

Congress of the United States
Washington, DC 20515

February 29, 2016

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

We write to request that the Government Accountability Office (GAO) conduct an investigation into actions by the Department of Interior's Bureau of Safety and Environmental Enforcement (BSEE), in its Gulf of Mexico Region. We respectfully ask that your office give this request the utmost consideration and prompt address.

The offshore oil and gas industry in the Gulf of Mexico relies on helicopter service providers to perform an array of tasks critical to the support of offshore drilling, production and maintenance operations, among other critical services. Those helicopter service companies often pre-position, at great expense, privately-owned refueling stations with quantities of aviation fuel on the facilities of the clients that they service, so that their pilots can safely refuel between missions without having to return to shore.

BSEE is tasked by Congress with inspecting offshore facilities under lease by the federal government. Those inspections require helicopters under contract by BSEE to use fuel to accomplish the mission of the agency. Historically, at least until 2014, BSEE's access to fuel was typically limited to lessees who owned fuel at facilities that the lessees control under lease, from the helicopter service provider under contract with BSEE and from parties that have consensually agreed or contracted with BSEE or its helicopter service provider to provide fuel to BSEE for inspections, and / or, at large, in case of emergencies or other critical safety needs.

However, it has recently come to our attention that BSEE has embarked on a troubling, and potentially illegal, course as it relates to its policy and practice to gain access to fuel. Allegedly, BSEE has, without advance notice, broadly reinterpreted and questionably expanded its authority. BSEE now claims the right, without consent or permission, to seize fuel owned by independent third-party contractors who are not agreeable to fuel sharing agreements with BSEE or its agents. The objections are due primarily to concerns about potential liabilities arising therefrom and for other reasons. Specifically, independent third-party contractors have reported that BSEE is now, in many circumstances, requiring that it be granted unlimited, unrestricted access to privately-owned fuel whenever it wants, for any purposes it determines, whether or not the fuel would be used for scheduled or valid inspections. This change was put into effect in 2014 without prior announcement or administrative review. While the delegation has expressed serious concerns to BSEE that this interpretation and conduct may arguably be an overreach of

its statutory premise and, on review, held to be illegal, BSEE has insisted it has the authority and will continue to use it, unabated.

We had requested that BSEE cease its unauthorized access to and taking of such privately owned fuel of independent third parties not under contract or without agreement. We asked that BSEE limit those actions to situations clearly provided for under the law and/or through fuel sharing contracts or consensual agreement between BSEE, its agents, and willing third parties. No one has voiced objection to BSEE accessing such fuel in case of emergencies or circumstances where there is, credibly presented, a clear and present safety issue and danger. Unfortunately, BSEE declined and so we are left with no alternative but to request an official investigation into BSEE's interpretation of the scope of its authority and related conduct. The objective of said request and investigation are to ascertain the precise limit of BSEE's authority and whether the alleged actions are verifiable and legal and, if not, whether BSEE and its agents could be subject to legal and / or civil liability for engaging in them. We believe that the GAO is in the best position to independently and objectively answer those questions.

Below is a specific breakdown of items that this investigation should address:

1. Whether BSEE has the explicit authority within the scope of its authorizing statute, or from valid, accompanying regulations (which regulations, we understand, must be consistent with and not exceed the limits of the authorizing statute) to demand or seize, whether for valid inspections or operational convenience, privately-owned helicopter fuel from lessees, permit holders, or operators of federally leased offshore facilities, or from independent contractors, or third-party vendors, and
 - If GAO determines that BSEE has that authority, it should assess whether—
 - BSEE may demand or seize the helicopter fuel at any time and for any purpose; or
 - The authority under that clause is subject to conditions or limitations;
2. Whether an independent helicopter service provider not under agreement with BSEE or a BSEE-contracted helicopter service provider qualifies as “a designated operator or agent of the lessee(s), a pipeline right-of-way holder, or a State lessee granted a right-of-use and easement” under section 250.105 of title 30, Code of Federal Regulations.
3. Whether BSEE is or has been conducting random, unscheduled inspections at any facility of a lessee or permit holder —
 - To allow BSEE to “justify” taking privately owned aviation fuel at the subject facility for BSEE's convenience; and
 - To justify the taking of helicopter fuel in connection with an inspection that otherwise would not have occurred; and
4. Whether BSEE employees, by demanding or seizing, or directing participation of third

parties in the demand for or seizure of, helicopter fuel, through intimidation, coercion, or other means, directly or indirectly, without the consent of the private owner of the fuel, would be—

- Subject to civil liability under section 2680(h) of title 28, United States Code;
or
- Subject to civil or criminal liability under any other law.

The GAO should be aware that several of the below-referenced members of Congress have asked on at least three separate occasions – including by official letter – for BSSE, through the Department of Interior’s Office of General Counsel, to cite and establish its precise legal authority for taking these specific actions. That document has never been provided. Furthermore, it is important to note that efforts to resolve this matter have been underway since 2014, and members of Congress have on many occasions attempted to help reach an amicable and reasonable settlement between BSEE and the regulated parties. Unfortunately, BSEE has been unwilling to play a constructive role in that process. As the investigative arm of Congress, GAO is in the best possible position to conduct this investigation and clarify the executive’s legal authority where BSEE has been unwilling to do so.

Thank you for your attention to this important matter. We hope and trust that GAO can undertake this important investigation at the earliest possible opportunity. We request that this investigation be concluded within 180 days. Please do not hesitate to contact us if we can provide additional information.

Sincerely,



David Vitter
United States Senator
Louisiana



Bill Cassidy, M.D.
United States Senator
Louisiana



Rep. Steve Scalise (LA-01)



Rep. Charles Boustany (LA-03)



Rep. Garret Graves (LA-06)



Rep. Pete Olsen (TX-22)



Rep. Blake Farenthold (TX-27)