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The Coalition To Protect America's National Parks

Voices of Experience

ELECTRONIC SUBMISSION – NO HARD COPY TO FOLLOW

June 22, 2018

Bureau of Safety and Environmental Enforcement
Attention: Regulations Development Branch
45600 Woodland Road, VAE-ORP
Sterling VA 20166

Subject: Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions
Regulation Identifier Number (RIN) 1014-AA39

Dear Bureau of Safety and Environmental Enforcement (BSEE):

I am writing to you on behalf of over 1,500 members of the Coalition to Protect America's National Parks (Coalition), a non-profit organization composed entirely of retired, former, or current employees of the National Park Service (NPS). The Coalition studies, educates, speaks, and acts for the preservation of America's National Park System (System). As a group, we collectively represent more than 35,000 years of experience managing and protecting America's most precious and important natural and historic places.

INTRODUCTION

Many of our members have worked in coastal and ocean parks, units of the National Park System that interface with marine waters along the shorelines of the United States. As a national park advocacy group, we are very concerned that BSEE's proposed revisions to the existing Blowout Preventer Systems and Well Control rule (hereafter "WCR") will increase the likelihood of major oil spills and may cause irreparable harm our nation's ocean and coastal parks, as well as to other coastal areas and resources. There are 67 units (parks) within the National Park System along the coasts of the Atlantic, Gulf of Mexico, Pacific, and Alaska. Collectively, these parks preserve over 10,000 miles of shoreline and nearly 2 million acres of marine waters. Americans love clean (i.e., oil-free) beaches and shorelines. In 2016 alone, the 67 parks received over 85 million visitors whose \$4.5 billion in spending supported 65,000 jobs in adjacent coastal communities. Sadly, history has proven there are significant risks to coastal parks and other coastal resources due to offshore oil spills.

BACKGROUND

The Department of the Interior's authority to regulate oil and gas activities on the outer continental shelf (OCS) is provided under the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C 1331 et seq., which was first enacted in 1953. The Act was substantially amended in 1978, when Congress established a National policy of making the OCS "available for expeditious and orderly development, subject to environmental safeguards (*emphasis added*), in a manner which is consistent with the maintenance of competition and other National needs."

As described on the BSEE website¹ Section 21(b) of the OCSLA Amendments of 1978 requires offshore oil and gas operators to use of the best available and safest technologies (BAST), as follows:

In exercising their respective responsibilities for the artificial islands, installations, and other devices referred to in section 4(a)(1) of this Act, the Secretary, and the Secretary of the Department in which the Coast Guard is operating, shall require, on all new drilling and production operations and, wherever practicable, on existing operations, the use of the best available and safest technologies which the Secretary determines to be economically feasible, wherever failure of equipment would have a significant effect on safety, health, or the environment (*emphasis added*), except where the Secretary determines that the incremental benefits are clearly insufficient to justify the incremental costs of utilizing such technologies.

Despite the Department of the Interior's longstanding oversight of OCS oil and gas development under OCSLA, disastrous oil spills have occurred off our nation's coasts; and some have severely damaged park resources. Such incidents include Santa Barbara Channel (1969), Exxon Valdez (1989), and Deepwater Horizon (2010). Members of the Coalition, during their NPS careers, worked on clean-up of the Exxon Valdez spill in Alaska and the Deepwater Horizon spill along the Gulf Coast; and we can speak from first-hand experience about the devastating effects of such oil spills on coastal parks, resources, communities, and economies.

In March 1989, the Exxon Valdez ran aground in Prince William Sound, spilling nearly 11 million gallons of oil along the Alaskan coastline, including national park sites such as Kenai Fjords, Katmai, Aniakchak, and Lake Clark. Recreation and tourism declined dramatically and resource managers were forced to limit hunting and fishing access because of the damage. Despite extensive cleanup efforts, oil remains on national park beaches to this day.

The 2010 Deepwater Horizon spill leaked more than 210 million gallons of oil into the Gulf of Mexico, contaminating miles of beaches, wetlands and ocean waters, and causing an estimated \$37 billion in damages. Gulf Islands National Seashore was affected, and the park is still recovering from the effects of the spill on plants, wildlife and archaeological resources. Thousands of birds, mammals, and sea turtles were plastered with leaked oil. According to a 2014 study, up to 800,000 birds were thought to have died. The brown pelican, recently delisted as an endangered species, was among the species most affected. A 2014 study projected that perhaps 12 percent of the brown pelicans and more than 30 percent of the laughing gulls in the area hit by the spill had been wiped out. In addition to the overwhelming resource impacts, the Deepwater Horizon spill caused many billions of dollars in economic losses and damages, affecting many of the industries upon which Gulf coast residents depended. At the peak of the spill, more than a third of federal waters in the gulf were closed to fishing due to fears of contamination. A moratorium on offshore drilling left an estimated 8,000 – 12,000 workers temporarily unemployed. And few travelers were willing to face the prospect of petroleum-sullied beaches, leaving those dependent on tourism struggling to supplement their incomes.

