surplus to West Coast needs is being transported by tanker to Gulf Coast areas. Large tankers leave from the

36. SOHIO DRAFT EIR, *supra* note 8 at Vol. 3, Part 1, III-6.

TAPS terminal at Valdez and proceed to Panama. There, after transfer to a mother ship, the crude oil is retransferred to smaller tankers—tankers which can pass through the Panama Canal—and delivered to the Gulf Coast. This transfer of oil is time-consuming and costly. In general terms, it would cost \$1.00 to \$1.75 per barrel less to ship oil from Valdez, Alaska to Midland, Texas via the Port of Long Beach, as compared with shipping by tanker from Valdez, Alaska, through the Panama Canal to a Gulf Coast port.³⁷ These additional transportation costs and the absence of workable energy-regulatory goals have depressed aggressive development of other North slope petroleum areas.

E. OIL SPILLS

SOHIO entered the regulatory arena when awareness of oil spill problems was on the upswing. In the middle of preparation of the Environmental Impact Report, the SANSINENA exploded in Los Angeles Harbor, and focused local and state concerns on oil spills and tanker explosions.

During the public hearings on the adequacy of the EIR for the SOHIO Project, repetitive concern was expressed about increased tanker traffic and the potential for oil spills due to collisions, rammings, and groundings of tankers, and the potential for rupture of SOHIO's storage tanks during an earthquake.

Actually, the SOHIO Project only represented an increase of one tanker every 1.5 days, and the tankers to be used would have been new, of the 165,000 deadweight ton (DWT) class, all outfitted with inert gas systems to minimize the potential for explosion, in addition to the latest navigational safety devices. Concern also was expressed that the increase in tanker traffic would impinge upon existing vessel traffic at a number of points along the West Coast so that the potential for accidents would increase as the dedicated tankers traveled from Alaska to Long Beach and back. Yet, studies indicated that the increased traffic would be minimal and that the newly established traffic separation patterns between north and southbound traffic more than compensated for the slight increase in traffic due to the SOHIO project.³⁸ Also, review of historical data showed that the potential for oil spills caused by tanker accidents within the coastal area (fifty miles seaward from the coastline) along the West Coast was very, very low.³⁹

The storage of millions of barrels of oil at the marine terminal also

37. Port of Long Beach and the California Public Utilities Commission Final Environmental Impact Report [hereinafter cited as SOHIO FINAL EIR]: SOHIO West Coast to Mid-Continent Pipeline Project. Vol. 4, Part 5, I-19 (Apr., 1977).

38. U.S. Army Corps of Engineers, Environmental Assessment Report, "Crude Oil Transportation System: Valdez, Alaska, to Long Beach, California," Appendix B, B-11 to B-22 (1977).

39. Port of Long Beach and California Public Utilities Commission, Supplement to Final Envi-

caused concern. Long Beach, with a history of earthquakes, is located adjacent to three known earthquake faults. One of those faults, the Palos Verdes Fault, runs within three miles of the SOHIO terminal site. Although there has been no recent activity along the Palos Verdes Fault, geologists and seismologists do not agree on the potential for activity. Opponents of the SOHIO project continually argued that an earthquake could cause liquefaction of the soil beneath the tank farm so that the tanks would rupture and release millions of barrels of oil into the waters of the Port of Long Beach. Yet, SOHIO planned to densify (compact) the soil beneath the tank farm, and utilize an engineering design that would withstand the projected maximum credible earthquake.

None of the safety measures seemed to satisfy the local citizens, in spite of the fact that Long Beach is an oil town with a series of oil islands directly offshore which have been supporting citizen activities over the past thirty years. This is an issue which never could be solved to the satisfaction of all, because scientific data are not trusted and the concerns are often emotional.

F. USE OF NATURAL GAS PIPELINES

After completing an engineering feasibility study on overland pipeline alternatives, SOHIO chose a southwestern route. In 1974, SOHIO and El Paso Natural Gas Company (El Paso) began negotiations to achieve an agreement authorizing SOHIO to use one of five existing El Paso natural gas lines which was projected to be unnecessary for El Paso's natural gas transportation obligation. El Paso was to carry out the necessary regulatory requirements to achieve abandonment of the pipeline from natural gas service, and the subsequent conversion for crude oil use.⁴⁰

Shortly after an interim agreement was reached with El Paso, SOHIO began negotiations with So-Cal to utilize one of its existing natural gas pipelines within California. SOHIO planned to use about 800 miles of existing natural gas pipeline, with approximately 130 miles owned and operated by So-Cal within the state of California, and the remainder owned and operated by El Paso, stretching across the southwestern United States from the

ronmental Impact Report [hereinafter cited as SOHIO SUPPLEMENTAL EIR]: SOHIO West Coast to Mid-Continent Pipeline Project, Vol. 5, Part 1, V-53 to V-55 (Nov., 1977).

40. El Paso obtains natural gas from the Permian Basin supply area which consists of the Permian Basin, the Anadarko Basin, the Panhandle areas of Texas and Oklahoma, and the San Juan Basin in northern New Mexico, southwest Colorado, Arizona, and Utah. Since about 1970, almost 52 percent of California's gas supply has been delivered utilizing El Paso pipelines. In addition to El Paso, Transwestern Pipeline Company (Transwestern) also transmits gas to the California border from southwestern production areas. Among others, Southern California gas Company (So-Cal) receives El Paso and Transwestern gas for distribution in Southern California. Both El Paso and Transwestern plan to supplement production from present sources by additions to supplies from supplemental sources.

California-Arizona boundary to southwestern New Mexico. By utilizing these existing natural gas pipelines, SOHIO only would have to construct a new pipeline leading from the marine terminal in Long Beach to the beginning of the So-Cal line, from the end of the So-Cal line across the Colorado River to Ehrenberg, Arizona, and from Jal, New Mexico, to Midland, Texas.

In mid-1975, El Paso initiated a study to assess the impact of the proposed gas service abandonment of one of five main transmission lines.⁴¹ El Paso compared its pipeline capacity after abandonment with possible future average and peak-day gas availability, considering its connected sources and projections of future reserve additions, potential for gas produced through coal gasification, gas received from foreign sources such as LNG, and the receipt of Alaskan gas. Based upon these comparisons, it was concluded that use of the pipeline by SOHIO could result in substantial economies for its gas customers and that the one pipeline to be used by SOHIO would not be required for future gas service (even if the wellhead price of gas was deregulated) and that the SOHIO project would benefit the entire nation by expeditiously providing secure, economic transportation of Alaskan oil from the West Coast to distribution networks connecting refining centers throughout the middle and eastern portions of the United States. El Paso filed an application with the Federal Power Commission in June, 1975, requesting approval to abandon the natural gas pipeline.⁴²

So-Cal, after making comparable studies, determined that the loss of a delivery line in its system, assuming availability of El Paso gas lines, did not represent a major problem; in other words, there would be no loss in So-Cal ability to receive and distribute the maximum amount of natural gas available for use in California up through the year 1985.⁴³ Negotiations between So-Cal and SOHIO continued for several years before a final agreement was reached in the summer of 1977.

The agreements between SOHIO and El Paso and SOHIO and So-Cal also included the potential use of a second set of natural gas pipelines. These pipelines were not part of the proposed SOHIO project as reviewed in the EIR, but represented a point of continual concern during hearings in California.⁴⁴

As the Draft EIR was being circulated, certain agencies in the state of California began to question the validity of statements that abandonment would not adversely impact the capability for receipt of natural gas in California. The Chairman of the California Air Resources Board (CARB) noted

41. El Paso Natural Gas Company, "Impact of The West Coast to Mid-Continent Oil Project Upon Future Gas Service from the El Paso System" (1976).

42. Federal Energy Regulatory Commission, Opinion No. 4, Docket No. CP75-362, 2 (1977).

43. Southern California Gas Company Application No. 57695 before the CPUC (1977).

44. "SOHIO-Phase II," an alternative which provided for the ability to transport an additional 500,000 barrels per day of crude oil using a second set of existing natural gas pipelines.

that, "If this happens, we could lose substantial quantities of natural gas (and) customers will find themselves without gas to use in necessary industrial operations."⁴⁵ This pronouncement was the initial volley in a lengthy series of studies and analyses which yielded divergent conclusions. The Draft Environmental Impact Report completed by the Port and CPUC, based on the assumptions used by El Paso and So-Cal, indicated that the abandonment of the existing natural gas pipelines still would allow effective service to California customers.⁴⁶ In contrast, the CPUC, in presenting California's position on the abandonment issue before the Federal Power Commission, indicated that loss of the El Paso line would leave insufficient capacity to supply California during the mid-1980's.⁴⁷

The CARB authorized the Rand Corporation to prepare a Working Note⁴⁸ examining the problems resulting from the abandonment of one El Paso pipeline and whether or not there was a "realistic probability of limiting the amount of gas available to California during the next ten to twenty years."⁴⁹ Several sources of new gas supply were examined. It was determined that adequate delivery capacity would be lacking during the 1980's if additional gas came from El Paso sources in lieu of North Slope gas, and if California also obtained gas through the same system from LNG, coal gasification, and so forth; and that the loss of capacity could be a problem if California receives southwestern gas as a substitute for North Slope gas, and that "the problem can be avoided if California is guaranteed the means of obtaining North Slope gas other than displacements from the Southwest."⁵⁰ The report also indicated that California could bargain by requiring El Paso or SOHIO to provide "insurance to cover the cost of building new capacity"⁵¹ if and when the existing capacity was determined insufficient.

Forecasting the availability of any energy source, together with the projected demand for products obtained therefrom, is an exercise in speculation. Therefore, the projections by El Paso, So-Cal, CPUC and others were subjected to intense scrutiny. Having assessed this debate in extensive hearings, a Federal Power Commission Law Judge issued an Initial Decision approving the abandonment in August, 1977.⁵² The Initial Decision

45. Press release of speech by Chairman, California Air Resources Board, before the League of Women Voters of California (July, 1976).

46. SOHIO DRAFT EIR, *supra* note 8, at Vol. 3, Part 1, V-28.

47. Assuming receipt of natural gas from all the following sources: LNG from Algeria; coal gas from New Mexico; Canadian, Mexican and Alaska gas; and traditional sources of domestic gas.

48. "The Proposed El Paso Abandonment: Should California Fight of Switch (And Bargain)?," a Working Note (WN9592-ARB), Rand Corporation (1976).

49. *Id.* at 1.

50. *Id.* at 20.

51. *Id.* at 31.

