



Via email and certified mail

April 5, 2022

Robert Garcia
Vice President - Facilities Engineering
DCOR, LLC
290 Maple Court, Suite 290
Ventura, California 93003

RE: Pipeline 0919 and DCOR's Failure to Comply with California Law

Dear Mr. Garcia,

On December 22, 2021, DCOR's Pipeline 0919, an undersea pipeline connecting Huntington Beach to drilling platforms off Orange County, ruptured and spewed oil into state waters resulting in a sheen visible from the air.¹ This oil spill was only the most recent in a long line of pipeline leaks befouling beaches, killing wildlife, and harming communities in Southern California. The Center for Biological Diversity requests that DCOR take immediate action on Pipeline 0919 to protect California's coastal environment from suffering the devastating impacts of yet another oil spill.

First, DCOR must apply for an after-the-fact coastal development permit from the California Coastal Commission. Second, DCOR must retrofit Pipeline 0919 with the best available technology. These actions are mandated by law and necessary to protect wildlife, marine fisheries, and the natural environment from the risk of another spill. Failure to perform either of these activities subjects DCOR to liability under the Coastal Act, Cal. Pub. Res. Code, § 30600, and the Coastal Best Available Technology Law, Cal. Gov. Code § 51013.1.

Repairs to Pipeline 0919 Constitute a Development for Which DCOR Failed to Obtain a Coastal Development Permit.

DCOR was required to obtain a coastal development permit from the California Coastal Commission for its work repairing Pipeline 0919. The Coastal Commission has a duty under the Coastal Act to ensure that pipeline repairs are done in a way that is protective of California's coastal resources. Cal Pub. Res. Code § 30001 (Commission's directive is to "protect the

¹ Priscilla Vega, California-based oil company identified as source of latest sheen off Orange County coast, LA Times, Dec. 26, 2021.

ecological balance of the coastal zone”). Now, DCOR must remedy its violation by obtaining an after-the-fact Coastal Development Permit and ensure that future pipeline construction and other development work obtain permits in advance of undertaking the activities.

The Coastal Act requires a coastal development permit for all “development” in the coastal zone. Cal. Pub. Res. Code, § 30600. The coastal zone is “that land and water area of the State of California . . . extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea.” *Id.* § 30103(a).

Pipeline repairs require a coastal development permit. *Id.* § 30106 (Applicable “developments” for which a coastal development permit must be obtained include those “on land, in or under water, [that involve] the placement or erection of any solid material or structure. . . includ[ing] . . . any . . . pipe [or] conduit.”). While the Coastal Commission has delegated most permitting authority over coastal development to local governments through certified local coastal programs, the Coastal Act specifically requires any developments located on tidelands, submerged lands, public trust lands, or any development which constitutes a major public works project or major energy facility to obtain a coastal development permit directly through the Coastal Commission. Cal. Pub. Res. Code §§ 30519, 30601.

Exceptions to the coastal development permit requirement do not apply here because the pipeline repair and construction work is in coastal waters and risks substantial adverse environmental impacts. Cal. Pub. Res. Code § 30610(d); 14 CCR § 13252(a)(3). While “incidental” repairs can be exempt from the permit requirement, if a repair requires “extraordinary methods of repair and maintenance involv[ing] a risk of substantial adverse environmental impact” a coastal development permit is required. Cal. Pub. Res. Code § 30610(d). The Coastal Act implementing regulations define “extraordinary repairs” as ones that involve “any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include . . . The presence, whether temporary or permanent, of mechanized equipment or construction materials.” 14 CCR § 13252(a)(3). A repair, such as this, which occurs in coastal waters and involves mechanized equipment is “extraordinary,” and risks substantial adverse impacts.

DCOR was therefore required by law to seek a coastal development permit from the Coastal Commission, and to abide by any restrictions imposed by the Commission necessary to protect the coastal zone.² There are many ways in which the Coastal Commission could exercise this authority, for example by ensuring that vessel anchors avoid sensitive marine habitat, that appropriate spill prevention and response measures are implemented, that marine mammal

² Records obtained through a PRA request demonstrate that the Coastal Commission informed DCOR of its duty to seek a coastal development permit.

observers and safety zones are used during activities that have entanglement risk or could cause acoustic impacts, that advance notice is given to the fishing and recreational boating community, and that marine debris generated during repairs is collected and removed.

