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MEETING
STATE OF CALIFORNIA
OFFICE OF THE STATE FIRE MARSHAL

CALIFORNIA NATURAL RESOURCES AGENCY
AUDITORIUM
1416 NINTH STREET
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 5, 2017
3:09 P.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

STAFF:

Mr. Joshua Cleaver, Legal Counsel

ALSO PRESENT:

Mr. Robert Gore, The Gualco Group

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1 P R O C E E D I N G S

2 FACILITATOR CLEAVER: Good afternoon, everybody.
3 Thanks for showing up. My name is Josh Cleaver. I'm a
4 staff attorney with CalFire, and working with the State
5 Fire Marshal's Pipeline Safety Division on the AB 864
6 regulations that we're all here to talk to you -- talk
7 about today.

8 Before I get started, just a quick safety note
9 and bathroom note. There's an emergency exit over here to
10 my right, and then back where we just came in at. If you
11 need to use the restroom while we're going through the
12 presentation or comment period, it's going be out those
13 doors we came in through, and just make a right, and
14 another right. It's going to be behind kind of an
15 aluminum looking door, and just down the hall on the left
16 from there.

17 Before I get started, you know, I appreciate
18 everybody showing up here today, and those who are
19 participating on the webcast. It's important the public
20 participate in these regulations. I think it's something
21 that adds value definitely to what we're trying to do here
22 today. And what we're about to go through in the draft
23 regulations and the procedures that we're going to show
24 you really represent a significant amount of work on part
25 of some very good professional staff here at the State

1 Fire Marshal's Office, Pipeline Division, as well as some
2 coordinated efforts with Fish and Wildlife's Oil Spill
3 Prevention Response, OPSR, as well as a large -- a good
4 contingent of experts from NGOs and industry, as well as
5 other cities and counties.

6 So with that, I'd like to get started.

7 (Thereupon an overhead presentation was
8 presented as follows.)

9 FACILITATOR CLEAVER: So this is just a quick
10 overview of what we're going to be doing today. Of
11 course, it's -- we're going to cover the purpose behind
12 the public workshop, a little background into why AB 846
13 came into existence, and then we'll touch on the
14 legislation itself, and then the draft regulation language
15 and developments process we went through on there. And
16 then following that, we'll open it up for public comment.

17 --o0o--

18 FACILITATOR CLEAVER: So this is our kick-off to
19 the informal public process. This is our very first
20 meeting on the draft regulations. And this is -- the
21 primary purpose is informational workshop with no real
22 formal action being taken by the State Fire Marshal's
23 Office.

24 But the objective here is really to bring in the
25 public and have them come and make comments on what we

1 have for our draft proposed regulatory language. And, of
2 course, look for some input on any alternatives that
3 parties might have for the draft approach as it is now, as
4 well as comments or suggestions or recommendations on
5 regulatory language, with the ultimate goal of looking at
6 ways to protect environmentally and ecologically sensitive
7 areas in the coastal zone, and comments related to
8 economic impacts on pipeline operators, as well as what we
9 could anticipate seeing with the State of California are
10 also welcome.

11 --o0o--

12 FACILITATOR CLEAVER: As we all know, the AB 864
13 legislation came about in May of -- or following the spill
14 in May of 2015 down in Santa Barbara County. And a large
15 amount of that oil from that spill made it's way into the
16 ocean and proceeded to move down about 25 miles of the
17 coastline affecting ocean water, and species, and beaches
18 along the way.

19 The impacts that we all know now are obviously
20 devastating both to the environment, and economically
21 speaking as well.

22 --o0o--

23 FACILITATOR CLEAVER: The legislation itself sets
24 out two real primary components, which is that by January
25 1 of 2018, any new or replacement pipeline that would be

1 near ecologically and environmentally sensitive areas,
2 which we are kind of dubbing EESAs, because it's a
3 mouthful to say ecologically and environmentally sensitive
4 area a lot.

5 But those pipelines that are new or replacement
6 shall be using best available technologies to reduce the
7 amount of oil released and oil spills to protect the State
8 waters and wildlife.

9 Likewise, there is a similar provision for
10 existing pipelines that are located near ecologically and
11 environmentally sensitive areas in the coastal zone.
12 Along those lines, that by July 1 of 2018, operators of
13 those existing pipelines will need to submit a plan to
14 retrofit their pipelines by January 1 of 2020 with best
15 available technologies.