52. Federal Power Commission Initial Decision on the non-environmental phases of the pro-

was just that, since several additional studies were necessary.

In November, 1977, So-Cal submitted an application to the CPUC requesting abandonment of its line in California. At the same time, the Draft Supplement to the Final Environmental Impact Report was issued with responses to questions on the loss of natural gas pipeline capacity, the use (albeit loss for customer use) of natural gas as compressor fuel in order to achieve increased delivery in the remaining El Paso pipelines, and a detailed analysis of the impacts should SOHIO-Phase II be implemented.

The issue of natural gas pipeline capacity for delivery to California was resolved by a Presidential decision that "construction of a western leg be authorized for direct delivery of Alaskan gas to the West Coast."⁵³ With respect to the compressor issue, the information provided by FERC⁵⁴ showed that only eleven billion cubic feet of natural gas would be required to meet increased compressor requirements during the first year after abandonment of the El Paso line.⁵⁵ Further, that loss in later years would be substantially less because gas supplies to the whole El Paso system would be continually decreasing. With respect to the Phase II issue, it was clearly determined that use of other existing natural gas pipelines would require additional regulatory approvals.

The final decision by FERC stated that the "abandonment of the proposed facilities is in the public convenience and necessity, if properly conditioned, and accordingly, we grant authorization for this abandonment"⁵⁶ Similarly, the CPUC approved the abandonment of the So-Cal pipeline in October, 1978.⁵⁷ However, the CPUC identified several areas of ambiguity or incompleteness in its final decision of October, 1978, and changes were completed which became effective March, 1979.⁵⁸ The CPUC also indicated that because of a pending court case on the adequacy of the EIR, the authority to proceed with the withdrawal of So-Cal's pipeline from natural gas service could only occur after the EIR was found by the court to be in compliance with CEQA.

ceedings on permission to abandon certain of the natural gas pipeline facilities of El Paso Natural Gas Company pursuant to Section 7(b) of the Natural Gas Act (May, 1977).

53. Executive Office of the President, Energy Policy and Planning; Decision and Report to Congress on the Alaska Natural Gas Transportation System, 10 (1977).

54. Federal Energy Regulatory Commission activated on October 1, 1977, successor agency to the Federal Power Commission, pursuant to Public Law 95-91, 91 Stat. 565 (Aug. 4, 1977) and Executive Order No. 12009, 42 Fed. Reg. 46267 (Sept., 1977).

55. Federal Energy Regulatory Commission Opinion and Order Granting Abandonment Upon Certain Conditions, Docket No. CP75-362, 18 (Nov., 1977).

56. *Id.* at 2.

57. CPUC Decision No. 89517.

58. *Id.*, Decision No. 90049.

G. CALIFORNIA'S MEDIA BLITZ

Early in 1975, SOHIO officials met with representatives of the California Energy Commission and the California Air Resources Board (CARB). At that time the significance of the SOHIO project both as a political and as a regulatory entity was not recognized. Shortly thereafter, however, with submittal of permit applications and the preparation of the Environmental Impact Report, the project moved to a position of eminence. Initially there were three concerns: (1) the impact on air quality from the emissions generated at the marine facility in the Port of Long Beach;⁵⁹ (2) the loss of existing pipeline capacity for delivery of natural gas to the West Coast;⁶⁰ and (3) the potential for environmental catastrophes because of inadequate enforcement of maritime rules controlling oil tanker operations.⁶¹

During all of these pronouncements about the proposed impacts of the SOHIO project, three other significant activities were taking place: (1) the Environmental Impact Report was being prepared; (2) a State Agency Task Force was being organized to provide an efficient mechanism for communication and an exchange of information; and (3) SOHIO was refining their proposal to include, to the maximum extent feasible, best available control technology to minimize air quality impacts.

During all of these activities, CARB indicated its frustration because of

59. The quantities of emissions are extremely large. To put them in perspective, it might be useful to compare them with the exhaust emissions of new cars meeting 1977 California emission standards. The 'worst case' analysis yields emissions equivalent to those from 6 million automobiles. Emissions under the 'most realistic' scenario are equivalent to the exhaust emission from more than 3.9 million new cars. The emissions of sulfur dioxide in the 'worst case' are the equivalent of emissions from an electric power plant of approximately 170 megawatts. In the 'most realistic' analysis, sulfur dioxides are the equivalent of those produced while generating 140 megawatts of electricity. The air quality impacts of these emissions is staggering.

Letter from Governor's Office (California) to Administrator, Federal Energy Administration (July, 1976).

60. The result will be additional unemployment as businesses which need the natural gas are forced to curtail operation. . . . The pipeline owned by the El Paso Natural Gas Company is part of a system which delivers natural gas to 12 million Southern Californians, including 6,200 medium and large companies. If the oil companies are allowed to take over the natural gas pipeline, it is likely that some of these customers will find themselves without gas to use in necessary industrial operations. . . . It is obvious that the Alaskan oil scheme as laid out by the oil companies will cause more smog and more unemployment in Southern California, in return we'll get absolutely nothing. . . . Only people in other parts of the country will benefit

Supra note 45.

61. The Air Resources Board is attempting to begin a study of relevant new rules and regulations with responsible officials of the Coast Guard, EPA, and other agencies with jurisdiction over the subject matter. However, the ARB will not reduce its estimate of emissions associated with the SOHIO project on the basis of a promise by a federal agency to adopt a regulation at some time in the future. Emissions estimates can only be reduced if such a reduction is inferable from an existing and enforceable regulation of an agency with appropriate jurisdiction

Supra note 59.

SOHIO's "lack of cooperation,"⁶² and SOHIO indicated its frustration because CARB and other agencies in California would not provide specific, detailed regulatory requirements. This frustration reached a peak in March, 1977, when CARB informed the federal government that review of the controversial Alaskan oil terminal in Long Beach would be suspended April, 1977, because SOHIO had refused to complete an application for the facility. In an eleven page letter to the President of SOHIO Transportation Company, the SOHIO subsidiary responsible for the west-to-east pipeline project, CARB pointed out that they had expected SOHIO to quickly apply for the necessary air quality permits some ten months earlier. Further, SOHIO was advised that their application was incomplete and failed to meet the requirements of both state and federal laws, and that SOHIO's failure to complete the application, coupled with the delay in answering questions regarding the project, made it impossible for any meaningful analysis of their proposal.⁶³ SOHIO countered with another plea for specific, detailed regulatory requirements.

Shortly after this impasse between CARB and SOHIO, representatives of the Port of Long Beach and the Federal Energy Administration met with SOHIO corporate executives and developed a proposed plan of action. The goals of this plan were to develop a final project description, determine how the project would be evaluated under existing regulations (local, state and federal), and establish what type of air quality trade-offs would be acceptable. Most of the differences were resolved, but the trade-off issue continued to be disruptive.

H. FEDERAL AND STATE GAMESMANSHIP

From the outset, SOHIO was in trouble: their proposal was in direct opposition to the concept that all of the Alaskan oil could be used on the West Coast; California had to agree to be an energy window for the rest of the nation; and there was extensive political maneuvering between federal and state personalities. In spite of all the actors in this drama, there were two significant aspects: (1) the unwillingness of the federal government to publicly support the SOHIO project as being in the national interest and thus deserving expedited processing; and (2) the maneuvering in California to stop the project or obtain unprecedented concessions.

Since 1974, the federal government had an active interest in the development of one or more west-to-east crude oil pipeline systems. The Senate and the House of Representatives held a number of hearings, spent

62. Letter from California Air Resources Board to Administrator, Federal Energy Administration (Mar., 1977).

63. Letter from California Air Resources Board to President, SOHIO Transportation Company (Mar., 1977).

countless hours of staff time, and contracted for special studies. But Congress was hard-pressed to initiate aggressive federal action to approve the project. The key question was: If we need to reduce reliance on foreign crude oil in the Gulf Coast and Midwest areas, why isn't the federal government taking strong steps to get the SOHIO west-to-east pipeline project approved with appropriate stipulations, and in a timely manner?

The flux in federal posture is illustrated in two letters to the California Coastal Commission in support of the application to construct the marine terminal. In August, 1977, the Federal Energy Administration (FEA) indicated that,

the federal government has no current legislative authorization to select crude pipeline and oil terminal locations. For this reason, as well as our desire not to exert undue pressure on state agencies that must approve the siting, construction and operation of particular projects, we have refrained from endorsing any of the four proposed pipeline projects—of which the SOHIO project is one—for moving Alaskan and other crude oil from the West Coast to points east of the Rocky mountains. The federal government does, however, believe that the expeditious authorization and construction of at least one, and perhaps two, such pipelines is in the national interest.⁶⁴

In August, 1978, the Federal Department of Energy indicated that since last August, the conditions on the West Coast . . . have worsened. In particular, two of the four possible projects for the transportation of Alaskan crude oil from the West Coast to inland regions by pipeline have not progressed. Even more serious are the changes that have occurred in the crude oil supply situation in California . . . [this] has caused prices for California crude oil production to be depressed to the point where as much as 30,000 barrels per day has been shut in. In light of these developments, we have come to the conclusion that the SOHIO pipeline is a critical element in the long-term solution of the West Coast crude oil production problem. The Department of Energy urges that the Coastal Commission act expeditiously in its deliberations on this matter and that it make every possible effort to resolve the remaining issues in a way that will best accommodate the nations energy needs.⁶⁵

Public announcement of strong federal support came four years after SOHIO started applying for permits! California's efforts during the same time period were divided between initial efforts to deny the project and subsequent efforts to conditionally approve the project.

In 1976, the California Air Resources Board (CARB) adopted New Source Review Rules⁶⁶ whereby new projects would be required to mini-

64. Letter from Federal Energy Administration to Executive Director, California Coastal Commission (Aug., 1978).

65. Letter from Department of Energy to Executive Director, California Coastal Commission (Aug., 1978).

66. These rules establish the standards for issuance of Permits to Construct for new facilities or modernization of existing facilities when the emissions inventory for the project exceeds 15 pounds per hour or more than 150 pounds per day for nitrogen oxides, organic gases or any

mize air emissions through the use of Best Available Control Technology (BACT) or provide trade-off emissions (reduction in emissions at existing facilities or by retrofitting facilities owned by individuals other than the applicant) to offset the new emissions produced by a project. Some believe that this rule was developed solely to stop SOHIO; however, a review of the history of the development of the model rule indicates that was not totally the case.