LESSONS LEARNED

The National Commission on the British Petroleum (BP) Deepwater Horizon Oil Spill and Offshore Drilling (Commission) was formed by the President Obama in May 2010 as an independent, nonpartisan entity directed to provide a thorough analysis and impartial judgment about the spill. The Commission's final report², issued in January 2011, referred to the Deepwater Horizon spill as "the worst environmental disaster America has ever faced." **The Commission attributed the spill to a lack of regulatory oversight by the government and**

¹ <https://www.bsee.gov/what-we-do/regulatory-safety-programs/statutory-requirements>

² http://www.iadc.org/archived-2014-osc-report/documents/DEEPWATER_ReporttothePresident_FINAL.pdf

negligence and time-saving shortcuts on the part of BP and its partners. The report included numerous recommendations for improving the safety and reducing the impacts of offshore oil and gas operations.

Among its findings, the Commission reported the “**absence of adequate safety culture in the offshore U.S. oil and gas industry**” (pp. 224). In addition to the three major incidents mentioned above, the report listed 79 other “loss of well control” incidents occurring in the Gulf of Mexico between 1999 and 2009 (pp. 226-227). The point is that oil spills and other “accidents” occurring during offshore oil and gas operations are NOT rare events and more spills and accidents are likely to occur in the future. Therefore, diligent and effective federal oversight is essential.

The industry was not the only target of criticism in the report. The Commission also found that “federal efforts to regulate the offshore oil and gas industry have suffered for years from competing purposes, pressure from political and industry interests (*emphasis added*), a deepening deficit of technical expertise, and severely inadequate resources available to the government agencies tasked with the leasing function and regulation” and given “the near certainty that the oil and gas industry will seek to expand into ever more challenging environments in the years ahead, a more comprehensive overhaul of both leasing and the regulatory policies and institutions used to oversee offshore activities is required” (p. 250). As a result, one of the key recommendations of the Commission (p.256) was that:

“Congress and the Department of the Interior should create an independent agency within the Department of the Interior with enforcement authority to oversee all aspects of offshore drilling safety (operational and occupational)”

In essence, the Commission found that the Interior Department’s oversight of offshore oil and gas operations was inadequate and the oil and gas industry has a safety culture problem and can not be expected to police itself. As a result, the Bureau of Safety and Environmental Enforcement (BSEE) was established by act of Congress on October 1, 2011. As described on its website³, BSEE’s mission is:

“to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement.”

As with the Interior Department, BSEE derives its authority primarily from OCSLA, 43 U.S.C. 1331-1356a. The 1953 Act authorized the Secretary of Interior to lease the OCS for mineral development and regulate oil and gas exploration, development, and production operations on the OCS. The Secretary has delegated authority to perform certain of these functions to BSEE. To carry out its responsibilities, BSEE regulates offshore oil and gas operations to enhance the safety of offshore exploration and development of oil and gas on the OCS and to ensure that those operations protect the environment and implement advancements in technology. BSEE also conducts onsite inspections to assure compliance with regulations, lease terms, and approved plans. In essence, the primary role of BSEE, your role, is that of risk management and environmental protection with regard to oil and gas operations on the outer continental shelf.

REGULATORY CHANGES AFTER DEEPWATER HORIZON

In the aftermath of the Deepwater Horizon incident in 2010, BSEE adopted several recommendations from multiple investigation teams in order to improve the safety of offshore operations. Subsequently, BSEE published the Blowout Preventer Systems and Well Control final rule⁴ (WCR) on April 29, 2016. The WCR

³<https://www.bsee.gov/who-we-are/about-us>

⁴ https://www.federalregister.gov/documents/2016/04/29/2016-08921/oil-and-gas-and-sulfur-operations-in-the-outer-continental-shelf-blowout-preventer-systems-and-well?utm_campaign=subscription%20mailing%20list&utm_medium=email&utm_source=federalregister.gov

consolidated the equipment and operational requirements for well control into one part of BSEE's regulations; enhanced blowout preventer (BOP), well design, and modified well-control requirements; and incorporated certain industry technical standards. Most of the original WCR provisions became effective on July 28, 2016.

As stated in the preamble to the 2016 final rule, “Based on BSEE's economic analysis of available data, this final rule will be cost-beneficial. The estimated overall cost of the rule (outside those costs that are part of the economic baseline) over 10 years will be exceeded by the time-savings benefits to the industry resulting from the revisions to the former requirements for BOP pressure testing frequency for workovers and decommissionings. In addition, the final rule will also produce benefits to society, both quantifiable and unquantifiable, by reducing the probability of well control incidents involving oil spills.”

A primary purpose of the 2016 WCR is to prevent future well-control incidents, including major incidents like the 2010 Deepwater Horizon catastrophe. At its core, the rule updated blowout preventer (BOP) requirements regarding a special assembly of heavy-duty valves, commonly called the BOP stack, installed on top of a well which can be closed to prevent high-pressure oil or gas from escaping (a blowout) from the well hole during drilling operations. In addition, as described on the BSEE website⁵, finalization of the 2016 WCR resulted in reforms that establish (phased in over time) the following items:

- (1) Incorporation of the latest industry standards that establish minimum baseline requirements for the design, manufacture, repair, and maintenance of blowout preventers,
- (2) Additional controls over the maintenance and repair of BOPs,
- (3) Use of dual shear rams in deepwater BOPs (API Standard 53),
- (4) Requirement that BOP systems include a technology that allows the drill pipe to be centered during shearing operations,
- (5) More rigorous third party certification of the shearing capability of BOPs,
- (6) Expanded accumulator capacity and operational capabilities for increased functionality,
- (7) Real-time monitoring capability for deepwater and high-temperature/high- pressure drilling activities,
- (8) Establishment by regulation of criteria for the testing and inspection of subsea well containment equipment,
- (9) Increased reporting of BOP failure data to BSEE and the Original Equipment Manufacturers (OEMs),
- (10) Sets expectations of what constitutes a safe drilling margin and allows for alternative safe drilling margins when justified, Requires the use of accepted engineering principles and establishes general performance criteria for drilling and completion equipment,
- (11) Requires the use of accepted engineering principles and establishes general performance criteria for drilling and completion equipment,
- (12) Establishes additional requirements for using remotely operated vehicles (ROV) to function certain components on the BOP stack,
- (13) Requires adequate centralization of casing cementing, and
- (14) Makes the testing frequency of BOPs used on workover and decommissioning operations the same as drilling operations.”

