

**Memorandum of Agreement
Between the Department of Conservation
Division of Oil, Gas, and Geothermal Resources
and the
Department of Forestry and Fire Protection
Office of the State Fire Marshal**

I. Background

In 1994, the Legislature passed Assembly Bill (AB) 3261 (O'Connell), which gave the Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR), jurisdiction over certain tanks and pipelines "attendant to" oil and gas production. In 2009, the Legislature passed AB 1960 (Nava), which directed DOGGR to prescribe minimum facility maintenance standards for oil and gas "production facilities." In 2012, the Legislature passed AB 1566 (Wieckowski) delegating to the Department of Forestry and Fire Protection – Office of the State Fire Marshal (CAL FIRE – OSFM) responsibility for administering the Aboveground Petroleum Storage Act (APSA) and giving CAL FIRE – OSFM jurisdiction over certain tank facilities with 1,320 gallons or more of petroleum, excluding tanks under the jurisdiction of DOGGR. None of the bills clearly delineate the jurisdictional boundaries of DOGGR and CAL FIRE – OSFM in relation to tanks and pipelines located within oil and gas fields. As a result, there is potential for uncertainty regarding where one agency's authority ends and the other's begins.

II. Purpose and Scope

This Memorandum of Agreement (MOA) sets forth a mutual understanding between DOGGR and CAL FIRE – OSFM with regard to each agency's regulatory authority over tanks and pipelines located within oil and gas fields.

III. Responsibilities and Authorities

Under California Public Resources Code (PRC), Section 3106, subdivision (a), DOGGR has jurisdiction over tanks and facilities that are "attendant to" oil and gas production, including pipelines located within oil and gas fields and not subject to regulation by CAL FIRE – OSFM pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the California Government Code (PRC, § 3106, subdivision (a)). Additionally, PRC Section 3270, subdivision (a), directs DOGGR to prescribe minimum facility maintenance standards for all "production facilities" in the state (PRC, § 3270, subdivision (a)). "Production facility" is defined to mean "any equipment attendant to oil and gas production or injection operations, including, but not limited to tanks . . . and pipelines that are not under the jurisdiction of the State Fire Marshal pursuant to Section 51010 of the Government Code" (PRC, § 3010).

Under California Government Code, Section 51010.5, subdivision (a), CAL FIRE – OSFM's Pipeline Safety Division regulates certain intrastate pipelines used for the transportation of hazardous liquid substances (Government Code, § 51010.5, subdivision (a)). Additionally, under the California Health and Safety Code, CAL FIRE – OSFM regulates any "tank facility" with a storage capacity of 1,320 gallons or more of petroleum (Health & Safety Code, § 25270.3). A "tank facility" is defined as "one or more aboveground storage tanks, including any piping that is integral to the tanks, that contain petroleum and that are used by an owner or operator at a single location or site." (Health & Safety Code, § 25270.2, subdivision (n).) An "aboveground storage tank" is defined to include certain tanks that have the capacity to store 55 gallons or more of petroleum, excluding aboveground oil production tanks subject to DOGGR jurisdiction under Section 3106 of the PRC (*i.e.*, excluding tanks "attendant to" oil and gas production) (Health & Safety Code, § 25270.2(a)). Tank facilities subject to CAL FIRE – OSFM jurisdiction are inspected by Certified Unified Program Agencies for compliance with the APSA.

The separation of jurisdiction between DOGGR and CAL FIRE – OSFM rests in part upon the interpretation of tanks and facilities "attendant to" oil and gas production. For purposes of this MOA, tanks and pipelines that are located within the lease areas of oil and gas fields, and are integrally associated with oil and gas production, are generally "attendant to" oil and gas production and therefore under DOGGR's jurisdiction. Consistent with this interpretation, DOGGR will have jurisdiction over all tanks and pipelines that exist on the lease between the wellhead and the point of custody transfer to a common carrier, pipeline company, refinery, or other third-party for purposes of sales, distribution, or further processing. This includes standalone tanks on the lease, not connected to the wellhead by physical pipeline, that are integrally associated with oil and gas production. The point of custody transfer may include, but is not limited to, the truck loading dock or the lease automatic custody transfer (LACT) unit. CAL FIRE – OSFM jurisdiction will begin at the point of custody transfer. Thus, tanks and pipelines that contain petroleum after it has passed a point of custody transfer (such as a truck loading dock or LACT unit) are subject to CAL FIRE – OSFM jurisdiction.

IV. Cooperative Functions

DOGGR and CAL FIRE - OSFM agree to exchange tank, pipeline, and testing information as may be reasonably requested by each agency.

Should any discrepancy arise regarding the respective jurisdiction of DOGGR and CAL FIRE – OSFM over any specific tanks or pipelines within the scope of this MOA, the agencies will communicate and cooperate with each other in good faith to reach a mutually agreed upon determination of the responsible agency. Such determinations will be made on a case-by-case basis. Additionally, this process of determining the responsible agency shall, at the request of either agency, involve sending a representative into the field to inspect, and otherwise gather information on the tank(s) and/or pipeline(s) at issue.

V. Implementing this MOA

DOGGR and CAL FIRE – OSFM will each designate a representative within their respective agencies to be responsible for coordinating and implementing the provisions of this MOA. The designees will act as the contact point for any requests and/or notifications stipulated in this MOA.

VI. Savings Provision

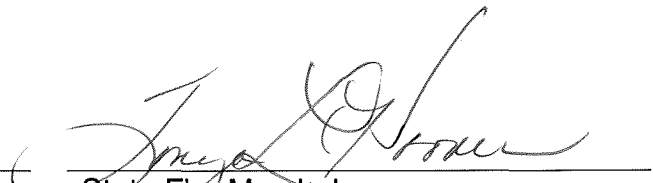
Nothing in this MOA alters, amends, limits, or otherwise affects in any way the statutory authority of DOGGR or CAL FIRE – OSFM.

VII. Effective Date


This MOA is effective upon signature by both parties. Both parties may amend this MOA by mutual written agreement only. Either party may terminate this MOA upon a 30-day written notice.



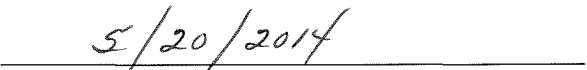
Director
Department of Conservation



State Fire Marshal



Date



Date