In November, 1976, CARB, based on an Environmental Protection Agency study,⁶⁷ indicated that air emissions from the SOHIO project would be catastrophic. This study was the basis of a media blitz in which SOHIO project emissions were equated to the emissions from six million cars. At the same time, other state agencies argued that abandonment of the El Paso Natural Gas Company and the Southern California Gas Company pipelines would severely jeopardize California's ability to receive future allocations of natural gas. Throughout these events, the behind-the-scenes discussions indicated that California could approve the project *if* SOHIO became a "good citizen"⁶⁸ and *if* the federal government would guarantee California additional allocations of natural gas. When additional natural gas allocations were not authorized, it was then agreed that if the President approved the western leg of the Alcan gas project, California would work with SOHIO to develop suitable project mitigations meeting California laws.

With the Chairman of CARB serving as the catalyst, Southern California Edison Company and SOHIO entered into a working agreement to determine the feasibility of utilizing a sulfur dioxide scrubber and ammonia injection equipment to remove sulfur dioxide and nitrous oxides from the stack gases at an existing electric generating facility.⁶⁹ These efforts were culminated in August, 1978, when SOHIO and the Southern California

contaminant for which there is a state or national ambient air quality standard except for carbon monoxide where the limits are 150 pounds per hour and 1500 pounds per day. These rules were adopted for the South Coast Air Quality Management District by the California Air Resources Board under the authority of California Health and Safety Code, § 40400 (1976) *et. seq.*

67. "Final Report: Air Quality Analysis of the Unloading of Alaskan Crude Oil at California Ports," prepared by Pacific Environmental Services under contract to the Environmental Protection Agency (1976). This study was undertaken to provide technical assistance to CARB in their study of the implications of introducing Alaskan oil to the lower 48 states through California ports. The CARB provided technical direction and air quality data on port sites, types and sizes of tankers, oil delivery volumes and frequencies, and oil characteristics.

68. Becoming a good citizen meant, at least: (1) providing air quality trade-offs for the maximum amounts of air emissions attributed to the project; (2) adding monitoring devices to the oil tankers to insure that cargo compartments were not opened (purged), releasing hydrocarbon vapors into the atmosphere, and that a low-percent sulphur fuel oil was used to minimize the release of oxides of sulphur and nitrogen into the atmosphere; (3) agreeing not to exercise the option for use of additional existing natural gas lines; and (4) helping California obtain additional supplies of natural gas.

69. "Southern California Edison Company/SOHIO Offset Scrubber Project," Stearns-Rogers, Inc., 2-1 (1978).

Edison Company signed an agreement which allowed SOHIO to install an anti-pollution package on one of their power plants. The contract, according to the Governor of California,

guarantees an improvement in Southern California air quality and it also will help reduce America's dependence on foreign oil. Often before, new industrial growth has meant a growth in air pollution, but under a new procedure developed by CARB, this Alaskan oil terminal will be built without increasing smog levels. In fact, some improvement in air quality will almost certainly come about.⁷⁰

For the casual observer, this announcement indicated that California was on the verge of approving the SOHIO project. However, to those who had followed the evolution of the project step by step, it only indicated that two new issues would rise to the surface; namely, that the South Coast Air Quality Management District (Local District) would have to be persuaded that the scrubber was adequate—and their protestations to that point indicated they did not deem it so—and the initial, totally negative, media blitz conducted by the state of California would have to be reversed.

I. ABSENCE OF COORDINATED REGULATORY PROCEDURES

The SOHIO project falls under the jurisdiction of four states and the federal government, to say nothing of the numerous special districts and local governments (see Table 2).⁷¹ Therefore, questions concerning jurisdiction, territorial imperative with respect to regulatory controls and determination of who made the first decision, were never-ending and complex. For example, early in the discussions, the issue of jurisdiction with respect to coastal waters became a crucial issue. At the heart of the matter was the question: Can an individual coastal state require that all oil tankers moving along its coast install air monitoring/control equipment? Inherent in that question was a second one, namely, what technology is "best" to control the significant impacts?⁷²

The California Air Resources Board determined that they had jurisdiction over air emissions within a broad corridor along the coast of California extending seaward sixty miles from the mean high tide line.⁷³ The Department of Transportation, particularly the Coast Guard, disagreed with this interpretation, and indicated that the Ports and Waterways Safety Act left

70. Press release, Office of the Governor, State of California (Aug., 1978).

71. Permit Acquisition Report of December 8, 1978, prepared by Williams Brothers Engineering Company for SOHIO.

72. These questions were considered at a number of meetings between CARB, Port, Local District, League of Women Voters, Los Angeles City Attorney, SOHIO, Federal Energy Administration, and others. Certain aspects of these questions also were considered by SOHIO in "Supporting Information for the SOHIO Permit Application" submitted to SCQAMD, II-2 (1977). Also *supra* note 67.

73. *Supra* note 67.

such matters to federal control.⁷⁴

In the midst of this conflict, the federal Supreme Court rendered a decision on the *ARCO v. Evans* case (subsequently changed to *ARCO v. Ray*) concerning special rules promulgated by the state of Washington to control shipping in Puget Sound. Simply stated, the federal Supreme Court held that the state could not impose absolute control over ship traffic within state waters because the field was preempted by existing federal laws, rules and procedures.⁷⁵ In spite of this decision, the state of California persisted in its demands for control over air emissions, based on the concept of police power, and indicated that unless the state was provided with adequate assurance that SOHIO tanker operations would be regulated by appropriate federal agencies, it would have to use maximum air emissions values in evaluating the project.⁷⁶ Inclusion of all such emissions as part of the trade-off package clearly was not economically viable for SOHIO, to say nothing of the startling precedent it established.

As a genuine effort to provide adequate, but reasonable controls over SOHIO tanker operations, the Port of Long Beach (Port) developed preliminary lease conditions stipulating that the SOHIO marine terminal only could be used by tankers with a specific amount of segregated ballast (no mixing of oil and water), an inert gas system (to reduce the potential for explosions) and certain air quality monitoring devices (to insure operations which minimized air emissions).⁷⁷ The Port also planned to establish basic operational safety and oil spill prevention criteria.⁷⁸ CARB was not comfortable with the enforcement of such conditions under a simple lease agreement between the Port and SOHIO, and continued to press for a clear understanding that the federal government would enforce such conditions and also be liable (in a general sense) for failure to do so.⁷⁹ Finally, using the Port's suggestion as a platform of departure, and with a push from the federal energy agencies, a coordinated effort between the Department of Transportation, Department of Justice, and CARB produced a list of "workable" conditions suitable to the state and concerned federal agencies.⁸⁰

The most complex and controversial procedural problem centered

74. Discussions between representatives of various units in the Federal Department of Transportation and the Department of Energy based on the Ports and Waterways Safety Act of 1972, 33 U.S.C. § 1221 *et. seq.* (1972).

75. 435 U.S. 151 (1978).

76. *Supra* note 59.

77. "OVERVIEW: SOHIO-West Coast to Mid-Continent Pipeline Project," Port of Long Beach, 19 (Dec., 1976).

78. *Id.* at 22.

79. Letter from California Air Resources Board to California Coastal Commission (Oct., 1977) and discussions between staffs of CARB, FEA, Port of Long Beach, and SOHIO.

80. SOHIO SUPPLEMENTAL EIR, *supra* note 39, at Vol. 5, Part 1, Appendices F and G (Nov., 1977).

around the efforts of CARB to develop precise strategy for controlling the air emissions associated with the SOHIO project. Although their effort was considered to be in conflict with both law and tradition, since the regulation of industrial polluters is in the province of the local air quality board (Local District), CARB assumed leadership based on their responsibility for implementing the Federal Clean Air Act.⁸¹ At the outset, there were few data on the air emission problems associated with crude oil tanker operations and a strong effort was made to obtain information from all sources.⁸²

SOHIO initially proposed development of a 700,000 barrel per day facility with 200,000 barrels per day of that total for local use.⁸³ SOHIO strongly believed that they should receive full "air quality credit" for emissions reduction associated with the delivery of 200,000 barrels a day via modern tankers to a modern facility in lieu of the present system using older tankers and terminals.⁸⁴ CARB disagreed and ultimately so did the Local District.⁸⁵ SOHIO corporate officials, who never understood why this was not acceptable, commented on several occasions that "there was nothing we could do—they had us over a barrel—it wasn't a question of air quality, it was a question of how much we were going to have to pay to California in order to build a terminal."⁸⁶

Initially, it was thought that the hydrocarbon emissions generated by tanker unloading and the storage of 3.5 million barrels of oil at the marine terminal would be the most problematic.⁸⁷ Subsequent analyses indicated, however, that the hydrocarbons were not the key emissions problem. As a consequence of extensive research conducted by Chicago Bridge and Iron Company, on behalf of SOHIO, hydrocarbon emission losses from storage tanks were determined to be no more than ten percent of the value normally considered by regulatory agencies. Opening of cargo compartments after the oil had been pumped ashore was not a requisite safety requirement. Consequently, the hydrocarbon issue dissipated.⁸⁸

Shortly after the resolution of the hydrocarbon issue, however, two other emissions factors emerged as problematic: the nitrous oxides and sulfur dioxides produced as a consequence of the operation of the ship boilers (engines) to provide the energy for pumping the oil from the ship to the onshore storage facility.⁸⁹ Because on certain occasions the air basin

81. CAL. HEALTH AND SAFETY CODE, § 41500 (1975) *et. seq.*

82. *Supra* note 67.

83. *Supra* note 17.

84. *Supra* notes 21 and 72.

85. SOHIO FINAL EIR, *supra* note 37, at Vol. 4, Part 2, 182-246.

86. Comment of Frank Mosier, Senior Vice President, SOHIO, at an Academy Forum, National Academy of Sciences (Nov., 1978).