In general, since the Deepwater Horizon disaster there have been important improvements in safety standards and environmental protections related to OCS oil and gas operations. However, federal oversight of those operations by BSEE is still a work in progress, with considerable room for additional improvement. For example, in April 2016 the U.S. Chemical Safety and Hazard Investigation Board (AKA U.S. Chemical Safety Board or “CSB”) announced it had updated its investigation into the Deepwater Horizon disaster. In an April

⁵ <https://www.bsee.gov/guidance-and-regulations/regulations/well-control-rule>

13, 2016 statement, CSB found offshore risk management and regulatory oversight of OCS oil and gas development is still inadequate in the Gulf of Mexico. As described on the CSB website⁶ (*emphasis added to underlined sections*):

- Offshore regulatory changes made thus far do not do enough to place the onus on industry to reduce risk, nor do they sufficiently empower the regulator to proactively oversee industry's efforts to prevent another disaster like the Deepwater Horizon rig explosion and oil spill at the Macondo well in the Gulf of Mexico.
- The CSB's draft report found, "[A] culture of minimal regulatory compliance continues to exist in the Gulf of Mexico and risk reduction continues to prove elusive," six years after [Deepwater Horizon] the catastrophic April 20, 2010, event that killed 11 workers and caused the biggest oil spill in the history of offshore drilling. While the Macondo blowout occurred under the direction of Transocean and BP, it affected the oil and gas industry worldwide by demonstrating that high-hazard risk management continues to be a challenge in the offshore environment.
- A complex interplay of physical, operational, and organizational barriers failed that day, sending oil and gas from deep below the ocean floor onto the drilling rig, triggering explosions and ensuing fire that left 11 of the 126 workers dead and critically injured at least 17 others.
- "Offshore regulations in the U.S. have been moving toward a performance-based approach, but in order for the changes to be effective, there are key regulatory attributes BSEE needs to pursue," said CSB Chairperson Vanessa Allen Sutherland. "These include an adaptable oversight approach that continuously strives to reduce risk, proactive tools to evaluate and monitor safety performance, and meaningful worker participation. Successful safety and risk management will take a tripartite effort by industry, BSEE, and the workforce. Ultimately, this will require a culture shift for everyone."

While we realize you are undoubtedly familiar with the above information, we include it as context for our comments below.

GENERAL COMMENTS

We have a number of concerns about the proposed rule and believe portions of it are fundamentally inconsistent with the lessons learned from the Deepwater Horizon incident, as well as inconsistent with BSEE's primary mission.

1) Revising the rule now is not adequately justified – The current rule was developed through an extensive public review process in the aftermath of the Deepwater Horizon disaster and based, in part, on the National Commission's comprehensive report and recommendations. The new rule has been in effect only since July 28, 2016 (i.e., for less than 2 years). Yet, the preamble of the proposed rule states, "Since the time the Blowout Preventer Systems and Well Control regulations took effect, oil and natural gas operators have raised various concerns (*emphasis added*), and BSEE has identified issues during the implementation of the recent rulemaking. The concerns and issues involve certain regulatory provisions that impose undue burdens on oil and natural gas operators (*emphasis added*)." In other words, BSEE's explanation for revising the rule again now can be paraphrased as follows: "The existing rule is too burdensome for the oil and gas industry; and it contains some references to technical standards that have become dated."

The industry's "burden" to comply with safety requirements such as the WCR simply is NOT an adequate justification for the proposed revisions. Lest you forget, the Deepwater Horizon disaster was a HUGE burden on the American public. The industry's "burden" is NOT an acceptable explanation to the American public who expect BSEE to protect the people's interest, not the industry's interest. As plainly stated in the

⁶ <https://www.csb.gov/the-us-chemical-safety-boards-investigation-into-the-macondo-disaster-finds-offshore-risk-management-and-regulatory-oversight-still-inadequate-in-gulf-of-mexico/>

Commission's report, "**The oil and gas industry does NOT own the valuable energy resources located on the outer continental shelf, which belong to the American people and are managed by the federal government on their behalf**" (p.239). And as already stated, the Commission found an "**absence of adequate safety culture in the offshore U.S. oil and gas industry**" (p. 224).

As a result, there is a compelling need for effective federal regulatory oversight of an industry with a history of safety deficiencies. Such oversight is BSEE's moral and legal obligation. The 2016 regulation made great strides toward ensuring the adequacy of that oversight. Given the reasons for the 2016 rule in the aftermath of the Deepwater Horizon disaster, BSEE has now failed to explain or justify how the proposed changes to that rule would improve risk management and enhance environmental protection or why the changes are needed now. In fact, the proposed revisions appear to weaken the rule and would diminish BSEE's ability "to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement" as required by its mission.

