

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

January 29, 2018

By Electronic Transmission

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

**Re: Docket ID No. BSEE-2017-0008; RIN 1014-AA37
Oil and Gas and Sulphur Operations on the Outer Continental Shelf—
Oil and Gas Production Safety Systems—Revisions**

Dear Director Angelle:

The Attorneys General of Maryland, Maine, Massachusetts, New York, North Carolina, and Virginia appreciate this opportunity to comment on the revisions to the Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems (Production Safety Systems) regulations proposed in the above-mentioned docket. We submit these comments to express our strong opposition to any revisions, such as those your agency is now proposing, that would undermine or roll back any safety requirements. The current version of the Production Safety Systems regulations was put in place little more than a year ago, following a lengthy rulemaking process, in the wake of the catastrophic *Deepwater Horizon* explosion and spill in the Gulf of Mexico. Any changes now that effectively weaken safety standards and procedures would be arbitrary and capricious or otherwise unlawful, particularly at a time when the Department of the Interior is simultaneously considering a plan to radically expand the scope of offshore drilling. The dangers of drilling expansion, which we strongly oppose, will only be intensified if your agency weakens safety standards.

As the Bureau of Safety and Environmental Enforcement (BSEE) is well aware, the Deepwater Horizon disaster catalyzed a variety of regulatory changes aimed at reducing the risks attendant to offshore drilling. One set of changes was to the safety requirements associated with oil and gas production on the Outer Continental Shelf (OCS).¹ In promulgating these changes in 2016, BSEE emphasized that the regulations had not “undergone a major revision” since their 1988 promulgation. In the intervening twenty-eight years, BSEE continued, “much of the oil and gas production on the OCS has moved into deeper waters and the regulations have not kept

¹ Department of the Interior, Bureau of Safety and Environmental Enforcement, Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems, 81 Fed. Reg. 61,834 (Sept. 7, 2016) (codified at 30 C.F.R. pt. 250, subpt. H).

pace with the technological advancements.”² Against that background, BSEE explained that the changes were “necessary to improve human safety, environmental protection, and regulatory oversight of critical equipment involving production safety systems,” and were “intended to improve worker safety and protection of marine and coastal ecosystems by helping to reduce the number of production-related incidents resulting in oil spills, injuries, and fatalities.”³

The 2016 regulatory revisions took effect on November 7, 2016, with some deferred compliance dates for certain provisions. Scarcely a year later, however, BSEE has proposed another significant overhaul of the Production Safety Systems regulations.⁴ BSEE’s proposal would, among other things, roll back important aspects of the protections put in place in 2016. For instance, it would dramatically pare back the categories of documents that an operator must submit to BSEE for approval, and that must be stamped by a registered professional engineer.⁵ BSEE also would eliminate the regulatory requirements that safety and pollution prevention equipment “function . . . in the most extreme conditions to which it may be exposed” and be certified by an independent third-party,⁶ inappropriately falling back on certain American Petroleum Institute standards that ostensibly “ensur[e] that each device will function in the conditions for which it was designed”⁷—but not the extreme conditions contemplated by the existing rule.

Given that these particular protections were put in place little more than a year ago in light of technological changes and lessons learned from the *Deepwater Horizon* disaster, rolling them back would be wholly unjustified even if the scope of offshore drilling were to remain the same. Yet the Bureau of Ocean Energy Management (BOEM) has proposed to dramatically

² *Id.* at 61,834.

³ *Id.* at 61,834, 61,838.

⁴ Department of the Interior, Bureau of Safety and Environmental Enforcement, Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems—Revisions, 82 Fed. Reg. 61,703 (Dec. 29, 2017).

⁵ *Id.* at 61,711.

⁶ 30 C.F.R. § 250.802(c)(1).

⁷ 81 Fed. Reg. at 61,709. To change course, the agency “must supply a persuasively reasoned explanation for modifying its earlier position that is itself rationally grounded in the evidence before the agency.” *Reservation Tel. Cooperative v. FCC*, 826 F.2d 1129, 1135 n. 4 (D.C. Cir. 1987). Instead of providing this explanation, BSEE simply suggests that “[o]perators raised concerns that it may not be possible for independent third parties to certify” that safety and pollution prevention equipment “will perform under the most extreme conditions to which it will be exposed.” 81 Fed. Reg. at 61,709. BSEE does not explain why a concern about certification for the most extreme conditions supports a transition to standards that BSEE identifies as being based only on “the conditions for which [the device] was designed.” *Id.* BSEE also does not show that certification is actually impossible or difficult, instead only describing “concerns.” *Id.*