87. SOHIO DRAFT EIR, *supra* note 8, at Vol. 1, Part 3, A-1 to A-122 (Sept., 1976).

88. SOHIO FINAL EIR, *supra* note 37, at Vol. 4, part 3, A-61 (Apr., 1977).

89. SOHIO SUPPLEMENTAL EIR, *supra* note 39, at Vol. 5, part 1, VI-1 (Nov., 1977).

in which the marine terminal was to be located exceeded allowable air quality standards, the introduction of even one additional part per million of nitrous oxides or sulfur dioxide was problematic. The only proven technology for directly reducing either of these emissions was the use of an inert gas scrubber (IGS) system on the tankers whereby about seventeen percent of the gases going up the stack of the ship were scrubbed of their sulfur dioxide content. Since this was inadequate, additional trade-offs were required.⁹⁰

Next, CARB actively supported the use of a stack-gas scrubber and ammonia injection equipment at an existing electric generating plant to trade-off SOHIO's emissions. They believed this was an extremely effective way of reducing air emissions as well as initiating emission control strategy that was sorely needed if the Southern California area was to make significant progress towards reducing problematic air emissions. The Local District effectively was excluded from this effort.⁹¹

The discussions between CARB, SOHIO, and Edison excluded the Local District, which, by law, was the primary regulatory agency designated to evaluate stationary source emissions. The Local District was not pleased at being left out of these discussions and indicated in a letter to the Secretary of Energy its position that "under state law, [the] District is the primary agent in the air quality permit approval process. . . . If the District disapproves the project as a whole, or any portion of the proposed trade-offs offered by SOHIO, our disapproval can not be overturned by the CARB."⁹² After a careful review of the documents, the Local District indicated that the proposed equipment would not be as reliable as had been determined in the CARB documents,⁹³ therefore the equipment would not fully meet the Local District requirements established for the project.⁹⁴ The Local District proposed an alternative course of action which would require SOHIO to provide ultra-low-sulfur fuel as an interim "back-up" trade-off for those times when the new equipment at the Edison plant was not operational. Additionally, they suggested that the most expeditious process was for SOHIO to exclusively provide ultra-low-sulfur fuel for use at the electric generating facility.⁹⁵ The ultra-low-sulfur fuel option, however, in the opinion of CARB, produced a series of potential problems, in particular, increased reliance upon foreign oil.⁹⁶

90. *Id.* at VIII-17.

91. Discussions between staffs of Local District, CARB, and Port of Long Beach.

92. Letter from Local District to Secretary of Energy (Mar., 1978).

93. "Construction Permit for New Stationary Source issued to PACTEX Pipeline Company" and "Authority to Construct Conditions for Southern California Edison's Alamos Unit 6" (June, 1978).

94. Letter from Local District to CARB (July, 1978).

95. *Id.*

96. Letter from CARB to Local District (July, 1978).

The "jousting" between the two air agencies continued until the hearing on the acceptability of the proposed trade-offs, when the frustration of the Local District was clearly expressed in the statement "that at issue is whether air quality decisions are to be made by the people's elected representatives in open hearings with full participation of the people being affected or whether such decisions are to be made [in] smoke-filled rooms without meaningful involvement of the citizens whose welfare is at issue."⁹⁷ The confrontation between these two agencies still exists.⁹⁸

On April 20, 1979, twenty-one months after the first hearing and at a cost to the state estimated to exceed two million dollars, the Local District approved the stack-gas scrubber and other air quality trade-offs for the SOHIO project. They also recommended that SOHIO use the ultra-low-sulfur fuel option rather than the scrubber. In addition, the Local District made a separate determination that the trade-offs had to be for the "life" of the SOHIO project, that is, that SOHIO was responsible for the effectiveness of the trade-offs.⁹⁹ Subsequent action by CARB approved the use of the scrubber and other air quality tradeoffs.¹⁰⁰

The process of obtaining approval from the California Coastal Commission for the SOHIO project also was complex and confused. An initial application was filed with the State Coastal Commission in May, 1977. Numerous documents were prepared and submitted in support of the application for a breakwater, wharf, trestle, surge/storage tankage and associated piping and operational facilities.¹⁰¹ After considerable deliberation and analysis, the Coastal Commission approved the project with the exception of the storage tanks. The tanks were omitted because the Commissioners felt they were not coastal-dependent, *i.e.*, they could be located inland, beyond the coastal zone boundary.¹⁰² This finding was made without a clear understanding of the methodology associated with unloading and transporting crude oil in a forty-eight inch diameter pipeline. It is important to recognize that the only forty-eight inch diameter crude oil pipeline in operation in the United States is the TAPS pipeline.¹⁰³ The Coastal Commission did leave only one option, namely, that if after additional analyses the

97. Statement of the Local District Vice Chairman during the final hearing on the SOHIO request for Permits to Construct (Mar., 1979).

98. The CARB has continued to develop New Source Review rules and procedures for implementation by the Local District. The latest changes were approved in November, 1979.

99. Findings, Decision, and Order of the South Coast Air Quality Management District Board in the Matter of the SOHIO Transportation Company Application for Permits to Construct (May, 1979).

100. CARB approved the Local District action on May 24, 1979, the same day that the Local District decision was final (see *supra* note 99).

101. Application 185-77 before the California Coastal Commission and Responses to Comments received during the Hearing on Application 185-77 (Aug., 1977).

102. Coastal Development Permit A-185-77 (Oct., 1977).

103. *Supra* note 33.

tank farm still was deemed essential, the Port could apply for an amendment to the permit requesting authorization to construct the tanks.¹⁰⁴

After extensive review of engineering, air quality, and suitable alternative locations, an amendment was filed requesting permission to construct the tanks.¹⁰⁵ Almost immediately a concern was expressed that the key issue was the air quality impacts associated with locating the tanks other than adjacent to the marine terminal.¹⁰⁶ A detailed analysis indicated that locating the tanks elsewhere would increase the related air emissions, principally due to the fact that tankers would be in port longer while they pumped the crude oil several miles inland.¹⁰⁷ At this point, CARB had not gotten a firm commitment from SOHIO to use the trade-off equipment at the Edison plant, and their interest in supporting this amendment was not strong.¹⁰⁸ Accordingly, the Coastal Commission denied the amendment.¹⁰⁹ Subsequent to this denial, SOHIO and the Port requested approval for two tanks, indicating that if no tanks were authorized, SOHIO could not proceed with the project.¹¹⁰ This amendment was considered in March, 1979, just after SOHIO's announcement that they were abandoning the project. The timing was perfect. The Coastal Commission, because the project was in the national interest, and perhaps because they did not wish to be the "whipping boy," accused of denying the SOHIO project, approved the amendment six days after SOHIO first announced it was abandoning the project.¹¹¹

Another illustration of the absence of regulatory coordination is associated with the "surge" of special studies on the SOHIO project prepared by a variety of federal and state agencies to support their own particular interests and temporal concerns. These studies included the Federal Energy Administration study on "North Slope Crude, Where To? How?";¹¹² a report on "Air Quality Analysis of the Unloading of Alaskan Crude Oil at California Ports" prepared by CARB and the Environmental Protection Agency;¹¹³ and the California Energy Resources Conservation Development Commission Biennial Report on "Energy Trends and Choices."¹¹⁴

104. *Supra* note 101.

105. Application to Amend Coastal Development Permit A-185-77 to add three crude oil storage tanks on Pier J, Port of Long Beach (Dec., 1977).

106. Public Hearing before the California Coastal Commission (Jan., 1977).

107. Letter from Fluor Engineers and Contractors, Inc., to Port of Long Beach (Aug., 1978).

108. Letter to California Coastal Commission from CARB (Aug., 1978).

109. Decision of California Coastal Commission (Oct., 1978).

110. Application 185-77 (Amendment II) before the California Coastal Commission (Feb., 1979).

111. Decision of California Coastal Commission (Mar., 1979).

112. Federal Energy Administration, Region 9 (1976).

113. *Supra* note 67.

114. 1977 Biennial Report of the State Energy Commission, "California Energy Trends and Choices", Vol. 4, 235-328 (1976).

These documents were intended to show that the SOHIO project was not needed or that it would cause cataclysmic events if located in Long Beach. It is interesting to note, however, that much of the data in these studies are no longer applicable. For example, the "North Slope Crude, Where To? How?" report prepared by Region IX of the Federal Energy Administration in 1976 was extensively reviewed and revised, but a final report was not published because certain assumptions could not be substantiated.¹¹⁵ This report and others are a testimony to the "individuality" of the various regulatory agencies as well as the absence of coordinated review by agencies with overlapping jurisdiction.

J. PUBLIC PARTICIPATION

To an "outsider," California appears unnecessarily concerned about the environment. However, California became a leader in the environmental movement when the California Environmental Quality Act (CEQA) of 1970 was enacted,¹¹⁶ thereby implementing the National Environmental Policy Act (NEPA) in California.¹¹⁷ In addition to CEQA, the California Coastal Zone Conservation Act of 1972 (also called Proposition 20) established a state and six Regional Coastal Zone Conservation Commissions,¹¹⁸ which were institutionalized by enactment of the Coastal Act of 1976.¹¹⁹ One of the primary goals of the Coastal Act is to guarantee public participation in land use decisions within the Coastal Zone area.¹²⁰ Although this process of coastal control has been continually criticized, and changes repeatedly proposed to disarm the Commissions, the fact remains that development of the Coastal Zone in California has been rigorously controlled since 1973.¹²¹

All of these regulatory efforts in California have insured that environmental impacts will be carefully reviewed and mitigated and that the public can effectively participate in the decision process.

The public participation process is not refined, and it allows an opportunity for all to express their concerns whether reasonable, emotional, confused, parochial, or based on a partial extrapolation of technical information. Consequently, decision-making bodies must be willing to review, evaluate, and make decisions within a forum of conflicting information and views. The process is young, but the public expects its business to be

115. Discussions with Federal Energy Administration/Department of Energy staff.

116. *Supra* note 19.

117. 42 U.S.C. § 4321 (1970) *et. seq.*

118. CAL. PUB. RES. CODE, § 27000 (1972) *et. seq.*

119. *Id.* § 30000 (1976) *et. seq.*

120. 14 Cal. Admin. Code § 13001 *et. seq.*

121. Based on participation in permit applications before the State and Regional Commissions since 1975.

done in public, and the decisions therefrom to benefit as many concerned constituencies as possible.