In light of the 2016 CSB report referred to in the previous section, BSEE's apparent confidence in the advances of the OCS oil and gas industry safety and environmental protection programs is highly questionable. We are particularly concerned that the proposed rule follows on the heels of the recent proposal by the Bureau of Ocean Energy Management (BOEM) to significantly expand OCS oil and gas leasing to as much as 98% of the OCS; which in turn followed a previous BSEE proposed rule that would weaken OCS oil and gas production safety regulations.

All told, it is very evident that the Department of the Interior places greater importance on aggressively developing OCS oil and gas reserves than it does on the safety and conservation of those resources, which (as stated by the Deepwater Horizon Commission) "belong to the American people and are managed by the federal government on their behalf."

2) BSEE fails to disclose American Petroleum Institute's (API) role as a prominent lobbyist for the oil and gas industry – Early in the preamble of the proposed rule, under "Addresses," BSEE identifies the American Petroleum Institute (API)⁷ as a provider of "key industry standards, including a broad range of technical standards," including a variety of safety-related standards and that are incorporated into Federal regulations.

We acknowledge that as a major representative of the oil and gas industry API is entitled to express its opinion about the proposed rule, as is any other stakeholder. That said, BSEE should NOT give special deference to input from API or any other industry lobby group, and certainly should NOT adopt, without independent review, the standards API proposes. It is crystal clear that API's interest in OCS oil and gas development is fundamentally commercial and profit-motivated. According to API's own website (*emphasis added to underlined sections below*):

The American Petroleum Institute (API) is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API's more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. API's mission is to promote safety across the industry globally and to influence public policy in support of a strong, viable U.S. oil and natural gas industry. We speak for the oil and natural gas industry to the public, Congress and the Executive Branch, state governments and the media. We negotiate with regulatory agencies, represent the industry in legal proceedings, participate in coalitions and work in partnership with other associations to achieve our members' public policy goals.

⁷ <http://www.api.org/about>

According to ProPublica.org (see its *Nonprofit Explorer* website⁸), API is a 501(c)(6) nonprofit organization “created for the improvement of business conditions.” According to the IRS⁹, 501 (c)(6) organizations “may engage in an unlimited amount of lobbying, provided that the lobbying is related to the organization's exempt purpose.” According to API’s Form 990 for Fiscal Year ending December 31, 2015¹⁰ (the most recent and complete Form 990 available on the Propublica.org website), line 4a, “API speaks for the petroleum industry before Congress, the executive branch of government, state legislatures, and the news media. It negotiates with regulatory agencies, represents the industry in court and participates in coalitions – building the grassroots support that prods Congress, the White House and state legislators to act.” The same Form 990, Part IX Statement of Functional Expenses, line 11d, indicates API received over \$216 million in gross revenues and spent over \$11 million on lobbying in 2015. API’s level of political activity is substantial – in 2017 alone, API actively lobbied over 50 bills¹¹ in Congress!

In addition, API has been one of the leading proponents for expanding offshore oil and gas exploration and recently (June 6, 2018) launched a new coalition¹² “that aims to spread acceptance of drilling off the coasts of Virginia, North Carolina, South Carolina, Georgia and Florida.”

Let’s face it – API is a high profile, high caliber oil and gas industry association whose primary mission includes lobbying its government overseers (i.e., Congress and the Executive Branch) for favorable policy outcomes that benefit the industry and boost profits. Despite this obvious and significant conflict of interest, BSEE’s failure to identify API as an industry lobby group in the preamble is ethically questionable and profoundly indefensible. You should be transparent with the American public about API’s problematic role in the rulemaking; and take immediate and decisive steps to correct the appearance of a conflict of interest!

3) It is inappropriate and a clear conflict of interest for BSEE to adopt safety and operating “standards” prepared by API, a major oil and gas industry trade association and lobbying firm – Given the information provided in Comment # 2 above, we have multiple concerns about the role BSEE is allowing API to play in the regulatory process. Specifically, in the preamble Section C. Summary of Documents Incorporated by Reference, BSEE identifies a number of API “standards” that are incorporated by reference into the proposed rule. Note: The proposed rule also appropriately adopts some standards endorsed by credible third-party organizations such as the American National Standards Institute (ANSI) or the International Organization for Standardization (ISO).

It is reasonable and appropriate for industry representatives and operators to comment, as stakeholders, on proposed rules that would regulate their activities. It is also reasonable and appropriate for BSEE to require operators to submit operating, safety, and contingency plans that articulate how the operator would reliably comply with established standards and address safety concerns and contingencies. **HOWEVER, it is NOT appropriate and is a clear conflict of interest for BSEE to rely on the regulated industry to prepare numerous safety and operating standards that are incorporated into the regulations.**

We can think of no other federal regulatory agency that would consider having the regulated industry prepare the content (in this case the “standards”) of applicable regulations. It is an irresponsible and haphazard

⁸ <https://projects.propublica.org/nonprofits/organizations/130433430>

⁹ <https://www.irs.gov/pub/irs-tege/eotopic103.pdf>

¹⁰ https://pp-990.s3.amazonaws.com/2017_04_EO/13-0433430_990O_201512.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAI7C6X5GT42DHYZIA%2F20180517%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Date=20180517T204301Z&X-Amz-Expires=1800&X-Amz-SignedHeaders=host&X-Amz-Signature=85ebc3741280b82a2443469a5ecd23911fbaed89ae699c928f3ac52b60b147a4

¹¹ <https://www.opensecrets.org/lobby/clientbills.php?id=D000031493&year=2017>

¹² <http://thehill.com/policy/energy-environment/390974-major-oil-group-launches-new-coalition-to-promote-offshore-drilling>

approach that raises serious doubts about the competency and effectiveness of federal oversight. For example, we cannot imagine the U.S. Occupational Health & Safety Administration (OSHA) adopting numerous safety standards written by the industries that OSHA regulates; so why would it make sense for BSEE to do that?

