



#2



February 6, 2017

Mr. Daniel Hastert, Associate Governmental Program Analyst
CAL FIRE – Office of the State Fire Marshal
Pipeline Safety Division
3950 Paramount Boulevard, Suite 210
Lakewood, CA 90712

Re: Draft Proposed Regulations Requiring the Use of Best Available Technology on New, Replacement, or Retrofit of Pipelines Near Environmentally and Ecologically Sensitive Areas in the Coastal Zone (California Government Code § 51013.1)

Dear Mr. Hastert:

The following comments are submitted on behalf of the Environmental Defense Center (“EDC”), a public interest environmental law firm founded in 1977 to protect and enhance the environment through education, advocacy and legal action. EDC responded immediately to the Plains All American Pipeline Oil Spill on May 19, 2015, and has worked consistently since then to achieve stronger laws and regulations to prevent another spill along our coast. EDC supported AB 864 because the purpose of the bill was to “reduce the amount of oil released in an oil spill to protect state waters and wildlife.” To accomplish this goal the bill required better technology for oil pipelines along the California coast. (Govt. Code § 51031.1.)

EDC appreciates the opportunity to comment on the draft regulations that will implement AB 864. We are concerned, however, that the regulations as drafted do not ensure full compliance with AB 864, and that they expose Environmentally and Ecologically Sensitive Areas to potential harm from future oil spills by limiting the scope of affected pipelines, failing to require frequent inspections of leak detection systems, exempting pipelines that are relocated, and omitting procedures to ensure objective assessments of risk and feasibility of best available technology.

I participated in the two workshops provided thus far, and would also like to register my concern that some of the information presented at the workshops was misleading. Statements were made that both understated the risks caused by oil pipeline spills and overstated the

protections provided in the draft regulations. For example, at the first workshop the presentation included a statement that the Plains All American Pipeline Oil Spill impacted “over 25 miles of coastline and ocean water,” when in fact the spill spread at least 150 miles. At the Santa Barbara workshop some of the specific language of the draft regulations was misrepresented and, since copies of the regulation were not available to the audience, many members of the public had no way to know.¹

We recommend the following revisions to the draft regulations to ensure compliance with AB 864.

§ 2004. Definitions.

(a)(2) “Automatic Shutoff Systems”: the reference to detection of “an undesirable event or other predetermined criteria” is vague and does not necessarily relate to the purpose of the regulation, which is to require consideration of Automatic Shutdown Systems that will cause a pipeline to shut down if a leak is detected. At the workshop in Santa Barbara, the staff left that phrase out of the definition. We agree that this phrase is inappropriate and should be deleted. Accordingly, the draft regulations should be modified as follows:

“Automatic Shutoff Systems” means an automated system not dependent upon human interaction capable of safely shutting down a pipeline system ~~upon detection of an undesirable event or other predetermined criteria.~~

(a)(6) “Near” environmentally and ecologically sensitive areas must be defined broadly enough to ensure that the regulation comports with the mandate of the law, which is “to reduce the amount of oil released in an oil spill to protect state waters and wildlife.” The proposed half-mile distance is woefully inadequate to protect state waters and wildlife from an oil spill from a pipeline. The Plains All American Pipeline oil spill spread much further than that, and there are many other examples of onshore oil spills that spread through various natural and man-made conveyances (e.g. streams, creeks, rivers, tributaries, culverts, irrigation channels, ditches, etc.). Any pipeline that is close to an Environmentally and Ecologically Sensitive Area, or a conveyance to such an area, must be subject to these regulations. During the webinar presented on January 5, 2017, the public was advised that any pipeline that “may impact the coastal zone” will be regulated. Accordingly, the definition of “near” should be revised to state this interpretation, as a half mile may not be adequate to satisfy this intent.

“Near” means ~~within half a mile or less~~ a location from which a spill from a pipeline may impact an Environmentally and Ecologically Sensitive Area in the Coastal Zone.

¹ One agency copy was on the table in the back of the room but no copies were available for the public to take and review during the presentation.

§ 2027. Use of Best Available Technology.

