

**Attorneys General of Maryland, Connecticut, Maine,  
Massachusetts, New York, and North Carolina**

November 14, 2022

Kevin M. Sligh Sr.  
Director, Bureau of Safety and Environmental Enforcement  
Attention: Regulations and Standards Branch  
45600 Woodland Road, VAE-ORP  
Sterling, VA 20166

Re: Docket ID Nos. BSEE-2022-0009; EEEE500000 223E1700D2 ET1SF0000.EAQ000  
Oil and Gas and Sulfur Operations in the Outer Continental Shelf—  
Blowout Preventer Systems and Well Control Revisions

Dear Director Sligh:

The Attorneys General of Maryland, Connecticut, Massachusetts, Maine, New York, and North Carolina appreciate this opportunity to comment on the Bureau of Safety and Environmental Enforcement’s (“BSEE”) proposed revisions to the Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Blowout Preventer Systems and Well Control regulations (the “Well Control Rule” or “WCR”) proposed in the above-mentioned docket.<sup>1</sup> We appreciate BSEE’s efforts to strengthen the WCR’s protections, including by restoring requirements adopted in 2016 but weakened or abandoned in 2019. We urge BSEE to continue identifying respects in which the WCR can be strengthened to further reduce the dangers of catastrophic spills.

To begin, we believe it is critical to reduce reliance on offshore oil and gas production as much as possible, for two principal reasons. *First*, dramatic greenhouse gas emissions reductions are essential if we are to avert the worst aspects of climate change. Even under a “very low” emissions scenario analyzed by the Intergovernmental Panel on Climate Change, long-term global temperatures are very likely to exceed 1850-1900 levels by 1.0 to 1.8 °C.<sup>2</sup> To have an even chance of limiting warming to 1.5 °C without overshoot, we must achieve net zero global

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<sup>1</sup> Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions, 87 Fed. Reg. 56,354 (Sept. 14, 2022) (“Proposed WCR Revisions”).

<sup>2</sup> Intergovernmental Panel on Climate Change, Sixth Assessment Report, Climate Change 2021: The Physical Science Basis, Summary for Policymakers, at 14 (2021), [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf).

carbon dioxide emissions by 2050.<sup>3</sup> Oil and gas production from the Outer Continental Shelf (“OCS”) undermines our ability to achieve these goals.

*Second*, although the risks of spills from OCS oil and gas activities can be reduced, they can never be eliminated. The Bureau of Ocean Energy Management has recognized that spills are inevitable, and that the only question is their extent.<sup>4</sup> And for catastrophic spills—events whose risk is difficult to quantify, but certainly is not zero—the consequences are devastating. The 2010 *Deepwater Horizon* disaster, for instance, caused the release of oil covering over 43,300 square miles of the Gulf of Mexico—an area about the size of Virginia—and 1,300 miles of shoreline. The environmental and socioeconomic harms were staggering, with severe effects on the entire Gulf economy, including the drilling, fishing, recreation, and tourism industries, not to mention wildlife, wetlands, and other aspects of the natural environment. The spill’s natural resource damages alone were valued at \$17.2 billion.<sup>5</sup> Its consequences persist even today.<sup>6</sup>

Nonetheless, we recognize that offshore oil and gas drilling and production continue under leases that remain in effect. We further recognize that some amount of new offshore oil and gas leasing may occur as a result of the Inflation Reduction Act, including certain preconditions that the Act attaches to offshore wind leasing.<sup>7</sup> For that reason, we believe that the

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<sup>3</sup> International Energy Agency, *Net Zero by 2050: A Roadmap for the Global Energy Sector*, at 47 (May 2021); Executive Order No. 14,008, *Tackling the Climate Crisis at Home and Abroad* § 101 (Jan. 27, 2021), 86 Fed. Reg. 7619; U.S. Dep’t of State and U.S. Executive Office of the President, *The Long-Term Strategy of the United States: Pathways to Net-Zero Greenhouse Gas Emissions by 2050*, at 3 (Nov. 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/10/US-Long-Term-Strategy.pdf>; see Bureau of Ocean and Energy Management, *2023-2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program*, at 3 (July 2022), [https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/2023-2028\\_Proposed%20Program\\_July2022.pdf](https://www.boem.gov/sites/default/files/documents/oil-gas-energy/national-program/2023-2028_Proposed%20Program_July2022.pdf) (“According to the International Energy Agency, a roadmap to net-zero emissions by 2050 for the global energy sector would require no new investment in fossil fuel supply projects.”).

<sup>4</sup> See, e.g., *id.* at 5-25 to 5-26.

<sup>5</sup> Richard C. Bishop et al., *Putting a Value on Injuries to Natural Assets: The BP Oil Spill*, *Science* 253 (Apr. 21, 2017).

<sup>6</sup> See, e.g., Charles Digges, Bellona Foundation, *Ten Years After the Deepwater Horizon, New Spills Seem Imminent*, <https://bellona.org/news/fossil-fuels/2020-04-ten-years-after-the-deepwater-horizon-new-spills-seem-imminent> (Apr. 24, 2020) (describing lingering fish contamination and effects on human health, and noting that the spill had reached as far as the southern tip of Florida).