We realize that BSEE is a relatively new regulatory agency, still finding its way in overseeing a diverse, complex industry that in many ways advances much more quickly than BSEE can keep up with. However, given the history of major offshore oil spills in this country (e.g., most recently Deepwater Horizon) and continuing concerns about the safety culture of the industry, we believe the environmental, economic, and social costs of oil spill disasters are far too high for BSEE to continue on its current path of relying on the industry to develop standards to be adopted as regulatory requirements. In brief, BSEE's approach lacks credibility.

We strongly recommend that BSEE establish a systematic process for standards development, similar to that used by OSHA¹³, which is widely recognized as one of the most effective and professional regulatory agencies in the federal government. OSHA's process, which is described fully at the referenced website, includes the following key elements that should be included in BSEE's standards development process:

- OSHA (*BSEE*) can begin standards-setting procedures on its own initiative, or in response to petitions from other parties
- If OSHA (*BSEE*) determines that a specific standard is needed, any of several advisory committees may be called upon to develop specific recommendations. There are two standing committees, and ad hoc committees may be appointed to examine special areas of concern to OSHA. (*Comment: BSEE could establish standing advisory committees with the National Academy of Engineering (NAE)¹⁴ or the Ocean Energy Safety Institute (OESI)¹⁵*).
- Recommendations for OSHA standards also may come from NIOSH, established by the Act as an agency of the Department of HHS (*Comment: Not sure BSEE has an equivalent sister agency.*)
- Once OSHA (*BSEE*) has developed plans to propose, amend or revoke a standard, it publishes these intentions in the Federal Register as a "Notice of Proposed Rulemaking," or often as an earlier "Advance Notice of Proposed Rulemaking."
- An "Advance Notice" is used, when necessary, to solicit information that can be used in drafting a proposal. The Notice of Proposed Rulemaking will include the terms of the new rule and provide a specific time (at least 30 days from the date of publication, usually 60 days or more) for the public to respond. (*Comment: In this case, BSEE should have issued an Advance Notice in order to obtain the information needed to prepare a better defined proposed rule. See Comment # 4 below.*)
- Under certain limited conditions, OSHA (*BSEE*) is authorized to set emergency temporary standards that take effect immediately and are in effect until superseded by a permanent standard. (*Comment: BSEE should define what the "limited conditions" would be for OCS oil and gas operations.*)
- Employers (*in in this case, OCS oil and gas operators*) may ask OSHA (*BSEE*) for a variance from a standard or regulation if they cannot fully comply by the effective date, due to shortages of materials, equipment or professional or technical personnel (i.e., temporary variances), or can prove their facilities or methods of operation provide employee protection "at least as effective" as that required by OSHA (*BSEE*). (These would be considered permanent variances.)
- A permanent variance (alternative to a particular requirement or standard) may be granted to employers (*operators*) who prove their conditions, practices, means, methods, operations, or processes provide a safe and healthful workplace as effectively as would compliance with the standard. In

¹³ https://www.osha.gov/OCIS/stand_dev.html

¹⁴ <https://www.nae.edu/About.aspx>

¹⁵ <http://oesi.tamu.edu/about-the-center/mission-and-objectives/>

making a [variance] determination, OSHA (*BSEE*) weighs the employer's (*operator's*) evidence and arranges a variance inspection and hearing where appropriate.

You will note that there is NOTHING in the above process steps that includes the industry writing its own standards for regulatory oversight – OSHA writes the standards or adopts suggested standards from credible sources such as its advisory committees or NIOSH.

We remind you of the essence of the Deepwater Horizon Commission causal findings for the catastrophic oil spill – inadequate Federal oversight of an industry that has an inadequate safety culture and cannot be expected to police itself. Given those findings as context for the current rulemaking, BSEE relying on “standards” prepared by API or any other oil and gas industry organization is indefensible and a clear conflict of interest – similar to asking the fox to write the rules for operating the henhouse. Because of this, **BSEE should NOT adopt any API-developed standards that are NOT also validated by a credible independent third party organization**, such as one of the following:

- American National Standards Institute (ANSI)¹⁶
- International Organization for Standardization (ISO)¹⁷

4) A number of sections of the proposed rule regarding “performance-based standards” are extremely vague. If BSEE did not know what the proposed standards should include, then it should have issued an Advance Notice of Proposed Rulemaking in order to obtain the information necessary to prepare a better defined proposed rule – BSEE mentions moving from “prescriptive standards” to “performance-based standards” in a number of sections of the proposed rule. Yet, BSEE has provided NO specifics about what those performance-based standards might be. Instead, BSEE requests that commenters provide suggestions as to what such standards might include. While we understand the thought process behind requesting such input, it is a very problematic approach at this stage of the rulemaking process because it ultimately may deny the public a reasonable opportunity to comment on a well-defined proposed rule before the rule is finalized.