The State Land Commission's Operations Report, detailing the work performed to repair Pipeline 0919 between December 23, 2021 and January 10, 2022, highlights the danger to the coastal zone emanating from such repairs. For example, pumping of crude oil through the pipeline to aid in detection of the leak caused additional oil spillage into the surrounding environment, and the oil pollution dome that was eventually dispatched over the pipeline to contain spills was insufficient to withstand ocean swells and toppled on January 6, 2022. The Coastal Commission's technical expertise in protecting the coastal zone is critical in ensuring protective measures are in place to prevent additional oil from entering the marine environment.

The Coastal Commission regularly processes after-the-fact applications for a coastal development permit. *See, e.g., LT-WR, L.L.C. v. Cal. Coastal Com.*, 152 Cal. App. 4th 770, 60 Cal. Rptr. 3d 417 (2007). Should DCOR not seek to obtain a coastal development permit, the Coastal Commission may initiate an enforcement proceeding. The Commission regularly uses Cease and Desist Orders to order removal of unpermitted development, and to obtain compliance with requirements of the Coastal Act, including failure to obtain a coastal development permit. Cal. Pub. Res. Code § 30810. The Commission also has the ability to seek judicial penalties should DCOR fail to obtain an after-the-fact permit. Furthermore, should DCOR fail to apply for a coastal development party, it opens itself up to liability under the citizen suit provision of the Coastal Act, which provides that "any person may maintain an action for declaratory and equitable relief to restrain any violation" of the Coastal Act. Cal. Pub. Res. Code § 30803.

DCOR Must Retrofit Pipeline 0919 With the Best Available Technology

DCOR recently evaded new legal requirements in California aimed to prevent oil spills by claiming that its pipeline was exempt. The recent oil spill from Pipeline 0919 raises serious concerns that this pipeline and others should be immediately decommissioned or, at minimum, retrofitted to have the best available technology.

The spill from Pipeline 0919 is only the most recent in a long line of offshore oil spills in Southern California. In October 2021, a different undersea pipeline connected to drilling platforms off Orange County ruptured, spewing tens of thousands of gallons of oil into the ocean.³ In May 2015, Line 901 of Plains All American Pipeline ruptured near Refugio State Beach in Santa Barbara County, spilling over 100,000 gallons of crude oil into the Pacific Ocean and impacting over 25 miles of coastline. That spill, and many before it, fouled sensitive beaches and wetlands, forced the closure of fisheries, and harmed or killed hundreds of fish, birds, and

³ Hannah Fry, et al., Massive oil spill sends crude onto Orange County beaches, killing birds, marine life, LA Times, Oct. 2, 2021.

marine mammals. In addition to harming sensitive ecosystems, oil spills also cause economic impacts, from closures of fisheries to lost revenue from tourism.

Pipeline 0919, like many of the offshore pipelines in the Pacific Ocean, was built in the late 1960s — it is well past the 30-years of age that federal data show significantly increases the risks of failure. And these offshore pipelines face additional stressors from salt water, storms, vessel collisions and unconventional well stimulation techniques such as hydraulic fracturing that increase the risk of accidents and spills. In other words, Pipeline 0919, and all the pipelines off California’s coast are extensively corroded and damaged, placing California at risk of yet another devastating oil spill.

In response to the Refugio spill, in an effort to prevent similar spills from occurring offshore, in late 2015 California enacted a new pipeline safety law. This law, the Coastal Best Available Technology Law, codified in Government Code Section 51013.1, requires that any new or replacement pipeline near environmentally and ecologically sensitive areas in the coastal zone use the best available technologies. These include installation of leak detection technology, automatic shutoff systems, remote controlled sectionalized block valves, or any combination of these technologies. In addition, the law requires retrofitting existing coastal pipelines with the best available technology to protect state waters and wildlife from oil spills. Cal. Gov. Code § 51013.1.