Most business interests have failed to understand the public participation process in California, and as a consequence, there have been numerous head-on confrontations resulting in expensive delays in approval or ultimate denial of projects.¹²² Many in the business sector hoped that the so-called costly environmental concerns (or at least the permit "maze") would disappear in the face of an energy crisis, impatience with government regulation, tax revolt, inflation, and so forth. That has not been the case.¹²³

In a 1978 survey conducted by Resources for the Future, sixty-seven percent of the public expressed agreement that the environment should be protected at the expense of commercial activities, and sixty-two percent were in favor of paying higher prices to protect the environment. As that survey concludes, "the environmental issue has made the transition from a fad to an endearing public concern."¹²⁴ Also of significance is the fact that the public in California exhibits a very high concern for the environment and, accordingly, serves to transmit that concern to other parts of the country.¹²⁵

SOHIO, as a midwestern oil company primarily engaged in refining and marketing operations until their participation in the Alaskan oil project, was startled by the scope of public participation in California. They assumed, because their project was in the national interest, economically feasible, and timely, that approvals would not be inordinately difficult.¹²⁶ Accordingly, they were pushed to the limit in dealing with an expanding list of detailed questions on natural gas delivery to California, oil spill potential from tanker collisions, air quality impacts on specific and general geographic areas, and so forth.¹²⁷ SOHIO, as it participated in the multiple-agency reviews of the project, prepared a tremendous number of technical documents. Because certain of the regulatory agencies were not sure what they needed to make appropriate decisions, SOHIO often ended up being

122. Proceedings of Society of Petroleum Industry Biologists Symposium on Energy Development Impacts, 239 (1978).

123. Based on the increasing number of regulatory controls which affect almost every aspect of daily life. For example, the federal government has 90 regulatory offices. These offices issue a total of 7,000 rules each year. There is no indication that regulatory controls will diminish, rather, there is an increasing tendency to add new controls while consolidating existing processes.

124. Results of a Resources for the Future Survey of 1,076 randomly selected respondents in a phone survey conducted in July, 1979. Data available from Resources for the Future.

125. Based on implementation of the California Environmental Quality Act, the California Coastal Zone Conservation Act of 1972, and the Coastal Act of 1976. *Supra* notes 19, 119, and 120.

126. *Supra* note 17.

127. Proceedings, American Society of Traffic and Transportation, National Conference and 33rd Annual Meeting, 226-228 (1978).

the middle-man between the various local and state agencies.¹²⁸

The public had a wide range of opportunities to participate in the review of the SOHIO project. The degree of participation is unparalleled in California.¹²⁹ Although opponents of the project may say that their concerns were never considered by the decision-makers, they cannot argue that they were not provided repeated opportunities to make their concerns known.¹³⁰ Clearly, if the key 'actors' in the SOHIO project had used a reduced but comprehensive public participation process as an effective means of educating themselves and the various constituencies of concerned individuals on the major issues, many of the roadblocks preventing timely approval would have been substantially reduced.¹³¹ Further, had the state used a positive approach, that is, suggesting that the project could be approved with appropriate conditions rather than equating the project to catastrophic events, public understanding of the project would have been enhanced and there would have been less emotionalism clouding the complex technical analyses.¹³²

K. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

In 1970, California approved the California Environmental Quality Act (CEQA),¹³³ whereby projects having significant environmental impacts must be evaluated through the preparation of an Environmental Impact Report (EIR) which describes the project, the ambient environmental conditions at the project site, the project impacts, irreversible impacts, growth inducements, irreversible commitment of resources and necessary mitigations. CEQA also established a process for determining the lead agency which has the responsibility for preparation of the EIR, *i.e.*, that agency which has the principal responsibility for approving or carrying out the project.

After SOHIO had determined that the marine terminal was to be located in the Port of Long Beach (Port), the Port commenced the preparation of the EIR on the assumption that it was the lead agency. Shortly thereafter, two state agencies, the State Lands Commission and the California Public Utilities Commission (CPUC), challenged that determination, utilizing a mechanism in CEQA whereby lead agency disputes are directed to the

128. Based on participation in various regulatory agency review/discussions, *e.g.*, with CARB, Local District, Coastal Commission, and so forth.

129. Based on a review of the regulatory record associated with the SOHIO project.

130. There were 53 hearings. At the majority of these hearings, there was an opportunity for any and all to offer comments, opinions, and proposed revisions to the project.

131. Based on the numerous regulatory conflicts that evolved during review of the project.

132. *Supra* notes 45, 59, 62 and 63.

133. *Supra* note 19.

Governor's Office of Planning and Research.¹³⁴ After considerable, and often spirited, discussion and analysis of the related problems, a mutual agreement was achieved between the Port and the CPUC, whereby they would function as co-lead agencies with equal responsibility for preparing the EIR.¹³⁵

Immediately after resolution of the lead agency issue, a State Agency Task Force was organized, consisting of representatives from those agencies which had jurisdictional concern, permit authority, and oversight responsibility for the project.¹³⁶ Most of the state agencies had no prior experience in evaluating projects comparable to SOHIO. Therefore, it was necessary to develop an understanding of how modern crude oil tankers operate, the characteristics of crude oil marine terminal operations, the use of an inert gas system, the movement of oil through a forty-eight inch diameter pipeline, oil spill monitoring procedures, and so forth. The principal purpose for establishing the State Agency Task Force was to provide a mechanism for exchange of information and development of a mutual understanding of the problems and processes related to the project.¹³⁷

The initial preparation of the EIR centered around a traditional approach, e.g., description of the project, analysis of the ambient conditions at the proposed project site, determination of project impacts and related mitigations, etc. However, it soon became apparent, because of an informal legal opinion, that a greatly expanded environmental evaluation would be necessary. The opinion, prepared by the Attorney General of the state of California, on a proposed electric generating facility outside of the state of California, but from which electric power would be delivered to various parts of California, indicated that regardless of geographical/political boundaries, the "spirit" of CEQA dictated that all key aspects of a project must be evaluated.¹³⁸

The Draft EIR, completed in September, 1976, consisted of four volumes in nine parts. In addition to the standard analyses, separate, detailed discussions were provided on: 1) energy supply and demand—an analysis of crude oil and natural gas use and distribution patterns in the United States; 2) tanker traffic and oil spill potential on the West Coast; and 3) analysis of alternative locations along the entire West Coast area—for an Alaskan oil terminal and related pipeline systems.¹³⁹

134. 14 CAL. ADMIN. CODE § 15065.

135. Port Statement of Contentions Regarding Designation of Lead Agency for California Portion of the Standard Oil, Ohio, Project (1976).

136. Developed from discussions between the Port of Long Beach and the Office of Planning and Research.

137. Informal agreement between the CPUC and the Port.

138. Opinion No. SO 75/50.

139. SOHIO DRAFT EIR, *supra* note 8, at Vol. 1, Part 1, 1-i (Sept., 1976).

After issuance of the Draft EIR, three public hearings were held. During those hearings, several issues/concerns were noted. Among these, the key ones included tanker safety, earthquake hazards, oil spills, impact on the expansion of tourism in the city of Long Beach, and the air quality problems induced by the project.¹⁴⁰

In May of 1977, the Final EIR was published and certified by the Board of Harbor Commissioners of the Port. The Final EIR contained responses to all the comments raised during the public hearings and during the formal review period.¹⁴¹ However, the local citizen groups and others in Southern California did not believe that their concerns were adequately addressed in the Final EIR, or given proper consideration by the Board of Harbor Commissioners or the CPUC.¹⁴²

After certification of the Final EIR, there was considerable public debate about whether or not the air quality impacts and the related mitigations, *i.e.*, trade-offs, had been adequately considered. The South Coast Air Quality Management District (Local District) received a petition from several interested parties requesting that review of the SOHIO project be conducted utilizing evidentiary hearings. It was the first request for such a hearing before the newly created Local District; the petition was granted.¹⁴³

After initiation of the hearings, and as a consequence of the concerns expressed by the petitioners, it was deemed appropriate to prepare a Supplement to the Final EIR in order to specifically consider certain of the issues raised by petitioners.¹⁴⁴ Among the several issues, the most significant concerned the abandonment of the El Paso Natural Gas Company natural gas line and the resultant impact on natural gas delivery capabilities to the state of California; and the specific nature, character, and significance of the tradeoffs to be provided by SOHIO.¹⁴⁵ Accordingly, in September, 1977, preparation of a Supplement to the Final EIR was initiated by the co-lead agencies. The Supplement was completed in November of 1977, and after appropriate review by responsible agencies and two public hearings, the Supplement to the Final EIR was certified as final.¹⁴⁶

The petitioners before the Local District and others representing various components of the public sector still did not believe that adequate answers were available on the natural gas delivery and air quality impact

140. Joint hearings of the CPUC and the Port.

141. SOHIO FINAL EIR, *supra* note 37, at Vol. 4, Parts 1-5 (Apr., 1977).

142. Minutes of the Board of Harbor Commissions (May, 1977).

143. On June 16, 1977, a number of petitioners filed a petition pursuant to California Health and Safety Code § 40509 requesting that the Local District Board hold a public hearing on the SOHIO permit applications. The Board concurred and set an initial public hearing for July 22, 1977.

144. Decision No. 88311 of the CPUC (Jan., 1978).

145. SOHIO SUPPLEMENTAL EIR, *supra* note 39, at Vol. 5, Part 1, I-1 to I-3 (Nov., 1977).

146. Minutes of the Board of Harbor Commissioners (Dec. 19, 1977).

trade-off issues. Soon thereafter a petition for Writ of Mandate was filed to compel compliance with CEQA.¹⁴⁷

L. LEGAL ACTION

The Citizens Task Force on SOHIO, a loose coalition of several citizens' groups in Long Beach, California, and others, brought an action for Writ of Mandate in Superior Court to compel the Board of Harbor Commissioners of the Port of Long Beach to rescind the certified EIR so that additional discussion could occur on those issues they deemed significant. The petition listed a number of concerns dealing with: air quality impacts due to decreased natural gas supply, that is, use of natural gas as a compressor fuel to move higher volumes of gas through the remaining El Paso Natural Gas Company pipeline system; air quality impacts during construction and operation of the SOHIO project; movement of Alaskan oil through the existing Four Corners Pipeline System; movement of oil through the proposed Elk Hills system; detailed analysis of alternative northern pipeline systems; analysis of the potential for and character of Phase II of the SOHIO project, that is, adding an additional 500,000 barrels per day of capacity; specific identification of the steps for determining trade-off acceptability; the impact of the importation of Alaskan crude oil on California production; construction of a totally new crude oil pipeline as an alternative to abandoning the natural gas pipelines; and further identification of the earthquake hazards associated with crude oil storage in the Port.¹⁴⁸ It is interesting to note that almost all of these issues were discussed in the Final EIR or in the Supplement to the Final EIR. For example, the Elk Hills oil project was still in the proposal stage and specific details on right-of-way alignment, location of pumps, etc., could not be included.¹⁴⁹ The issue of earthquake hazards associated with the placement of oil tanks in the Port already had been debated extensively and mitigated by construction/operation conditions.¹⁵⁰ The real issue was not the adequacy of the EIR, but whether or not the "right" view on a given subject had been included in the EIR. There also was concern that the EIR did not provide specific information on the air quality trade-offs.¹⁵¹ Yet, there was no way that definitive information could have been included in the EIR, since by law, the local District determines the acceptability of trade-offs after an EIR has been certified as Final.¹⁵² A real Catch 22!