Given this vagueness in numerous sections of the proposed rule, it would have been much more appropriate for BSEE to have issued an "Advance Notice of Proposed Rulemaking" to solicit information that could be used in drafting a more well-defined proposal regarding performance-based standards. Then, and only then, it would be appropriate to issue a proposed rule (i.e., Notice of Proposed Rulemaking). Such an approach would ensure the public has a reasonable opportunity to consider and comment on the details of the proposal. Regrettably, based on the current process, BSEE could conceivably issue a Final Rule containing specific requirements for “performance based standards” that the public has never seen nor had the chance to comment on. This approach is ill-conceived and will only invite legal challenge.

We strongly recommend that BSEE re-issue the Notice of Proposed Rulemaking with better defined descriptions of the performance-based standards BSEE is proposing. To do anything less would be a great disservice to the American public.

5) Preamble “Background” Section C. “Summary of Documents Incorporated by Reference” – As described, BSEE would incorporate by reference the following:

API Standard 53 – Blowout Prevention Equipment Systems for Drilling Wells. This standard provides requirements for the installation and testing of blowout prevention equipment systems whose primary functions are to confine well fluids to the wellbore, provide means to add fluid to the wellbore, and allow controlled volumes to be removed from the wellbore. Given that this is one of the most important sections of

¹⁶ https://www.ansi.org/about_ansi/overview/overview?menuid=1

¹⁷ <https://www.iso.org/about-us.html>

the WCR and API is one of the oil and gas industry's biggest lobbying groups, the appearance of a conflict of interest in adopting API Standard 53 "as is" is staggering. In order to have any credibility, BSEE really should seek independent third party validation of the Blowout Prevention Equipment Systems standard.

API Recommended Practice 17H – Remotely Operated Tools and Interfaces on Subsea Production Systems.
Same concern as above. BSEE should seek independent third party validation of the standard.

COMMENTS ABOUT SPECIFIC SECTIONS OF THE PROPOSED RULE

As described in the "Section-by-Section Discussion of Proposed Changes," BSEE is proposing to revise the following regulations:

Subpart A – General

Documents Incorporated by Reference (§ 250.198) – BSEE would revise various paragraphs within the rule to presumably update "standards" incorporated by reference, including a number of standards prepared by API. We have several "process" concerns about the proposal. First and foremost, BSEE is statutorily responsible for regulating the OCS oil and gas industry to ensure safety and reduce environmental risk. As we expressed previously, having the regulated entity (in this case API, which represents 625 members of the industry) prepare the standards they will be held to smacks of a serious conflict of interest and is fundamentally irresponsible.

The most practical way for BSEE to correct this is to have ANSI or ISO review and validate any/all standard(s) proposed by the industry; and/or to establish standing advisory committees (e.g., at NAE or OESI) to provide objective review and recommendations about proposed standards. This concern is fundamentally about credibility. It is clear that the proposed rule is being driven by a pro-industry, anti-government-oversight Administration. However, BSEE's mission demands that that the agency's OCS oil and gas operator requirements are credible and effective and consistently enforced!

BSEE identifies a number of API standards within this section that we believe should be reviewed and validated, if appropriate, by an independent third party organization, as described above. The standards mentioned that should be independently validated include:

- Paragraph (h)(63), which incorporates API Standard 53 – Blowout Prevention Equipment Systems for Drilling Wells
- paragraph (h)(78), which incorporates API Standard 65 – Part 2, Isolating Potential Flow Zones During Well Construction
- Paragraph (h)(94) to update the incorporation of API RP 17H to the second edition

In principle, we have no strong objection to BSEE updating, as needed, standards in Subpart H that have been superseded by newer versions of the same standards. However, we believe BSEE's approach to these updates is haphazard at best. BSEE should establish a more systematic approach that includes establishing a periodic review schedule (such as a 3-year or a 5-year schedule) for future evaluation and update of standards, as needed. This would improve certainty of timely review and replacement, if appropriate, of outdated standards.

We also believe, in general, that performance-based standards would be an improvement over prescriptive measures in most instances. They provide flexibility for an operator and regulator to meet a goal over a range of environmental and operational conditions, and have the bonus of being durable over time (i.e., standards don't change so much over time while ways to achieve them change more rapidly). Prescriptive measures can become stale. However, as described previously, the lack of specifics regarding possible performance-based standards is problematic in a proposed rule. There should have been an Advance Notice of Proposed Rulemaking to solicit the information needed to draft the proposed rule.

Subpart D – Oil and Gas Drilling Operations

What must my drilling prognosis include? (§ 250.414) – We are very concerned about BSEE’s proposal to possibly eliminate the 0.5 pound per gallon (ppg) drilling margin in order to establish some sort of vague “performance-based” or “situational” standard. As described in the preamble (*emphasis added to underlined sections*):

BSEE requests comment on replacing the 0.5 ppg standard with a more performance-based standard under which the approved safe drilling margin is established on a case-by-case basis for each well, based on data and analysis particular to that well, through the permitting process. BSEE also requests comment on potentially providing for a different drilling margin or multiple drilling margins that are specific to the conditions in which the wells are drilled, such as if the well is drilled in deep water or shallow water. BSEE further requests comment on whether removal of a specific reference to a 0.5 ppg standard from the regulation may be appropriate.

