March 6, 2019

The Honorable Raul M. Grijalva
Chairman
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Grijalva:

I write in regards to your letter dated February 26, 2019, whereby you requested information regarding requests for approvals of departures, variances, or alternate compliance from the Bureau of Safety and Environmental Enforcement (BSEE) regulations from January 2015 to February 2019. I understand that your request has been acknowledged and is currently being reviewed for purposes of response. In the meantime, I am writing to you to correct inaccuracies in a February 25, 2019 Politico article that was referenced in your letter.

BSEE is the lead federal agency charged with promoting safety and ensuring environmental protection related to offshore energy exploration and development on the Outer Continental Shelf (OCS). We fulfill this mission through vigorous regulatory oversight and enforcement while encouraging industry to seek more efficient and effective means to achieve those goals as they develop and produce America’s energy resources. The article painted a picture of our agency that is contrary to its mission, grossly misrepresents the facts, and would no doubt be confusing to a reader unfamiliar with the long-standing practices of the agency.

First, for the purposes of engaging in a fruitful dialogue, it is important to use the correct terminology. Contrary to the news report in Politico, zero “waivers” have been granted by BSEE in the current or previous administration regarding the 2016 Well Control Rule. BSEE has not granted departures from the Well Control Rule regulations. Since 1988, the federal regulations related to the development of the Nation’s offshore energy resources have allowed operators, based on BSEE review and approval, to use alternate procedures or equipment (sometimes informally referred to as “alternate compliance”), provided they “meet a level of safety and environmental protection that equals or surpasses current BSEE regulations.” 30 C.F.R. § 250.141. When an operator makes this demonstration and obtains BSEE approval of its alternate procedures or equipment, it is complying with the regulations.
Second, despite news coverage, it is important to note that both the current and previous administrations granted alternate procedure or equipment requests during the research request timeframe. The coverage wrongly attributed all alternate procedure or equipment approvals only to the current administration. These inaccuracies have been repeated by several media outlets and blogs, namely *West Side Story*, *Union of Concerned Scientists*, and *Daily Caller*. Our public affairs staff is proactively working to address the misinformation.

Third, the engineering review process for granting the use of alternate procedures or equipment has not changed from the previous administration to the current administration. BSEE’s technical staff critically review each request of this nature to verify that the proposed alternate procedures or equipment meet or exceed the level of safety and environmental protection required in the regulations.

What has changed is the pace of alternate procedures or equipment approvals granted by the current administration compared to the previous administration during the research request timeframe. The facts, as shown in the attached charts and tables, demonstrate that the previous administration granted approvals at a higher rate on a per day and per permit basis:

- The rate of alternate procedures or equipment approvals per day was 79% higher during the previous administration as compared to the current administration during the research request timeframe (8/1/2016 – 3/22/2018).
- The rate of alternate procedures or equipment approvals per permit was twice as high under the previous administration as compared to the current administration during the research request timeframe (8/1/2016 – 3/22/2018).

Finally, I understand that former Director Brian Salerno testified before the Senate Committee on Energy and Natural Resources regarding development of the Well Control Rule and the application of these specific provisions. Prior to the Rule’s effective date (July 28, 2016), on July 25, 2016, BSEE issued a Bureau Interim Directive on implementation of the Well Control Rule, signed by the former director (attached). This Directive included as part of the policy discussion the use of departures and alternate procedures or equipment. A Memo listing standards and regulatory provisions for which departures should be granted as instructed by the former director was issued on the same date (attached).

We appreciate your interest in BSEE’s work to ensure safe and environmentally responsible operations on the OCS. We believe this letter provides important background on the long-standing regulatory provisions and agency decisions at issue. It is a matter of utmost importance that the public is provided the complete and true story.
We are also providing a copy of this letter to Reps. Rob Bishop, Alan Lowenthal, and Paul Gosar.

Sincerely,

Lars Herbst
Regional Director, Gulf of Mexico OCS

Attachments (4)

cc: Rep. Rob Bishop, Ranking Member, Committee on Natural Resources
    Rep. Alan Lowenthal, Chairman, Subcommittee on Energy and Mineral Resources
    Rep. Paul Gosar, Ranking Member, Subcommittee on Energy and Mineral Resources
Comparison of Alternate Procedure or Equipment Approvals Granted by Each Administration within the Research Request Timeframe

Number of Days during the Research Request Timeframe
8/1/2016 – 3/22/2016

Alternate Procedure or Equipment Approvals in each Administration during the Research Request Timeframe

Previous Administration
28.7%
172 days

Current Administration
71.3%
427 days

Previous Administration
41.9%
692 AP/E granted

Current Administration
58.1%
960 AP/E granted
**Comparison of Alternate Procedure or Equipment Approvals¹ to Number of Days Within the Research Request Timeframe (8/1/2016 – 3/22/2018)**