147. Petition for Writ of Mandate, Superior Court of the State of California for the County of Los Angeles, No. SO C 50044 (Feb., 1978).

148. *Id.*, Petitioners' Points and Authorities in Support of Petition for Writ of Mandate.

149. SOHIO SUPPLEMENTAL EIR, *supra* note 39, at Vol. 5, Part 1, XVII-5 (Nov., 1977).

150. *Id.* at X-23.

151. *Id.* at VIII-1 to VIII-16.

152. *Id.* at VIII-3.

Although the petitioners recognized that the EIR had been prepared jointly by the Port and the California Public Utilities Commission (CPUC), they declined to name the CPUC as a party. Consequently, the Port, CPUC, and SOHIO requested that the matter be transferred to the Supreme Court in California in accordance with State Codes.¹⁵³ In March, 1978, the trial court granted that motion and ordered the CPUC joined as a proper party and the proceeding transferred to the Supreme Court.¹⁵⁴ Almost simultaneously, the petitioners filed an appeal seeking to have the trial court's orders vacated. Shortly thereafter, the Court of Appeals denied the appeal.¹⁵⁵

The Supreme Court, "because of the extensive research involved," delayed taking action until one year later (March, 1979).¹⁵⁶ The Court said in part, "The granting of the Court's motion to join the CPUC as an indispensable party, together with the Court's transfer of the matter to the Supreme Court on the ground that it lacked authority to compel the CPUC to comply with CEQA" was improper.¹⁵⁷ Further, the Court found that "The Port of Long Beach was the first to act on the SOHIO project, thus it became the lead agency and hence was required to defend the adequacy of the entire EIR under appropriate sections of California's Public Resources Code; and that consequently, the CPUC thereby became a responsible agency."¹⁵⁸ This determination was based upon a review of the appropriate section of the California Administrative Code, that is, when two or more public agencies equally qualify as the lead agency for the purpose of preparing an EIR, the agency which is to act first on the project shall be the lead agency (following the principle that the environmental impact should be assessed as early as possible in the planning process).¹⁵⁹ The Supreme Court ordered that the matter be transferred back to the Superior Court of Los Angeles County.¹⁶⁰

The issuance of the decision by the Supreme Court came nine days after the March 13, 1979, announcement by SOHIO that it was abandoning the proposed project. Significantly, the Supreme Court's remand of the case to the Superior Court highlighted one of SOHIO's major "fears",

153. Port of Long Beach Memorandum of Points and Authorities in Support of Motion of Respondent for Order to Join California PUC and to Transfer this Action to the California Supreme Court, Case No. SO C 50044 (Feb., 1978).

154. Court of Appeal of the State of California, Second Appellate District, Decision No. 53277.

155. Denied in the Court of Appeal on April 4, 1978, based on 2 CAL. CIV. CODE § 53277 *et seq.*

156. Statement of the Clerk of the California Supreme Court (Mar. 22, 1979).

157. Decision of California Supreme Court on L.A. 30922, 2 (Mar. 22, 1979).

158. *Id.*

159. *Id.*

160. *Id.*

the potential for lengthy litigation.¹⁶¹

M. MARINE TERMINAL AT LONG BEACH

The Port of Long Beach (Port) has been a major commercial center since about 1935. It had a steady growth until about 1970.¹⁶² In 1970, the Port gambled on the success of containerized cargo, and developed an extensive amount of new land.¹⁶³ The gamble paid off, and tonnage increased until 1975, when productivity began to stabilize due to the maze of regulatory requirements associated with the construction of modernized or new maritime facilities.¹⁶⁴

In 1973, the California Coastal Initiative for Coastal Zone Management was approved, creating a Coastal Commission and five regional Commissions.¹⁶⁵ These Commissions had life and death control over all development extending 1,000 yards inland from the mean high tide line and three miles to sea.¹⁶⁶ The Port found it difficult to proceed with new projects because of uncertain requirements and lengthy delays in obtaining approvals.¹⁶⁷

In the summer of 1974, when SOHIO approached the Port about building a marine terminal to handle Alaskan oil, the Port did not have any staff dedicated to working with the regulatory process. They decided to organize a staff to prepare environmental documents and permit applications, and develop a rapport with appropriate regulatory agencies.¹⁶⁸ SOHIO was in agreement with this, and the Port organized a Division of Environmental Affairs.¹⁶⁹

Between September, 1975, and March, 1979, the Port diligently pursued completion of necessary environmental documents and obtaining of certain permits required for the SOHIO project.¹⁷⁰ The key efforts centered around completion of the Environmental Impact Report (EIR), obtaining California Regional Water Quality Control and Coastal Commission permits for construction of the marine terminal and adjacent storage facilities, and applying for the Army Corps of Engineers approvals.¹⁷¹

161. "Limit Lawsuits on SOHIO, L.B. Group Tells Congress," IPT, Apr. 3, 1979.

162. The Port of Long Beach Annual Report (1976).

163. Port of Long Beach, Draft Environmental Impact Report, Proposed General Plan, Vol. 1, 1-1 to 1-43 (1975).

164. Port of Long Beach, Draft Master Plan, 36-55 (1978).

165. *Supra* note 118.

166. *Supra* note 120.

167. Based on a review of the approval and denial of Port projects before the South Coast Regional Coastal Commission during the period 1973-1975.

168. Minutes of the Board of Harbor Commissioners, (July 28, 1975).

169. Minutes of the Board of Harbor Commissioners, (July 1, 1976).

170. Based on a review of Port records.

171. *Supra* note 77.

In January, 1978, the Board of Harbor Commissioners adopted an extremely complex resolution which conditionally approved the SOHIO project.¹⁷² Because of the continuing concern regarding air quality, the resolution contained a statement that, "If the mitigations of air impacts imposed by other agencies, in the opinion of said Board of Harbor Commissioners, are inadequate, the Board will require by contractual agreement, to the extent legally permissible, such additional conditions as result in adequate mitigations of such air impacts."¹⁷³ The inclusion of this statement was intended to clearly demonstrate to all interested parties that the Board of Harbor Commissioners would not be tolerant of approvals which clearly did not protect the citizens of Long Beach.¹⁷⁴ In no way, however, was the Board of Harbor Commissioners attempting to preempt the jurisdiction of the South Coast Air Quality Management District (Local District); rather, because the Local District has a broad geographical responsibility,¹⁷⁵ the Board deemed it appropriate to stress their concern for assuring air quality improvement within the confines of the city of Long Beach.

Within thirty days after this resolution, the Citizens Task Force on SOHIO and two named individuals filed a petition in Superior Court challenging the adequacy of the EIR and requested that a Writ be issued requiring the Port to set aside its certification of the Final EIR and Final Supplement to the EIR.¹⁷⁶ The filing of this petition inhibited California agencies from authorizing construction of the project, since California law provides that agencies may only grant "conditional" approvals until the EIR has been deemed adequate.¹⁷⁷

This EIR lawsuit initiated a number of concerns and problems. SOHIO estimated that for each month of delay in start of construction, the project costs would increase \$3.5 million, and that if SOHIO could not proceed to construct the proposed crude oil system in a timely manner, it could well result in their abandoning the project.¹⁷⁸ Also, this continued to frustrate the Port management and Board of Harbor Commissioners.¹⁷⁹

About the same time, the Local District concluded the hearings which established project emissions, generally approved the project, and established the trade-off requirements.¹⁸⁰ As an outgrowth of that decision, the

172. Board of Harbor Commissioners Resolution No. HD-1173.

173. *Id.* at 13.

174. Minutes of the Board of Harbor Commissioners (Jan. 16, 1978).

175. CAL. HEALTH AND SAFETY CODE, § 40410 *et. seq.*

176. *Supra* note 147.

177. CAL. PUB. RES. CODE § 21167.3 (1977).

178. Affidavit of R.A. Panek, *see supra* note 153.

179. After three years of preparing EIR's and working with the various regulatory agencies, they believed it was time to force a decision.

180. Local District "Review of Phase I Findings and Staff Recommendations on Phase II of SOHIO Permit Applications" (Jul., 1978).

question arose whether or not a separate EIR was needed on one of the proposed trade-offs, the scrubber.¹⁸¹ There was no precedent for this, since SOHIO was the first party to retrofit facilities owned by others, so-called third-party trade-offs.¹⁸² Several interpretations evolved: For example, that the CEQA process required consideration of all components of the project; therefore, the EIR for the SOHIO project would be incomplete until detailed environmental information on the scrubber was incorporated into the certified Final and Subsequent EIR.¹⁸³ On the other hand, it was argued that the approval of specific trade-offs was within the jurisdiction of the Local District and not that of the lead agency, and that trade-off facilities should not be part of the EIR for the basic project, but should be the subject of separate environmental evaluation.¹⁸⁴

By June, 1978, Port management decided that delay in executing a lease between SOHIO and the Port was only playing into the hands of the ever-increasing regulatory maze.¹⁸⁵ This was not an unexpected conclusion, since SOHIO also was becoming extremely frustrated, and the Port, in its role as a utility, wanted to support the SOHIO project for several reasons.¹⁸⁶ Foremost among these reasons was the fact that SOHIO represented an additional two million dollars in annual revenue; and if the project were constructed, it would serve as the nucleus for providing increased recreational access within the Port and for relocating and improving other petroleum operations.¹⁸⁷ Also, the dredged material the SOHIO project produced could be used to expand sorely overcrowded container operations.¹⁸⁸ Thus, implementation of the SOHIO project, based on appropriate environmental constraints, was considered to be extremely important in achieving certain master planning goals within the Port.¹⁸⁹

On June 23, 1978, the Board of Harbor Commissioners considered, at a first reading, an ordinance directing the General Manager of the Port to execute a lease agreement with SOHIO.¹⁹⁰ Draft copies of that lease agreement, provided to interested parties, contained a section entitled "Cessation of Terminal Operations" which indicated that one or two air

181. Under the provisions of the CEQA Guidelines, the EIR process is intended to evaluate whether a project may have a significant effect on the environment [14 CAL. ADMIN. CODE § 15011.6(f)]. Since the proposed trade-offs were for substantial volumes of air emissions, it was considered that the impacts would be significant.

182. *Supra* note 66.

183. 14 CAL. ADMIN. CODE § 15069.

184. *Id.* §§ 15065 and 15065.3.

185. *Supra* note 179.

186. Based on discussions between SOHIO and Port management staffs.

187. SOHIO DRAFT EIR, *supra* note 8, at Vol. 1, Part 1, II-21 to II-25.

188. *Supra* note 163.