The lack of detail about what might be included in a performance-based standard is a prime example of our previously expressed concerns concern about the “vagueness” of the proposal. Soliciting such input in an Advance Notice of Proposed Rulemaking would have been appropriate; however, it is not appropriate in a proposed rule.

As context, BSEE should explain that “drilling mud” is the primary mechanism for well control; so mud weight is a key consideration. The current 0.5 ppg standard is a prescriptive requirement; but it only applies to the safety margin above the drilling mud weight, the latter being determined by the operator. In other words, there is more flexibility in the current standard than BSEE indicates. The operator determines the underlying drilling mud weight needed to generally control the well; while the current rule defines the safety margin. In addition, the current rule already includes a process to get an exception to the safety margin standard, when the operator can justify it; so we wonder why a revision of this section is necessary now.

To be clear, the 0.5 ppg drilling margin is a safety factor added on to an estimated mud weight necessary to control formation pressures. Fundamentally, the estimated mud weight, determined by the operator, is the most important piece of the puzzle, and the information that the regulator must be able to judge as reasonable in the permit application. The regulator (BSEE) is not defining the required mud weight, so, in effect, BSEE is leaving it up to the operator to estimate and provide the most important information anyway.

Given the importance of mud weight as the primary mechanism of well control, we recommend that BSEE retain a defined safety margin (such as 0.5 ppg), particularly for exploration wells. For development wells, the operator (and presumably BSEE) has more information to more precisely estimate required mud weights, thus possibly justifying a lower drilling margin. Lower mud weights may benefit the operator with faster drilling times and less expense for mud additives. There are also environmental benefits of less drilling time translating to fewer impacts (e.g., fewer emissions) and less waste generation.

What well casing and cementing requirements must I meet? (§ 250.420) – BSEE is proposing to incorporate by reference API Standard 65 – Part 2 in paragraph (a)(6) of this section for purposes of defining the standards governing centralization. As stated previously, any/all standards proposed solely by API should be reviewed and validated by a credible third party organization such as ANSI or ISO. Lacking that, BSEE’s proposal lacks credibility.

What must I do in certain cementing and casing situations? (§ 250.428) – BSEE is proposing to revise paragraph (c) to include the term “unplanned” when describing the lost returns that provide indications of an inadequate cement job. This revision would minimize the number of unnecessary revised permits submitted to

BSEE for approval. Current cementing practices utilize improved well modelling to identify and account for zones that may have anticipated losses. The rulemaking would also revise paragraph (d) to allow the preapproval of remedial cementing actions through a contingency plan within the original approved permit. BSEE has determined that allowing the professional engineer (PE) to certify the remedial cementing actions in the contingency plan within the original permit would help streamline the permitting process and reduce delays to remedial actions without compromising safety.

We believe the proposed approach is appropriate and have no major concerns about it. It makes sense to have a contingency plan, approved as part of the original permit, which describes remedial cementing actions in the event of a primary cement job failure. Lost returns are not uncommon; and the techniques for evaluating and remediating cement jobs are well proven. The cost of a second review and approval process on both the operator and regulator will not likely be justified by improved results or safety. We think the term “unplanned” should really be “unanticipated.”

Proposed revisions to / clarifications of various other Sections under Subpart D: We have no comments or concerns related to these changes.

Subpart E – Oil and Gas Well-Completion Operations: BSEE would make minimal revisions to a number of sections in Subpart E to update incorrect citations. These revisions are administrative in nature and ensure that the appropriate citations are correctly cross referenced. We have no comments or concerns related to these changes.

Subpart F – Oil and Gas Well-Workover Operations: BSEE is proposing a number of minor revisions and clarifications to several sections under Subpart F. We have no comments or concerns related to these changes.

Subpart G – Well Operations and Equipment:

When and how must I secure a well? (§ 250.720) – BSEE proposes to revise paragraph (a)(1) to add an impending National Weather Service-named tropical storm or hurricane to the list of example events that would interrupt operations and require notification. Furthermore, BSEE also proposes to add new paragraph (a)(3) to include provisions for testing the applicable BOP or lower marine riser package (LMRP) upon relatch according to § 250.734 paragraphs (b)(2) or (b)(3), respectively, and obtaining BSEE approval before resuming operations. We support these revisions.

Subpart G – Well Operations and Equipment. What are the real-time monitoring requirements (RTM)? (§ 250.724) – The rulemaking would “remove many of the prescriptive real-time monitoring (RTM) requirements and move towards a more performance-based approach. BSEE would still require the ability to gather and monitor real-time well data using an independent, automatic, and continuous monitoring system capable of recording, storing, and transmitting data for the BOP control system, the well's fluid handling system on the rig, and the well's downhole conditions with the bottom hole assembly tools (if any tools are installed).”

We are (again) concerned about the vagueness of this proposal, as there is no indication what the performance-based standards might be. In our view, RTM is one of the most important provisions in the WCR. There is a significant difference between current “prescriptive real-time monitoring requirements” (which clearly state how the monitoring data should be obtained and used) vs. the proposed “having the ability to monitor” (which apparently leaves many details of how to do it up to the operator).