expand the scope of drilling on the OCS.⁸ Besides increasing the overall number of lease sales pursuant to the Outer Continental Shelf Lands Act (OCSLA), BOEM has proposed to allow oil and gas exploration and drilling in areas where little or no production has ever taken place—including areas in both the Atlantic Ocean and the Pacific Ocean.⁹ Our states' respective coastlines fall within the North Atlantic and Mid-Atlantic Planning Areas, where there are no existing oil or gas leases but where five new lease sales have been proposed, significantly threatening coastal and marine ecosystems and economies.¹⁰ Those new lease sales, as well as others elsewhere on the OCS, would only increase the number of locations subject to the threat of oil spills and other harms related to offshore oil and gas development.

The undersigned Attorneys General, along with those of other partner states, plan to vigorously oppose BOEM's efforts to expand offshore drilling to areas affecting the coasts of our states, and we believe we will succeed in demonstrating that such an expansion cannot be justified under OCSLA, the Administrative Procedure Act, or other applicable law. That BOEM is contemplating expanding the scope of offshore drilling, however—whether in the form already proposed, or in a form that takes shape later in the National Leasing Program development process—makes it even more inappropriate for BSEE to take any steps that could weaken the important safety protections put in place in response to the *Deepwater Horizon* calamity. If anything, BOEM's proposed expansion of offshore drilling creates a *heightened* need for robust production safety systems rules. As Florida members of Congress have recently noted, had these safety measures been in place, the *Deepwater Horizon* disaster may have been averted.¹¹ In that vein, we note that BOEM has sought to justify its leasing proposal by relying on BSEE's recently-implemented safety rules¹²—rules that BSEE is now revisiting or poised to revisit and,

⁸ Bureau of Ocean Energy Management, 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Draft Proposed Program (2019-2024 DPP) (Jan. 2018).

⁹ *Id.* at 8, 4-6 to -7, 4-9 to -10.

¹⁰ *Id.* at 4-9.

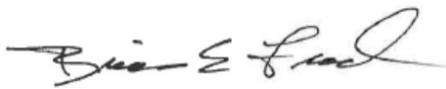
¹¹ See Press Release, Vern Buchanan, Buchanan Files Formal Protest Letter: "Don't Weaken Safety Regs for Offshore Oil Rig" (Jan. 25, 2018), <https://buchanan.house.gov/media-center/press-releases/buchanan-files-formal-protest-letter-don-t-weaken-safety-regs-offshore>; Press Release, Vern Buchanan, Florida Members Protest Lifting Safety Rules for Oil Rigs (Jan. 9, 2018), <https://buchanan.house.gov/media-center/press-releases/florida-members-protest-lifting-safety-rules-oil-rigs>.

¹² See 2019-2024 DPP at 2 (noting that "since the 2010 Deepwater Horizon blowout and oil spill, the U.S. Department of the Interior (USDO) has made, and is continuing to make, substantial reforms to improve the safety and reduce the possible adverse environmental impacts of OCS oil and gas activity"); *id.* at 7-35 (asserting that "recently implemented safeguards, including increased requirements for the design, manufacture, repair, testing, and maintenance of blowout preventers, required downhole mechanical barriers, increased well design and testing requirements, and additional regulatory oversight make [a catastrophic spill] even less likely than in the past").

at least in part, roll back.¹³

Unjustified reversals of position are, of course, a widely-recognized form of arbitrary and capricious agency action.¹⁴ On that score, we find it difficult to imagine how BSEE can justify any changes that would weaken portions of the Production Safety Systems regulations barely a year after they took effect. That BOEM is contemplating a vast expansion of offshore drilling only underscores the inappropriateness of any about-face that could weaken those rules' important protections for human and environmental safety.

Sincerely,



Brian E. Frosh
Attorney General of Maryland



Janet T. Mills
Attorney General of Maine



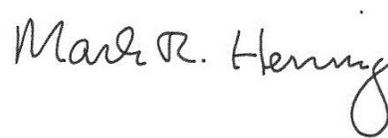
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¹³ See Offshore Magazine, BSEE Reportedly Proposes to Scale Back Well Control Rule, Dec. 27, 2017, available at <http://www.offshore-mag.com/articles/2017/12/bsee-reportedly-proposes-to-scale-back-well-control-rule.html>.

¹⁴ See, e.g., *FCC v. Fox Television Stas., Inc.*, 556 U.S. 502 (2009); *Ala. Educ. Ass'n v. Chao*, 455 F.3d 386 (D.C. Cir. 2006).