<table>
<thead>
<tr>
<th></th>
<th>Previous administration (8/1/2016 – 1/19/2017)</th>
<th>Current administration (1/20/2017 – 3/22/2018)</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Alternate procedure or equipment approvals¹</td>
<td>692</td>
<td>960</td>
</tr>
<tr>
<td># of Days during Research Request Timeframe</td>
<td>172</td>
<td>427</td>
</tr>
<tr>
<td>Rate of Alternate procedure or equipment approvals¹ per Day during Research Request Timeframe</td>
<td>4.02</td>
<td>2.24</td>
</tr>
</tbody>
</table>

The rate of Alternate procedure or equipment approvals¹ per day was 79% higher during the previous administration as compared to the current administration during the research request timeframe. (8/1/2016 – 3/22/2018)

**Comparison of Alternate Procedure or Equipment Approvals¹ to Number of Permits² Approved Within the Research Request Timeframe (8/1/2016 – 3/22/2018)**

<table>
<thead>
<tr>
<th></th>
<th>Previous administration (8/1/2016 – 1/19/2017)</th>
<th>Current administration (1/20/2017 – 3/22/2018)</th>
</tr>
</thead>
<tbody>
<tr>
<td># of Alternate procedure or equipment approvals¹ during Research Request Timeframe</td>
<td>692</td>
<td>960</td>
</tr>
<tr>
<td># of Permits² Approved during Research Request Timeframe</td>
<td>342</td>
<td>942</td>
</tr>
<tr>
<td>Rate of Alternate procedure or equipment approvals¹ per Permit² during Research Request Timeframe</td>
<td>2.02</td>
<td>1.01</td>
</tr>
</tbody>
</table>

The rate of Alternate Procedure or Equipment approvals¹ per permit was twice as high under the previous administration as compared to the current administration during the research request timeframe. (8/1/2016 – 3/22/2018)

¹ As found in 30 CFR §250.141, “You may use alternate procedures or equipment after receiving approval as described in this section. (a) Any alternate procedures or equipment that you propose to use must provide a level of safety and environmental protection that equals or surpasses current BSEE requirements. (b) You must receive the District Manager’s or Regional Supervisor’s written approval before you can use alternate procedures or equipment. (c) To receive approval, you must either submit information or give an oral presentation to the appropriate Regional Supervisor. Your presentation must describe the site-specific application(s), performance characteristics, and safety features of the proposed procedure or equipment.”

² Permits- (what was counted for response) Six types of well permits are reflected in the number count of permits approved. These include: new well permit, bypass permit, sidetrack permit, revised well permit, revised bypass permit, and revised sidetrack well permit.
Bureau Interim Directive

BID No: 2016-022N

Series: Program Series

To: All BSEE Employees

Approving Official: Director, Bureau of Safety and Environmental Enforcement (BSEE)

Office(s) of Primary Responsibility: Office of Offshore Regulatory Programs

Effective Date: July 25, 2016

Title: Implementation of Well Control Rule

Purpose and Background
The Blowout Preventer Systems and Well Control Rule (Well Control Rule, or Rule), which was published April 29, 2016, contains requirements that focus on blowout prevention and well control, including incorporation of industry standards and revision of existing regulations. The rule also adopts reforms in the areas of well design, casing, cementing, real-time monitoring, and subsea containment. These requirements are phased in over a period of years beginning July 28, 2016.

Due to the comprehensive nature of this rule, BSEE has been issuing guidance and interpretations related to compliance and verification issues. Nevertheless, we can reasonably expect that departures or other relief to operators may be needed to address issues that are lease specific or which were not clearly addressed in the final rulemaking.

This BID defines the general principles that should be applied by BSEE staff when discretionary decisions related to the implementation of the Well Control Rule are required. This includes reviews of permit applications, departure and alternate compliance requests, and requests for interpretations of the regulations. The BID provides internal guidance and direction to BSEE staff and defines the overall goals of the Bureau in ensuring the timely and effective implementation of the rule during the initial period of the rule being in effect.

Policy
Implementation of the Well Control Rule should be guided by the following:
• Interpretations and application of regulations should be done in a manner that provides consistency across the Bureau and reflects input from the appropriate program and regional/district personnel. Decisions and guidance provided to external sources should be documented to ensure that the rationale for the decision is preserved.

• The overall objective during the implementation period is to ensure that new requirements are phased-in in a safe and timely manner without unreasonable disruptions or unintended safety consequences.

• Where regulatory discretion is available, decisions involving permits, departures, and alternate compliance should be based on a reasonable assessment of the risk to safety or the environment. For example, if existing equipment is in substantial conformance with new requirements, the granting of a departure for a limited period of time to bring the equipment into full compliance should be granted unless there are obvious safety concerns. To assist in this process, the Chief of the Office of Offshore Regulatory Programs will be responsible for issuing to the regional offices an initial list of provisions within the regulations and incorporated standards for which a departure request should be granted for a short period of time.

• BSEE personnel are expected to exercise their best professional judgment when reviewing plans, permits and departure/alternate compliance requests to determine whether the operator has submitted sufficient documentation to reasonably demonstrate that the activity can be performed safely and is consistent with the overall regulatory objectives. The resources in the Engineering Technology Assessment Center in Houston can be used to provide additional support to address unique technical issues if needed.