We generally prefer performance-based standards over prescriptive measures, as long as the basis for the performance-based standards is clear; however, such clarity is absent in this case. As described, it sounds like BSEE is proposing to eliminate standardization of the RTM requirement, but it is not clear what BSEE is

proposing to replacement it with. For the reasons stated previously, we believe it would have been more appropriate for BSEE to solicit input on this issue via an Advance Notice of Proposed Rulemaking, so that the Proposed Rule itself would contain a sufficient description of what is being proposed.

That said, to a certain degree, the consistency provided by prescriptive standards is good and necessary to ensure reliable implementation of certain aspects of the RTM requirement. For example, it is critical that BSEE have relatively prescriptive record keeping requirements for distribution and retention of RTM data/records. In the unfortunate event of a blow-out or spill, such information will be critical to determining root causes of the incident (such as sources of equipment failure, operator negligence, etc.), as well as appropriate corrective actions. Aside from record-keeping requirements, performance-based standards, if better defined for the other aspects of RTM, may be appropriate and could provide beneficial flexibility for the operator and regulator to meet a goal over a range of environmental and operational conditions.

What are the general requirements for Blowout Preventer (BOP) systems and system components?

(§ 250.730) – This rulemaking would also revise the failure reporting requirements (i.e., the specific timeframes required) in paragraph (c) to codify BSEE guidance and current practice. It would eliminate references to ANSI/API Specs 6A and 16A and adopt API Standard 53. BSEE...determined that certain operations would not be able to meet the original timeframes. For example, the current WCR requires that an investigation and failure analysis be performed within 120 days of the incident; BSEE proposes to require that the investigation and failure analysis be started within 120 days of the failure. BSEE would then provide an additional 120 day timeframe to complete the investigation and failure analysis.

We again express concern about BSEE adopting a standard prepared solely by API, a major oil and gas industry trade association and lobbying organization. All such standards submitted by the industry should also be endorsed by ANSI or ISO. Regarding failure reporting and investigation requirements, reporting failures (to BSEE) should occur as soon as practicable, preferably immediately. For conducting an investigation and failure analysis, it would make more sense to provide a required time “from the time equipment first becomes available for testing” and not from the time of the incident. There should be the option for the operator to request an extended time (if justified); and BSEE to require an accelerated time frame (if warranted by the circumstances). The failure analysis should NOT be tied to continuing well operations. Continuing well operations should be contingent on replacing failed equipment with equipment that meets defined requirements.

What are the BSEE-approved verification organization (BAVO) requirements for BOP systems and system components? (§ 250.732) – BSEE proposes to completely revise this section by removing all

references to a BAVO and, where appropriate, replacing those references with an independent third party. This change would also be made in appropriate locations throughout subpart G where BAVOs are referenced, as noted throughout the applicable section-by-section discussions. With the removal of the BAVO references, BSEE is also proposing to remove the mechanical integrity assessment (MIA) report requirements from paragraph (d). This MIA report was a function of the BAVO. Based on discussions regarding the MIA report after publication of the original WCR, BSEE determined that the information contained within the MIA report was redundant with the BOP equipment capability verifications required by § 250.731.

The proposed approach seems to be a reasonable and appropriate correction to a component of the existing rule that wasn't working. In essence, the proposal simplifies the rule and eliminates redundancy. That said, in the absence of the BAVO and MIA report requirements, it is critical that BSEE ensure strict compliance with ALL third party certification requirements, including the BOP equipment capability verifications required by § 250.731.

III. Additional Comments Solicited A. BOP Testing Frequency – BSEE is requesting comments on whether the BOP testing interval should be 7 days, 14 days, or 21 days for all types of operations including drilling, completions, workovers, and decommissioning.

We believe there should be a minimum prescribed testing frequency for ALL well control equipment; however, we do not have a specific suggestion for what that frequency should be. As we understand it, the proper frequency may vary for different equipment subject to different conditions. As a result, we recommend that BSEE defer on revising this section of the rule and seek input from an advisory committee as to what a reasonable and prudent standard would be.

CLOSING COMMENT

As described above, we have a number of significant concerns about the proposed rule including the following:

- BSEE has not provided adequate rationale for updating the rule now, less than two years after it was issued, particularly considering the key findings of the Deepwater Horizon Commission regarding the safety culture of the offshore oil and gas industry. Those findings have recently been reinforced as still a concern in a 2016 report by the Chemical Safety Board
- BSEE allows a major industry lobbying organization (API) to play an inappropriately prominent role in developing standards for the rulemaking. This constitutes a clear conflict of interest, particularly in light of API's recent well-publicized initiative to expand offshore drilling
- BSEE proposes to change a number of “prescriptive standards” to “performance-based standards”; yet the proposed rule is overly vague with regard to what would or should be included in such performance-based standards. In order to acquire the information needed to describe those standards in the proposed rule, BSEE should have issued an Advance Notice of Proposed Rulemaking to solicit such information
- BSEE needs to develop a much more systematic process for developing standards in the future, similar to the process used by OSHA
- There are some aspects of the proposed rule that we find acceptable, such as updating standards adopted by reference with newer versions of the same standard and reducing redundancy in some reporting requirements

For these reasons, we urge BSEE to NOT issue a final rule based on the current proposal – it is too vague, ill-conceived, and likely to invite legal challenge. Instead, we strongly encourage BSEE to use the information received during this public comment period to develop a more well thought out proposed rule; then re-issue it for additional public comment before finalizing the rule.

In closing, we appreciate the opportunity to comment on this important issue.

Sincerely,



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