189. *Supra* note 164.

190. Minutes of the Board of Harbor Commissioners (June 23, 1978).

quality monitoring stations would be established within the coastal area of the City of Long Beach, and that whenever the sulfur dioxide and sulfate levels in the coastal areas of the City of Long Beach exceeded the value defined by Local District rules, SOHIO would cease all terminal operations; or alternatively, if sulfur dioxide and sulfate episode levels would be exceeded during the coming twenty-four hour period, all terminal operations requiring use of shipboard pumps would cease.¹⁹¹ Just prior to consideration by the Board, SOHIO indicated it was not in agreement with that language and, after strenuous negotiation, the language was changed.¹⁹² The language, in essence, changed the precise requirement for cessation of activities to a process whereby SOHIO would file a cessation plan with the Local District and, in turn, abide by the terms of that plan as directed by the Local District.¹⁹³ The basic difference between the two versions was that the final language was permissive. SOHIO argued that it was not appropriate for the Port, in essence, to preempt the authority clearly provided the Local District. After a lengthy and somewhat uncomfortable discussion, the Board of Harbor Commissioners approved the ordinance.¹⁹⁴

On July 6, 1978, when the Board of Harbor Commissioners again considered the ordinance, for the required second reading, citizen representatives expressed their disagreement with the changes in the lease language dealing with cessation of terminal operations.¹⁹⁵ A policy statement, which explained the Board's intent and interpretation of the lease language, also was considered. SOHIO representatives agreed to this interpretation, and the Board of Harbor Commissioners adopted the ordinance approving the lease arrangements.¹⁹⁶ In a following agenda item the Board adopted the policy statement on implementation of the cessation of operations clause in the lease.¹⁹⁷ The City Attorney indicated, however, that the policy statement was just that, and that it did not amend the lease agreement approved by the ordinance, and that it only would be helpful in clarifying ambiguities at a later time.¹⁹⁸ Shortly thereafter, and not unexpectedly, the Citizens Task Force on SOHIO, and others, indicated that they would challenge the ordinance through a referendum.¹⁹⁹

191. Harbor Department Document HD-2953, Exhibit "F", 62-63.

192. Discussions between SOHIO and Port staffs.

193. *Supra* note 191, Revised Exhibit "F", 62-63.

194. *Supra* note 190.

195. Minutes of the Board of Harbor Commissioners (July 6, 1978).

196. *Id.*

197. *Id.*

198. *Id.*

199. LONG BEACH, CAL., CITY CHARTER art. XXVII.

N. REFERENDUM

When the Citizens Task Force on SOHIO and others made known their intention to use a section of the Long Beach City Charter to place a referendum measure on the ballot regarding the SOHIO project, it caught the Port, Long Beach City Council, SOHIO, and many others unprepared. In all the history of the Port, no ordinance had ever been challenged by use of this process.²⁰⁰ The City Charter stipulates that no ordinance shall become effective until the expiration of thirty days from the time of final passage, with exception for certain emergency provisions, and, if during that thirty day period a petition, signed by twenty-five percent of the qualified voters participating in the preceeding general election, protesting the passage of such an ordinance, is presented to the City Council, then the ordinance shall not become operative until a majority of the qualified voters vote favorably.²⁰¹

When the Board of Harbor Commissioners approved the execution of an agreement with SOHIO in the form of an ordinance, the thirty-day referendum waiting period began.²⁰² Those who opposed the ordinance and, in essence, the project, worked diligently to gather the necessary 4,700 signatures in order to qualify the referendum measure for the November, 1978, ballot.²⁰³ The small number of signatures required was generally considered to be the result of a "fluke" when the City failed to change the initiative and referendum procedure after voter approval in 1976 of district elections as opposed to city-wide elections.²⁰⁴ 7,322 signatures were obtained, and the Board of Harbor Commissioners was advised by the City Clerk that the signatures were valid and thus the petition was in order. The Commissioners then moved to reconsider the ordinance approving the lease with SOHIO and after due deliberation, the Board determined not to rescind or repeal the ordinance, and requested the City Council to submit the ordinance for voter consideration.²⁰⁵ The City Council concurred, and ordered the matter on the November general election ballot, thus setting the stage for a complex and controversial campaign.²⁰⁶

The key issues offered by the referendum supporters were not new, but a reiteration of past concerns on: air pollution and related health hazards, particularly the fact that there were no mitigations to specifically protect Long Beach residents from hazardous air pollutants; the potential for massive oil spills which would result in miles of tarred beaches and oil-

200. Based on a review of Port records.

201. LONG BEACH, CAL., CITY CHARTER §§ 227-b, -c, and 307.

202. *Supra* note 195.

203. *Supra* note 199.

204. LONG BEACH, CAL., CITY CHARTER art. IV.

205. Minutes of the Bd. of Harbor Comm'rs (Jul. 13, 1978).

206. Minutes of the Long Beach City Council (Aug. 15, 1978).

fouled boats; the potential for fire hazard resulting from explosions and fires aboard supertankers; the peril from earthquakes because the tank farm soils would "liquefy"—move like jelly; the economic disaster for the City because it would reduce the potential for tourism, conventions, and in particular, stifle the revitalization of the downtown area of Long Beach; and the "visual blight" of the tall storage tanks to be located in the Port.²⁰⁷ By now, the issues were worn and polished so that debators knew their opponents' rebuttal as well as their own arguments.

As the referendum issue gathered momentum, the Long Beach branch of the League of Women Voters strongly urged SOHIO to agree to modifications of its lease with the Port to insure: cessation of tanker operations at first stage sulfur dioxide levels; assessing of penalties if operations were not conducted to insure minimum air quality impact; that air monitoring would be continuous; and that monthly monitoring data would be available to the public.²⁰⁸ This discourse continued until finally, in October, 1978, the Executive Committee of the Long Beach League of Women Voters voted unanimously to oppose the tanker terminal.²⁰⁹ This action dismayed SOHIO and the Port.²¹⁰

SOHIO recognized that the issues being raised by their opponents were significant. In order to conduct an effective campaign, SOHIO hired a professional campaign management firm to organize the referendum fight, and they also organized a citizens' group to work closely with the campaign firm in carrying out the election strategy.²¹¹ SOHIO was able to respond, often quite effectively, to the concerns raised by their opponents.²¹² They indicated that the air pollution associated with their project was not really a problem; but rather, because of the equipment that SOHIO would provide as part of the third-party trade-offs there would be an improvement in the air in Long Beach, that they had modern tankers equipped with the latest safety equipment so that transporting the oil would be done with minimum potential for oil spills; that the potential for explosions and fires would not be high because of the local, state, and federal requirements they would fulfill when constructing and operating their facilities; that the economic disaster to the city would not occur because the City of Long Beach traditionally was an oil town; that the earthquake peril indicated by the opponents was not a reality, since SOHIO would carry out an expensive multi-million dollar den-

207. SOHIO Supplemental EIR Vol. 5, Part 2 (Dec., 1977).

208. Correspondence and discussions between the Long Beach League of Women Voters and Port.

209. "Women's Voter League Opposes SOHIO," IPT Sept. 17, 1978.

210. Discussions between the staffs of SOHIO and the Port.

211. "SOHIO Hires Experts, Forms Citizens' Group in Terminal Campaign," IPT Sept. 13, 1978.

212. "SOHIO and Foes Duel for Long Beach Vote," L.A. Times, Oct. 8, 1978.

sification project to make sure the soils where the tanks would be constructed would not move like "jelly" in the event of a maximum credible earthquake.²¹³

As the issues were refined and the debates repetitive, it was clear that neither side had an absolute winning position. This view was substantiated by the fact that the Long Beach City Council took no official position on the SOHIO project, an effort which thwarted SOHIO's hope to gain City Hall support.²¹⁴ The "no position" posture stemmed primarily from the fact that the project would provide only marginal financial benefits to the City, as opposed to the Port, because the property tax limitation, popularly called Proposition 13, would reduce SOHIO's taxes from about \$1.4 million per year to just slightly over \$110,000 per year.²¹⁵ Although during the final days of the campaign individual councilmembers came out both in favor of and opposed to the project, there was no strong City Hall support.²¹⁶ City Hall was not alone, for various individuals within the city first supported and then urged a "no" vote, or pointed out the extreme problems associated with the project only to ultimately support it.²¹⁷ Although the concerns were clear, the information was not.

SOHIO recognized their peril if the referendum was defeated. It would be at least twelve months before a new ordinance could be considered by the Board of Harbor Commissioners, and the potential for another referendum still would exist.²¹⁸ Thus, SOHIO moved with tremendous effort to insure a victory at the polls. SOHIO committed about \$700,000 to the campaign while the opponents worked diligently to raise a "warchest" of just a little over \$10,000.²¹⁹

At the same time as the referendum story unfolded, other significant activities occurred which were noted in the press and thus available to the electorate. Among those events, key ones included the eruption of a disagreement between CARB and the Local District on the type of trade-offs which would be appropriate for the SOHIO project; the setting of a hearing on the acceptability of third-party trade-offs plus a postponement until early 1979; the denial by the Coastal Commission to add three tanks to the already approved project at the Port; the signing of an agreement between Southern California Edison and SOHIO to construct a scrubber at the Alamitos Bay electric generating plant; and the final decision of the Public Utilities Commission authorizing the abandonment of the natural gas line owned

213. "SOHIO Saga: Something for Everyone," IPT, Oct. 22, 1978.

214. "SOHIO Financial Impact 'Minimal,'" IPT, Oct. 11, 1978.

215. Report of City Manager to the City Council (Oct. 10, 1978).

216. "Mrs. Sato Backs SOHIO—First on Council To Do So," IPT, Oct. 28, 1978.

217. "New Study Cites Lung Pollution Peril in L.B.," IPT, Nov. 4, 1978.

218. *Supra* note 199.