16 --o0o--

17 FACILITATOR CLEAVER: Continuing on with some of
18 the requirements of AB 864. These regulations are to be
19 adopted by the State Fire Marshal's office by July 1 of
20 2017. And within the legislation, it sets forth at least
21 4 specific requirements that need to be, I guess,
22 promulgated in the regulations by the State Fire Marshal's
23 office, including definitions for automatic shut-off
24 systems, a process to assess the adequacy of an operator's
25 risk analysis, a process for treatment of information that

1 operators might find inside of their risk analyses or
2 plans that are submitted to the State Fire Marshal's
3 office that potentially would contain confidential
4 information; as well as a determination of how near an
5 ecologically and environmentally sensitive area to a
6 pipeline must be to be subject to regulations that are
7 going to be promulgated under AB 864.

8 --o0o--

9 FACILITATOR CLEAVER: Continuing on with some of
10 the factors or items that are also in AB 864 legislation.
11 We have notice, consultation requirements, as well as some
12 of the definitions and terms that are also contained
13 within the legislation.

14 As far as the notice goes, pipeline operators
15 that have pipelines near ecologically and environmentally
16 sensitive areas in the coastal zone need to notify the
17 State Fire Marshal's office of any construction or
18 retrofit of pipelines that would be subject to these
19 regulations.

20 Under consultation, the State Fire Marshal's
21 Office worked closely with the Office of Spill Prevention
22 and Response, or OPSR, to consult on impacts of state
23 water and wildlife.

24 And then as far as the definitions and terms
25 provided, we have environmentally and ecologically

1 sensitive areas, which was directed to another section of
2 the California Government Code, which is largely OSPR's
3 responsibility under that section, but the definition is
4 shared across the legislation that we are, and the
5 regulations that we're working on right now.

6 And then, of course, there's a definition of best
7 available technology. It's a very -- it's a broad
8 definition. It's basically technology that's available
9 anywhere in the world that you could purchase anywhere in
10 the world. It could be used here.

11 The State Fire Marshal's Office would then look
12 at best available technologies that are included of risk
13 analyses of plans that are submitted to us, and make that
14 determination of whether it would be effective and
15 engineering feasibility, as well as whether that is
16 something that needs to be reviewed, or revised, or looked
17 at again within the risk analysis or plan that's submitted
18 to us.

19 And ultimately oil that was used in -- the oil as
20 the term was used in the legislation is also -- is beyond
21 just oil. It is defined in 49 CFR section 195.2.
22 Essentially, what that definition of oil is within that
23 and within the 195 section is that it includes things
24 beyond just crude oil. It includes liquids like carbon
25 dioxide, propane, and butane as well, among others.

1 And so you may be asking yourself what it is in
2 ecologically and environmentally sensitive areas since the
3 legislation really just kind of directs you too what the
4 California Government Code section is. Then by looking at
5 that code section, you can then look at the definitions
6 that are also contained in there.

7 And the simple version is that EESA is defined by
8 an area that would be found within contingency plans that
9 are submitted to OPR. It would -- it essentially means
10 that -- or it could also be a contingency -- contingency
11 plans or geographical response plans, but those plans are
12 generated by Coast Guard, U.S. EPA, as well as by the OPR
13 administrator.

14 So within those contingency plans that are
15 identified, these ecologically and environmentally
16 sensitive areas, Coast Guard, U.S. EPA, and the OPR
17 administrator will look at things such as habitat, are
18 there rare threatened and endangered species in the area,
19 are there aquatic resources that could be impacted, and
20 ecologically and environmentally sensitive areas like
21 fish, amphibians, plants. It also includes terrestrial
22 animals and plants as well, and in some cases, Migratory
23 birds and migratory animals.

24 It's also important to note that even though
25 these contingency plans that OPR has that layout what

1 would comprise an EESA, they track this information, and
2 I'll show it to you a little bit later in a map, but it's
3 important to note that not all EESAs have been identified.
4 And there is the potential, of course, to discover EESAs
5 when you maybe encounter the species along a pipeline, or
6 plant, or biota, or something along those lines.

7 So it's certainly not a fixed contingent, which
8 is important to keep in mind, because if you discover
9 something, it's -- it could potentially lead to further
10 planning needs.

11 --o0o--

12 FACILITATOR CLEAVER: So as we undertook this
13 process to develop these draft regulations for AB 864, the
14 State Fire Marshal's Office looked at interested parties
15 that had commented on the legislation when it was moving
16 through the process, various committees, and we assembled
17 a stakeholder workgroup comprised of NGOs, local
18 government and industry, and have been meeting with this
19 group of stakeholders, in some cases, on a monthly basis,
20 but very regularly since January of 2016.