• The Well Control Rule consists of both prescriptive and performance based provisions. These requirements range from general duty obligations related to operating safely and minimizing risks to detailed equipment specifications. It is the operators' and contractors' responsibility to comply with all regulatory requirements and permit conditions and to have proper documentation available to demonstrate that all criteria are satisfied. BSEE retains the authority to request evidence of compliance with specific provisions at any time. However, it is not the expectation of the Bureau that permit reviewers or inspectors affirmatively verify during a permit or field inspection review that the proposed activity is in complete compliance with every potential regulatory obligation, especially those involving performance requirements or technical standards. Compliance with these obligations remains the responsibility of the operator. Specific examples related to the Well Control Rule implementation include:
➢ Section 250.730(a), which requires that a BOP system be capable of closing and sealing a well under anticipated flowing conditions. BSEE engineers or field inspectors will not be responsible for verifying the anticipated flowing conditions of the well,

➢ Section 250.107(a)(3), which imposes the general obligations on the industry to reduce risks to the lowest practicable level using recognized engineering practices, and

➢ Section 250.198 and other related sections that require equipment and practices to meet specific industry standards.

Specific guidance related to the application of these provisions will be issued at a later time.

Responsibilities
1. Bureau Director: The Bureau Director is responsible for approving significant policy actions involving implementation and enforcement of the Well Control Rule.

2. Chief, Office of Offshore Regulatory Programs (OORP): The Chief of OORP is responsible for issuing national interpretations and guidance in collaboration with the Regional Directors, Solicitor’s Office, and Director when appropriate.

3. Regional Directors: The Regional Directors are responsible for executing and administering the implementation and enforcement of the Well Control Rule within the Region in accordance with the content of this document and national policy.

4. Solicitor’s Office: The Solicitor’s Office is responsible for providing legal support and review on issues involving implementation, interpretation, and enforcement.

Authority
Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §1331 et seq.

References
Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR 250 et seq.

Definitions
n/a

Supersession and Expiration
This interim directive will remain in effect for one year, at which time it may be extended for up to two years, or when superseded, rescinded, or incorporated in a manual chapter or handbook, whichever is sooner.

Page 3 of 4
Contact
Douglas Morris, Chief, OORP, (202) 208-3974

Type of BID:
☒ National ☐ Regional ☐ Emergency (not to Exceed 60 days)
☐ Guidance ☐ Procedure ☒ Policy

Distribution Designation
☒ Public ☒ Internal (redesignated Feb 2017)

Attachment(s)
n/a

Brian M. Salerno
Director
Bureau of Safety and Environmental Enforcement

25 July 2016
Date
MEMORANDUM

DATE: July 25, 2016

TO: Lars Herbst, Regional Director, Gulf of Mexico

FROM: Douglas Morris, Chief, Office of Offshore Regulatory Programs

SUBJECT: Well Control Rule: Guidance for Granting of Departures

I have been instructed by the Director pursuant to the Bureau Interim Directive 2016-0222N (BID) to provide a list of provisions within the new well control regulations and incorporated standards for which a departure request should be granted to avoid unreasonable disruptions or unintended safety consequences.

Based on the application of best professional judgment, the following guidance is provided:

**Incorporated Standards**

API Standard 53 contains a significant number of requirements for blowout prevention equipment systems and related components. Given the wide range of requirements in this document, it is possible that some operators may need additional time to make the necessary changes to existing equipment to ensure conformance with every aspect of the standard. Specific sections of the standard that have been identified as potential issues for departure requests include:

- Section 6.5.3.6.2
- Section 7.2.3.1.1
- Section 7.2.3.2.9
- Section 7.3.1.2
- Section 7.3.13.2.5
- Section 7.4.8.2.5
- Section 7.4.9.10
- Section 7.4.9.11
- Section 7.6.5.1.5
If equipment meets all of the requirements of API Standard 53 except for one or more of the provisions listed above, a departure request can be granted without creating significant safety or environmental concerns. The approval of these departure requests is consistent with objective of BID which is to “ensure that new requirements are phased-in in a safe and timely manner without unreasonable disruptions or unintended safety consequences.” Departures should only be granted for the time necessary for a reasonably diligent operator to be in full compliance with the standard.

Regulatory requirements:

Based on the guidance provided in the BID, departures should be issued for the following provisions to allow operators with existing operations an opportunity to obtain and safely install equipment in a timely manner:

- Section 250.730(b)- A number of BOP manufacturers (OEM) have recently issued new bolting specifications that are applicable to existing equipment. The granting of a departure request that provides an operator with a reasonable amount of time to comply with these OEM requirements is consistent with the objective of the BID.
- Section 250.734 (a)(3)(i) and (a)(3)(ii)- These provisions relate to installation of subsea equipment that provide accumulator capacity.
- Section 250.734(a)(4)- This provisions involves the installation of a ROV panel with the open functions. BSEE addressed the implementation of this provision in the June 6, 2016 response to the industry.

As noted in the BID, all decisions related to departure requests should be fully documented.