(a) This section requires new or replacement pipelines to use best available technology by January 1, 2018, but exempts relocation of a pipeline from this requirement. If a pipeline is relocated, the effect of the installation is the same as for construction of a new or replacement pipeline; hence, relocated pipelines should be similarly regulated. For example, the All-American pipeline, the very pipeline that inspired the passage of AB 864, may be relocated; if so, the newly relocated pipeline should be subject to this regulation. This section should be modified as follows:

By January 1, 2018, any new or replacement pipeline near an Environmentally and Ecologically Sensitive Area in the Coastal Zone shall use best available technology, including, but not limited to, the installation of leak detection technology, automatic shutoff systems, or remote controlled sectionalized block valves, or any combination of these technologies. ~~For the purpose of this regulation, a relocation is not considered a new or replacement pipeline.~~

(d) This section provides that the selection of best available technology “shall be based on a risk analysis conducted by the operator that is reviewed and accepted by OSFM.” This regulation fails to comply with the mandate of AB 864 that the regulations provide a *process* to assess the adequacy of the operator’s risk analysis. (Govt. Code § 51013.1(c)(2).) To ensure an unbiased and credible assessment, the analysis should be performed by an independent consultant approved by OSFM, and – in accordance with AB 864 – OSMF shall make the determination as to what is the best available technology. (See Govt. Code section 51013.1(g)(2).) Accordingly, this section should be revised as follows:

The selection of best available technology shall be based on a risk analysis conducted by the operator ~~that is reviewed and accepted by OSFM~~ utilizing an independent expert consultant approved by OSFM. OSFM shall assess the adequacy of the operator’s risk analysis. The analysis shall demonstrate to OSFM’s satisfaction that the technology to be implemented will protect state waters and environmentally and ecologically sensitive areas in the coastal zone by limiting the amount of oil released in the event of an oil spill.

§ 2029. Testing Requirements.

(a)(1) Testing for leak detection systems is required only once every three years, while testing for automatic shutoff systems is required annually. Additionally, pipeline inspections that are required pursuant to SB 295 must occur annually. Annual testing should be required to ensure consistency and proper function of leak detection systems, which are critical to the function and potential shutdown of a pipeline and should be integrated with the automatic shutoff systems. Please modify this regulation as follows:

Test the leak detection capability and leak limitation effectiveness ~~every 3 years~~ annually in accordance with the California Requirements of Pipelines near an Environmentally and Ecologically Sensitive Area in the Coastal Zone Procedure (dated July 1, 2017) from the date of installation or initial operation.

(c) This section requires a new risk analysis and review of best available technology if there are two test failures during the three-year annual testing period. Any test failure should require a new risk assessment and review of the technology.

~~Two~~ Any test failures ~~during the 3-year annual testing period~~ shall require a new risk analysis and review of best available technology applicability for leak detection.

§ 2035. Exemption for Pipelines Located Outside the Coastal Zone.

(a) This section provides that pipelines located outside the Coastal Zone but within a half-mile of an Environmentally and Ecologically Sensitive Area may be exempt from regulation if the operator can demonstrate that a spill from the pipeline will not impact the Coastal Zone portion of such area. As noted above, the proposed half-mile distance is inadequate to meet the intent of the law and adequately protect state waters and wildlife. In addition, the risk analysis required in this section should be performed by an independent contractor approved by OSFM.

Pipelines located outside the Coastal Zone ~~but located within ½ mile of an Environmentally and Ecologically Sensitive Area~~ may not be subject to this regulation if the operator can demonstrate that a spill from such pipeline will not impact ~~the Coastal Zone portion of that~~ an Environmentally and Ecologically Sensitive Area in the Coastal Zone. An operator of a pipeline may request an exemption from the provisions of this chapter through submission of a risk analysis to the OSFM. The exemption request shall include a risk analysis, conducted by an independent expert consultant approved by OSFM, which demonstrates the risk of an oil spill impacting the Environmentally and Ecologically Sensitive Area in the Coastal Zone at issue.

Conclusion

Thank you again for this opportunity to comment on the draft regulations proposed to implement AB 864. This law must be applied strictly to limit the risk of another devastating oil spill on the California coast. Please do not hesitate to contact me if you have any questions.

Sincerely,



Linda Krop,
Chief Counsel

cc: Senator Hannah-Beth Jackson
Assemblymember Monique Limon
California Department of Fish and Wildlife – Office of Spill Prevention and Response
California Coastal Commission
County of Santa Barbara Board of Supervisors, Office of Emergency Management, and
Energy and Minerals Division
City of Goleta