21 The primary purpose of those workgroups were
22 to -- the stakeholder workgroup was to define terms that
23 weren't defined in the legislation, go through and look at
24 typical standards, such as the API, or American Petroleum
25 Institute, standards that are incorporated by reference in

1 the draft regulations; also to create guidance to the
2 procedures document that is also available on the website
3 that lays out how risk analysis and considerations that
4 are going to go into those risk analyses should be
5 developed by the operators; as well as how the State Fire
6 Marshal's Office will go back through and do an analysis
7 on the risk analysis and plans; and look at, of course,
8 the process for identifying what is best available
9 technologies; as well as setting forth the testing
10 requirements that the Fire Marshal's Office is going to
11 place on pipelines initially adopted in this retrofit
12 process, or if there's been new, or a replacement pipeline
13 to verify that what actually was proposed in the risk
14 analysis or the plan is actually delivering in the way
15 it's supposed to be delivering.

16 And, of course, as I mentioned, a process for
17 requesting confidential treatment of information that
18 might be contained in those risk analyses or plans.

19 As I mentioned previously, the State Fire
20 Marshal's Office was directed to consult with OPSR on
21 potential impacts of State water and wildlife, and sought
22 out their assistance as well in identifying ecologically
23 and environmentally sensitive areas in a coastal zone.

24 The next couple of slides are going to be some
25 maps of the information that we developed in conjunction

1 with OPSR on ecologically and environmentally sensitive
2 areas in a coastal zone.

3 --o0o--

4 FACILITATOR CLEAVER: This map is -- well,
5 there's -- I mean, I have 3 more slides after this, but
6 this is just California. And then obviously, San
7 Francisco, Santa Barbara, and Los Angeles will have
8 separate maps come up for those as well. It's important
9 to keep in mind that the links on the Fire Marshal's Code
10 Development website will direct you to two options. One
11 is the ERMA viewer that will generate a map that should
12 look like this. And then there's an opportunity to
13 actually download the data that we use to develop these
14 maps representing EESAs in the coastal zone.

15 The downloadable information is only going to be
16 viewable if you have a GIS program that's already loaded
17 on your computer. It's just a file format. But what you
18 would end up getting out of the downloaded information
19 would be representative of what you actually get off of
20 the ERMA viewer as well. So there's a couple sources
21 there for it.

22 But quickly going through basically the key on
23 the bottom left here is that ecologically and
24 environmentally sensitive areas, as I mentioned, can be
25 pretty complex and they can cover information that's

1 considered sensitive, such as locations of endangered
2 species.

3 So what you have in the green -- the green dots
4 along the coastal zone are points, right? So it's point
5 data, so it doesn't give specific locations of what might
6 be considered endangered species. And then you have blue
7 lines, which will be -- which are a little bit easier to
8 see here where you see blue lines.

9 Those blue lines are typically rivers. And then
10 we have polygon data too that's representative of a
11 grid -- a grid pattern, and as well as the red part along
12 the coastline is the coastal zone area, of course.

13 --o0o--

14 FACILITATOR CLEAVER: So this is just a
15 representative map of San Francisco, and the Bay Area.
16 This is information that -- you know, that it -- it was
17 challenging to compile to an extent, but OPSR worked hard
18 and generated what we needed from them. Thankfully, they
19 had a lot of the information already from their sea plans.

20 But what you can see out of the Bay Area here is
21 that when you start looking at the points and the blue
22 lines and then the polygon data that is what you'll see in
23 the big circular areas, is that there is no one formulaic
24 approach to what an EESA would look like.

25 The blue lines are rivers. They can extend

1 inland a good distance, but they would also terminate in
2 the coastal zone area that was identified in conjunction
3 with various entities to represent this map today.

4 Digging into the draft regulation language is
5 you're going to start looking at where are these EESAs
6 located, right? So all of those EESAs should originate
7 somehow in the coastal zone. The regulation language, as
8 we envision it right now, is that there will be a half
9 mile buffer that is added on to the coastal zone.

10 That buffer extends out beyond the coastal zone,
11 because there is a potential that, you know, a release
12 outside of the coastal zone could, of course, impact the
13 coastal zone, because hazardous, liquids, oil are in the
14 liquids. They can move with terrain and the potential for
15 it to migrate into the coastal zone and impact where the
16 ecologically and environmentally sensitive area exists.

17 So this half-mile buffer is aimed at capturing
18 pipelines that would be outside the coastal zone, but then
19 could impact the coastal zone. Those would be subject to
20 this regulation. So along those lines, when we start
21 looking at, say, a river that extends inland, say, for --
22 in the Santa Barbara example, you see a river up in the
23 top left area here.