<sup>7</sup> See Inflation Reduction Act § 50264.

protections put in place by the Well Control Rule in 2016 remain vital,<sup>8</sup> and that the rollbacks effectuated by the previous Administration in 2019 remain reckless.<sup>9</sup>

We are therefore heartened that BSEE is revisiting aspects of the WCR, including provisions that BSEE weakened in 2019, and we generally support the revisions that BSEE is proposing in this rulemaking. The fact that BSEE is revisiting only certain aspects of the WCR in this rulemaking—and not, for instance, all of the 2019 rollbacks—should not preclude BSEE from revisiting others in the future. Indeed, we urge BSEE to continue to strengthen the WCR, whether by remedying deficiencies noted previously or by responding to technological or other developments.

Our comments regarding the specific revisions proposed in this rulemaking are below.

*Closing and sealing wellbore:* The WCR currently provides that a blowout preventer (“BOP”) “system must be capable of closing and sealing the wellbore in the event of flow due to a kick, including under anticipated flowing conditions for the specific well conditions.”<sup>10</sup> BSEE has proposed to amend the rule to provide that the “BOP system must be capable of closing and sealing the wellbore at all times to the well’s maximum kick tolerance design limits,” and has indicated that this amendment reflects a clarification consistent with the intent of the 2016 WCR.<sup>11</sup> We appreciate BSEE’s proposed restoration of the “at all times” language promulgated in the 2016 WCR but urge BSEE to define “maximum kick tolerance design limits” in a manner that ensures protection against blowouts.

*Failure reporting:* Whereas the WCR currently permits well operators to report failures to a third party, BSEE has proposed to require operators to report failures directly to the agency.<sup>12</sup> This revision sensibly ensures that failure reports reach BSEE in a timelier manner, so that the agency can respond more promptly. The proposed revision also improves the rule by shortening the time for operators to begin failure investigations.

*Independent third parties:* BSEE has proposed to bolster safeguards associated with operators’ use of “independent third parties” to conduct certain verifications, certifications, and inspections in connection with BOP systems. We support the proposed addition of a requirement that an independent third party be accredited by a “qualified standards development

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<sup>8</sup> Oil and Gas Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control, 81 Fed. Reg. 25,888 (Apr. 29, 2016).

<sup>9</sup> See Comments of Attorneys General of Maryland, Connecticut, Maine, Massachusetts, New Jersey, New York, North Carolina, Oregon, Virginia, and Washington on Oil and Gas Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions (Aug. 6, 2018) (“2018 AG Comments”).

<sup>10</sup> 30 C.F.R. § 250.730(a).

<sup>11</sup> Proposed WCR Revisions, 87 Fed. Reg. at 56,355-56.

<sup>12</sup> *Id.* at 56,356-57.

organization,” as well as a provision allowing BSEE to review an independent third party’s credentials and qualifications to ensure that the independent third party is capable of performing its responsibilities.<sup>13</sup> We urge BSEE to define “qualified standards development organization,” however, in a manner that ensures the third party’s independence, and we reiterate our offices’ earlier-expressed concerns about the use of “independent third parties” in place of the “BSEE Approved Verification Organizations” envisioned by the 2016 WCR.<sup>14</sup>

*Dual shear rams:* The WCR currently requires the use of dual shear rams only at new floating production facilities. We support BSEE’s proposal to require dual shear rams to be installed whenever the BOP stack is replaced, even if the production facility is not itself new, as dual shear rams increase safety in the event of a loss of well control.<sup>15</sup>

*Capability of remotely operated vehicles:* BSEE has proposed to restore the 2016 WCR’s requirement that a remotely operated vehicle used in a subsea BOP stack be able to open (not just close) “each shear ram, ram locks, [and] one pipe ram.”<sup>16</sup> This revision would appropriately help ensure that closed rams do not impede repairs or other interventions following a loss of well control.

*Provision of test results to BSEE:* BSEE has proposed to restore the 2016 WCR’s requirement that operators provide BSEE with certain BOP test results within 72 hours if BSEE cannot witness the tests.<sup>17</sup> We support this revision, as it ensures that BSEE will have prompt access to testing results without having to request them.

We thank BSEE for the opportunity to submit these comments, and we urge BSEE to continue strengthening the Well Control Rule’s protections.

Respectfully submitted,



Brian E. Frosh  
Attorney General of Maryland

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<sup>13</sup> *Id.* at 56,357.

<sup>14</sup> *See* 2016 WCR, 81 Fed. Reg. at 25,948 (explaining that “approval of verification organizations by BSEE will ensure that the BAVOs are independent of the parties whose crucial equipment and processes BAVOs will review and evaluate”); 2018 AG Comments at 10-11 (expressing concerns about whether “independent third parties” are truly independent and qualified).

<sup>15</sup> Proposed WCR Revisions, 87 Fed. Reg. at 56,357-58.

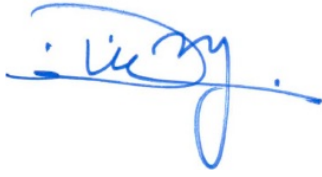
<sup>16</sup> *Id.* at 56,358-59, 56,364.

<sup>17</sup> *Id.* at 56,359.

Director Kevin M. Sligh Sr.

November 14, 2022

Page 5



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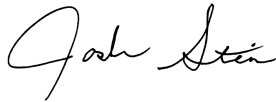
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