California regulations require pipeline operators to identify pipelines that are subject to or may be exempt from the requirements of the Coastal Best Available Technology law. In a letter to CalFire on September 24, 2020, DCOR asserted that Pipeline 0919, connecting Platform Eva to the Fort Apache Separation Facility, was exempt from the statute because it did not qualify as a “pipeline.”

According to California Government Code Chapter 5.5, Section 51010.5(a)(3):

(a) “Pipeline” includes every intrastate pipeline used for the transportation of hazardous liquid substances or highly volatile liquid substances, including a common carrier pipeline, and all piping containing those substances located within a refined products bulk loading facility which is owned by a common carrier and is served by a pipeline of that common carrier, and the common carrier owns and serves by pipeline at least five such facilities in the state. “Pipeline” does not include the following:

...

(3) A pipeline for the transportation of crude oil that operates by gravity or at a stress level of 20 percent or less of the specified minimum yield strength of the pipe.

DCOR concluded that that the exemption defined by California Government Code Section 5101 0.5(a)(3) is applicable to Pipeline 0919 “because that segment continues to operate below 20% SMYS [specific minimum yield strength].” On October 1, 2020, Office of the State Fire Marshal (OSFM) accepted DCOR’s claimed exemption. As a result, Pipeline 0919 has not yet been retrofitted to meet legal requirements under Coastal Best Available Technology Law. Cal. Gov’t. Code § 51013.1

The rupture of Pipeline 0919 demonstrates the risks posed by the pipeline, and others like it, by failing to apply the best available pipeline technology to control oil spills. DCOR must rapidly retrofit this pipeline, and the others DCOR has likewise claimed are exempt from the Coastal Best Available Technology Law requirements. These include Pipeline 0579, a 6-inch pipeline from Fort Apache to Heil/Goldenwest Station, Pipeline 0918, a 3.5-inch pipeline from Platform Esther to 1st Street Vault in Seal Beach, Pipeline 0842, a 22-inch pipeline from ROSF to Crimson Harbor Station in Ventura, and Pipeline 0843, a 12-inch pipeline from Front St. Station to Mohawk Station in Ventura.

In addition to the retrofitting required by law, Pipeline 0919 itself should also undergo a comprehensive environmental and safety review. Such a review should identify alternatives, mitigation, and safety precautions to ensure environmental and public health. It should also include a full disclosure of the impacts of resuming oil production from Platforms Eva and Edith and the receiving Fort Apache facility at Huntington Beach, and include robust mitigation to avoid and mitigate any further environmental, public health, and climate damage.

Additionally, Platform Eva and the onshore Huntington Beach Fort Apache facility that both connect to the Pipeline 0919 appear to be overdue for safety audits. A December 2020 audit revealed that both were scheduled for a safety audit in 2019 that was not initiated because of staffing shortages and the pandemic.⁴ The audit also noted that the program lacked a “risk assessment process to assist in identifying high risk areas, such as reviewing recent facility inspection records and violations.”⁵ Any plan to repair and restart the Pipeline 0919 must include a comprehensive safety audit of Platform Eva and Fort Apache.

The risks of aging pipeline technology are grave, and another oil spill in the coastal zone could be catastrophic to California’s wildlife and coastal communities. It is precisely these grave risks that prompted the passage of Coastal Best Available Technology Law and necessitates comprehensive updating of the state’s offshore pipelines. Pipeline 0919 must undergo the retrofitting required by law and DCOR should ensure that the restart plans include safety audits of Pipeline 0919, Platform Eva, and Fort Apache.

⁴ California Department of Finance, Final Report—California Oil Spill Prevention, Response, and Preparedness Program Performance Audit (Dec. 2020).

⁵ *Id.*

The Center will continue to monitor this situation and ensure that DCOR complies with California law to protect our coastal ecosystems and wildlife. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Emily Jeffers". The signature is fluid and cursive, with the first name "Emily" and last name "Jeffers" clearly distinguishable.

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