24 --o0o--

25 FACILITATOR CLEAVER: So you see this river right

1 here. I'm sorry for people on the webcast that they can't
2 seat it right now. But the river that I just identified
3 is in the top left corner of this map, and that is, as you
4 can tell, outside of the coastal zone in this part of it.
5 But as it comes back in, it does touch into the coastal
6 zone.

7 And as a result, in working with OPSR, is that
8 the determination is that EESAs in a coastal zone, of
9 course, can extend beyond the coastal zone. So if you
10 have a leak in a pipeline or a release that's on an inland
11 stream or outside the coastal zone, the potential for that
12 to impact an ecologically and environmentally sensitive
13 area in the coastal zone area does exist.

14 So there's the potential that these identified
15 ecologically and environmentally sensitive areas not only
16 just because they're beyond a half a mile, there would be,
17 you know, maybe a land more release could impact the
18 coastal zone here.

19 And for this scenario, and in these regulations,
20 those river systems are going to be -- and the pipelines
21 that would cross, you know, or potentially cross those
22 rivers, or do cross those rivers they're identified as
23 ecologically and environmentally sensitive areas, they're
24 going to be subject to the regulations.

25 I think the primary takeaway here is that EESAs

1 do not just terminate at the end of the coastal zone
2 boundary. So the potential for a pipeline outside the
3 coastal zone to impact the coastal zone EESAs exists as
4 part of the regulation.

5 As far as regulations applying to existing
6 pipelines, and new pipelines, and replacement pipelines,
7 it's fairly clear in the legislation. But there's also
8 the potential that pipelines that are not jurisdictional
9 in the State Fire Marshal's Office could be transferred
10 into the State Fire Marshal's Office jurisdiction for
11 interstate line, for example.

12 In those situations, the draft regulations layout
13 how a pipeline would then potentially become the
14 jurisdiction of the State Fire Marshal's Office, and
15 there's a point in time where that pipeline would also be
16 required to be compliant with the regulations that are
17 applicable here.

18 And looking forward, if there are future releases
19 from a pipeline that say was not subject to these
20 regulations, but there is a release from that pipeline
21 that does impact an ecologically and environmentally
22 sensitive area in a coastal zone, that pipeline would then
23 become subject to these regulations as well.

24 We've also looked at the fact of the need for
25 exemptions. The reason why we incorporated this kind of

1 information, or this provision, into these draft
2 regulations is, in some cases, where you have a river that
3 is 40, 50, 60 miles inland, there's the potential that it
4 may not actually reach an ecologically and environmentally
5 sensitive area in a coastal zone. So there are provisions
6 built into the draft regulations that would afford
7 operators of the pipelines to essentially apply for an
8 exemption from the applicability of the regulations.

9 The way that we see it working is that those
10 pipelines that are outside the coastal zone but within a
11 half mile of an ecologically and environmentally sensitive
12 area can request an exemption. That request could take
13 the form of something similar to what we're already
14 looking for in the retrofit plan, which would be a risk
15 analysis that would be submitted to the State Fire
16 Marshal's Office, which would then be evaluated and
17 potentially accepted. And then, at that point in time,
18 that pipeline would be exempt from these regulations.

19 That exemption also does provide the ability for
20 that pipeline that was exempt to come back into and be
21 required to meet the regulation requirements, in the event
22 that say that pipeline does later suffer a release that
23 does then, in fact, impact the ecologically and
24 environmentally sensitive area. So in the event that a
25 pipeline were exempt, it could potentially be brought back

1 in.

2 --o0o--

3 FACILITATOR CLEAVER: So this last slide is
4 basically -- is just the Los Angeles/Long Beach area. And
5 it's just a -- we try to capture about, you know, 3
6 different places along the coast that -- to get a
7 representation of what areas have ecologically and
8 environmentally sensitive areas in the coastal line, et
9 cetera.

10 But I would encourage people to look to the ERMA
11 website and explore and provide input, in the form of
12 comments to us, if they need to.

13 --o0o--

14 FACILITATOR CLEAVER: So like I mentioned, this
15 is the first of our plan workshops. We have two more that
16 are anticipated. The next one coming up will be in Santa
17 Barbara. It's going to be Thursday, February 2nd, 2017.
18 We will be sending notices out for that shortly. We just
19 have to set up a couple more logistical things. However,
20 the location and times have all been set up, that way you
21 can plan accordingly to participate. We'll have webcasts
22 for those as well.

23 And then the third anticipated workshop is slated
24 for the City of Long Beach Gas and Oil Department,
25 February 16th. And a notice will go out for that one as

1 well, so you can lock in a couple more.