219. "SOHIO Foes Outspent 48-1 in Campaign Against Oil Terminal," IPT, Oct. 27, 1978.

and operated by the Southern California Gas Company.²²⁰

The day before the election, many considered that SOHIO only had a fifty-fifty chance of getting voter approval. Extensive precinct-walking by local labor union members may have turned the tide.²²¹ SOHIO obtained a sixty-two percent approval vote, a victory that cleared away a dangerous obstacle in SOHIO's long march to obtain approval to build their project.²²²

0. POST ABANDONMENT FLURRY

When SOHIO announced on March 13, 1979, its decision to abandon the \$700 million project, which had been in planning and permitting stages for nearly five years, the decision was said to be irrevocable.²²³ The Chief Executive Officer of SOHIO said, "I don't see any reasonable prospect" of reviving the project.²²⁴ This announcement created concern across the country. Port officials were stunned, but soon indicated that they would do their best to "scrounge the world" for a replacement.²²⁵ Members of Congress immediately blamed California, in particular the Governor, for the "dragging of feet."²²⁶ California countered by requesting a full-scale federal investigation into the decision, and the Governor indicated that the "cancellation may be a carefully crafted publicity circuit" designed to "rail-road Congress into allowing them to sell oil to Japan."²²⁷ Locally, supporters were saddened and opponents were jubilant.

Almost immediately, the senior Senator from California attempted to revive the project by orchestrating a "Save the SOHIO Project" meeting.²²⁸ More than 20 representatives from various state and federal agencies attended a meeting in Los Angeles and it was concluded that the "door was not absolutely closed on proceeding with the project."²²⁹ On Tuesday, March 28, 1979, the scene shifted to Washington, where the Chief Executive Officer of SOHIO indicated that SOHIO would require changes in its agreement to spend eighty million dollars for a scrubber device.²³⁰ The Governor of California responded that such a request indicated that SOHIO "wants to welsh on a written contract" and that such a modification of the project would not be fair to the citizens of Long Beach since SOHIO prom-

220. *Supra* notes 58, 70, 93, 94 and 109.

221. Based on comments from a number of individuals who walked the precincts.

222. "SOHIO Oil Terminal Approved," IPT, Nov. 8, 1978.

223. "Why SOHIO Gave Up," IPT, Mar. 14, 1979.

224. *Id.*

225. "Port Officials to Seek New Terminal Backers," IPT, Mar. 20, 1979.

226. "Brown is Called 'Irresponsible' in SOHIO Actions," IPT, Mar. 15, 1979.

227. "Brown Asks U.S. Probe of SOHIO Pulout," IPT, Mar. 15, 1979.

228. "SOHIO Will Listen, Anyway," IPT, Mar. 18, 1979.

229. *Id.*

230. "SOHIO Terminal Appears Dead Once More," IPT, Mar. 28, 1979.

ised that "Long Beach voters would get cleaner air."²³¹ Later, SOHIO indicated that it would take a "miracle" to get the terminal built.²³² The most often repeated reason, however, was the unprecedented regulatory review and the potential for lengthy litigation.²³³

On May 24, 1979, the Board of Directors of SOHIO made a final determination that the project was no longer viable because there was an increasing demand on the West Coast for Alaskan oil, and the regulatory quagmire and potential for lengthy litigation could not be resolved by proposed legislation until February, 1980. Ironically, this announcement came on the same day that the Local District approved the project and CARB ratified the Local Districts' decision.²³⁴

Clearly, the SOHIO announcement was tragic evidence of the inability of our regulatory and legislative processes to achieve a timely decision—particularly when that decision is produced by an extensive and diverse series of regulatory constituencies.

V. LESSONS LEARNED

The institutions of American business are creaking from the overburden of a regulatory culture so enormous that in many instances it is virtually impossible to be responsive. It is a situation where the process has become supreme, and the product—a safe, efficient, economical, and environmentally-sound project—almost forgotten. Yet, our regulatory culture has been accepted by the public as an essential safeguard mechanism. Recent events, however, indicate that there is an increasing recognition of the inconsistencies, the frailty, and the demagoguery of the regulatory process. Thus, our regulatory culture still must be both fostered and reformed, because it is the only mechanism available to balance progress with planning and effective environmental preservation with efficiency. The challenge is to refine the process to achieve an appropriate balance between preservation and essential development. There is no longer room for confusion, conflict, hastily imposed rules and regulations, and development strategies aimed at vast profits or absolute conservation at any cost.

The review, analysis and related decisions associated with the SOHIO project clearly indicate that the present regulatory structure is overly complex, redundant, often inconsistent, mosaic, and accordingly, much less productive than desirable. Although the project is no longer viable, there are several lessons which illustrate the need for change in the regulatory

231. *Id.*

232. *Id.*

233. *Supra* notes 2, 3, 4, and 6.

234. *Supra* note 7.

process so that other important projects can be evaluated more effectively and appropriately. Some of the lessons learned include:

A. *OVERLAPPING JURISDICTION MUST BE DELETED*

Overlapping jurisdictions, where two or more agencies have similar responsibilities, must be deleted so that decisions are compatible. The initial denial of storage tanks near the SOHIO marine terminal is an excellent example, since locating the tanks elsewhere would have caused less coastal impacts but much greater air quality impacts. Since the regulatory process is like a mosaic—each agency only considering the project within the limits of its responsibilities—requirements must be established for integrated review by all concerned agencies as well as the evolution of a compatible decision process.

Where more than one state and the federal government are involved, the federal government should be the lead agency, with responsibility for coordinating all project review and complying with applicable federal and state laws; concerned state agencies should participate as responsible agencies. Where only one state and the federal government are involved, the state should be the lead agency with concerned federal agencies participating as responsible agencies. These processes would provide responsive review and still insure adequate opportunity to assess project impacts and related solutions.

In the case of SOHIO, a federal Environmental Impact Statement and a California Environmental Impact Report were prepared. The information in these two documents has a very high correlation, and preparation of both documents was an unnecessary expenditure of resources.

Where two agencies, with established or assumed powers, achieve alternative solutions to the same issue, the project proponent should not become the middle-man in the process. Government owes the public a fair decision based on clearly established legal and administrative processes. When such disputes arise, top governmental officials should be required to intervene immediately to achieve timely accommodation, or alternatively, if necessary, a short-term legal review process should be available (established).

B. *REGULATORY REQUIREMENTS MUST BE ESTABLISHED AT THE OUTSET*

The requirements for approval must be available for project proponents to review and understand at the initiation of a project. Such requirements must include the general and specific criteria to be used in making decisions. All agencies should have printed guidelines which stipulate project review criteria and processes. If this requirement is not established, agencies can continue to request information which, after review, serves as the

stimulus to request more information which, after review, serves as the stimulus to request more information, etc. The maze of reports and analyses regarding the air quality trade-offs for the SOHIO project is an excellent illustration of how agencies can prolong decisions using a "we need more information" approach.

Both the project proponent and the regulatory agency must have essential information available early in the review process. Regulatory staffs cannot be experts on the specific methodology or operational processes associated with *all* types of projects. Special studies prepared by the project proponent or regulatory agencies and their consultants must be made available at the start of the review process. An open approach between project proponent and the regulatory agency is a must for good decisions because it serves to educate all involved. The development of a State Agency Task Force for the SOHIO project is a good example of how this can work.

C. *DECISION-MAKERS MUST BE INVOLVED AT THE OUTSET*

When the decisions are discretionary, as opposed to ministerial, working only with the regulatory staff can be problematic. For complex projects, decision-makers must be involved very early in the review process. Otherwise, agreements with staff can be rejected during the final phases of review, causing frustration, delays, and additional opportunities for political maneuvering.

D. *BENEFITS AND COSTS MUST BE BALANCED*

Denial of a project simply because it does not conform to the expectations of a given group of regulators is not in the best interest of the public. Approval or denial of a project should be based on appropriate regulations plus a review of the benefits versus the costs of obtaining the benefits. Determining reasonable benefits is very complex. Regulatory efforts must be expanded so that effective guidelines for quantifying benefits versus costs are available. In the case of SOHIO, for example, it still is questionable that the air quality impacts from the project warranted spending eighty million dollars for third-party trade-offs.

Trade-offs, as a type of mitigation, are relatively new, and determining requirements and acceptability of specific trade-offs has been a game of: How much can we get? as opposed to: How much is necessary?—to mitigate the impact. Agencies which use trade-offs as mitigations must be required to establish guidelines and evaluation criteria so that project proponents know what is expected before initiating regulatory review. Such guidelines must be cross-checked between local, state and federal agencies to eliminate redundancy and the opportunity for conflicting criteria.

E. THE TIME LIMIT AND MODE FOR COMPLETING REGULATORY REVIEW SHOULD BE ESTABLISHED BY LAW

Most states and many federal agencies now must approve or deny a project within a specific time limit. However, there is no companion requirement that if denial is due to the expiration of a time limit that a factual finding providing the rationale for denial is entered into the public record. Agencies can delay a factual decision by getting the project proponent, on the threat of denial, to grant an extension of time. No agency should be able to deny a project just to comply with a stipulated time limit. There is no reason why appropriate information cannot be assembled in a manner allowing for timely, responsible review and decision. The procedures of the California Coastal Commission in this regard are good and should be emulated.

F. REGULATORY AGENCIES SHOULD BE REVIEWED FOR EFFECTIVENESS

Some regulatory agencies have functions which no longer are necessary or which, more appropriately, should be assumed by other agencies. There must be an effective process for eliminating unnecessary agencies and consolidating responsibilities to achieve effectiveness. Such a review must be accomplished with the assistance of both the private and public sectors. Corrective legislation at both the state and federal levels should be aggressively implemented.

G. PUBLIC PARTICIPATION CANNOT BE LIMITLESS

Public participation must continue, it must be available to all who are concerned; but it must not be open to vicarious efforts. Public participation can be destructive if unbridled. In the case of SOHIO, public participation was excessive because the regulatory process was grossly disorganized. In the future, the option for public participation must remain open, but unlimited participation must be reduced by new local, state and federal rules and procedures to only essential opportunities.

H. EXCESSIVE POLITICS AND REGULATORY PROCESSING DON'T MIX

The intent of the regulatory process is to regulate, not intimate. Regulators should be allowed to achieve their responsibilities, in accordance with a reasonable exercise of their jurisdictional power, without undue influence from political circles. Political processes should receive no more or no less opportunities than those afforded the public. The conflict between the California Air Resources Board and the Local District over what trade-offs would be best for the SOHIO project illustrates the kind of problem generated when political pressure is overbearing.

I. NO RISK IS THE GREATEST RISK OF ALL

We cannot cease to function—culturally and economically—because there is an associated risk. Lifestyle continues to be a very significant ingredient to all Americans and we cannot have a continual supply of affluent goods without taking some risks. Risk is commonplace on the highway, and when smoking, flying, eating and breathing. Procedures should be evolved so that risks are balanced, that is, when they outweigh the benefits, they are used to reject the project, and when they are less important than the benefits, the project is approved. Perhaps, the greatest risk to future generations is our propensity for no risk at all!