2 --o0o--

3 FACILITATOR CLEAVER: We have some requirements
4 to take care of before we go there.

5 We're going to open it up for public comment
6 here. Just a couple of quick things. If you can, please
7 limit your oral comments to 3 minutes.

8 We're going to have Daniel over here, Daniel
9 Hastert. His contact information is here as well. If you
10 have written comments, please make sure that he gets them,
11 so that we can review them, and consider them, and make
12 sure that everything is heard from -- if you have comments
13 along those lines.

14 We also are then -- following that, we'll look at
15 written comments that are physically submitted before 5:00
16 p.m. on January 2nd. We -- it was a holiday observance
17 day, so in the event that you couldn't get your comments
18 in, please provide comments on the draft regulations and
19 procedures as well by no later than January 12th. Daniel
20 Hastert can receive those as well, and his contact
21 information is here. It's also on the notices that we've
22 sent out.

23 It's important too that everybody knows that any
24 sort of documentation that you provide or written or oral
25 comments or attachments that you give the State Fire

1 Marshal's Office, as well as contact information,
2 including your address or phone number or email, these
3 could become part of a Public Records Request -- Act
4 request. So please keep in mind that any information you
5 give to us may be released to the public in the event that
6 there's a PRA associated with public comments we receive.

7 That being said, let me go ahead and open it up
8 to public comment. Does anybody have -- we'll just have
9 you come up here and you can provide comment into the
10 microphone here, and then make sure you provide Daniel
11 or -- and as well as our recorder here with your name and
12 the organization you represent. It's not required, but it
13 helps us track the comments we receive. That way we can,
14 if nee be, contact you as well.

15 So with that, please, we'll open it up for public
16 comment.

17 MR. GORE: Good afternoon. I'm Robert Gore from
18 the Gualco Group on behalf of the 550 small and medium
19 energy producers who make up the California Independent
20 Petroleum Association.

21 The statute in question, the assembly bill, has 2
22 admirably brief and directive clauses that were noted.
23 Nowhere do they mention section 2035 in the proposed
24 regulation, that is the State exemption process. It is
25 our opinion it needs to be examined closely for legality

1 and authorization. We're not certain it's legal at all.

2 Also, it would be good to recall that petroleum
3 production is a statutory recognized beneficial use by the
4 people of the State of California. Again, we would
5 appreciate, as we continue, a timetable and continued
6 collaboration to develop these regulations.

7 Personally, I've been involved in State
8 regulations as an employee and a now as an advocate since
9 1984. And I find this proceeding relatively unique.
10 Recently, I've had the privilege to work or lead working
11 groups at the Water Resources Board, DWR, and Fish and
12 Wildlife, the SWAN.

13 So I think a continued collaboration based on a
14 timetable would be a good thing.

15 Thank you.

16 FACILITATOR CLEAVER: Anymore comments from the
17 audience here?

18 Okay. Let me pull up and see if we have anything
19 on-line. It appears there was an audio issue.

20 Just so everybody is aware, we will be posting a
21 transcript from this on-line as well. So unfortunately
22 the audio was not coming through on the webinar side, so
23 there will be an opportunity, of course, to see the
24 presentation and any comments that were submitted as well.

25 Very well.

1 Likewise, if you have comments following this, of
2 course, you have until January 12th to submit those for
3 us. In the event that we're having other difficulties on
4 the other end of the line, outside of the audio issue that
5 we're encountering here, we'll, of course, consider those
6 comments as well.

7 Going forward, as I mentioned, we're going to
8 post the transcripts on the draft regulation language and
9 related documents to the code development page for the
10 State Fire Marshal's Office. The link was included in the
11 previous notice. And it will be included as well in the
12 upcoming notice, as well as a link to the webcast for the
13 upcoming 2 events.

14 If you have not signed up for any of the upcoming
15 workshop notifications, please make sure that you contact
16 Daniel Hastert over here. You can submit information to
17 him via email, and then we'll add you to our list that
18 will provide you with the rolling updates, and the
19 notifications with these -- with changes to the draft
20 regulation language or procedures.

21 If you have any questions about public workshops
22 or about the draft AB 864 regulations as well, please
23 reach out to Ben Ho or Doug Allen. They are pipeline
24 safety engineers and supervising pipeline safety engineers
25 located up here in Sacramento. So hopefully, they can

1 answer any questions that you may have.

2 And with that, thank you for attending. I hope
3 it was informative. And, of course, if you have any
4 comments or questions, feel free to reach out to us.

5 Thank you.

6 (Thereupon the California State Fire Marshal's
7 Office hearing adjourned at 3:40 p.m.)

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C E R T I F I C A T E O F R E P O R T E R

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Fire Marshal's Office hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of January, 2017.



JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063