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Oil, Gas & Energy Law Intelligence

U.S. Offshore Regulatory Policies in Abandonment and Decommissioning by B.B. Pollett

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U.S. Offshore Regulatory Policies in Abandonment and Decommissioning¹

*Buford Boyd Pollett, J.D. and Attorney at Law**

Abstract

Current State of Abandonment and Decommissioning in the Offshore United States

The Bureau of Ocean Energy Management (BOEM, the agency within the U.S. Federal Government responsible for administering federal offshore leases on federal submerged lands) recently stated that the “routine” oil and gas facility decommissioning liability in the Gulf of Mexico currently totals USD 40 billion because of the increasing maturity of the Pacific and Gulf of Mexico oil and gas infrastructure. In addition, the BOEM has highlighted that an accident or hurricane event can result in a tenfold (or more) increase in “routine” decommissioning cost to offshore facilities. Likewise, the Bureau of Safety and Environmental Enforcement’s (BSEE, the agency within the U.S. Federal Government responsible for promoting the safe development of oil, gas, and mineral resources on federal submerged lands) records indicate 245 platforms in the Gulf of Mexico currently fit “idle iron” criteria in accordance with NTL 10-5. Although the oil and gas infrastructure is in the early stages of development in the U.S. Arctic, the BOEM has noted that the Arctic decommissioning costs potentially rival the costs of decommissioning in the deepwater of the Gulf of Mexico.

Regulatory update

On July 14, 2016, the BOEM issued a Notice to Lessees and Operators (NTL 2016 – No. 1 effective September 12, 2016) providing a general notification to all active Record Title Owners, Operating Rights Holders, and Designated Operators; Pipeline Right-of-Way Holders; and Rights-of-Use and Easement Holders (collectively termed Interest Holders) on the federal outer continental shelf (OCS) that the Interest Holders needed to provide additional security in order to provide sufficient protection for liabilities incurred during OCS operations.

In December of 2016, the BOEM issued Orders to Provide Additional Security for the sole liability properties on the OCS that have only one liable party (i.e., no current co-lessees or prior Interest Holders. However, on February 17, 2017, the BOEM announced the withdrawal of the sole liability orders issued in December of 2016 in order to permit the new Administration the opportunity to review the financial assurance program as part of the ongoing, six-month interactive process that the BOEM had previously initiated to gather information following the issuance of NTL 2016-N01. In addition, the BOEM emphasized that it may re-issue sole liability orders prior to the end of this six-month period if the BOEM concluded that an Interest Holder posed a substantial risk with regard to nonperformance of the Interest Holder’s decommissioning obligations.

¹ The author would like to thank Ms. Terry L. Saunders Patton, Program Coordinator, and Ms. Cristina Smith Williams, Program Coordinator Master of Energy Business, Collins College of Business School of Energy, University of Tulsa, as well as his family for their invaluable support, encouragement, feedback and insights during the process of researching and drafting previous versions of this paper. Please note the author retains all responsibility for any errors in the paper.

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Financial Assurance Supporting Abandonment and Decommissioning Obligations

This paper will also examine financial assurance and transparency challenges currently present and anticipated with regard to offshore energy installations in the United States. In doing so, the paper will discuss the areas for suggested dialogue, collaboration, and coordination between industry and regulatory agencies in order to increase transparency, enhance safety, mitigate against environmental risks, and otherwise provide potential solutions in achieving and maintaining a social license to operate.

I. Introduction

This paper outlines the regulatory background and highlights the jurisdictional interactions applicable to the decommissioning of offshore energy installations in the United States. I also provide a regulatory update on the decommissioning obligations imposed on parties with interest in the offshore submerged lands of the United States. Through my examination of this process I provide a basic understanding of the "labyrinth" of the legal framework (*i.e.*, international, federal, state, and local level) and regulatory changes that might substantially change the profile of companies investing and operating on the OCS as well as substantially impact the way investors view the US offshore regulatory environment.

II. Historical Background on Abandonment and Decommissioning in the Offshore United States

1. Legal Framework

The exploration, development, operation, and decommissioning of energy resources in the offshore of the United States of America ("USA") as a constitutional republic involves the interaction of legal jurisdictions at the international, federal, state, and local level.²



² Map Source: <https://www.boem.gov/Resource-Evaluation-Data/> Oct. 30, 2017.

(1) **International and United States Federal Law** - Generally, under the United Nations Convention on the Law of the Sea ("UNCLOS") coastal nations have the authority to exercise varying levels of authority over their adjacent offshore areas.³ As of the date of this article, the USA has not ratified UNCLOS in accordance with U.S. Constitution requiring the consent of two-thirds of the United States Senate.⁴ However, the USA has exerted jurisdiction over offshore shore areas of the United States both via treaties and Presidential proclamations.⁵

(2) **United States Federal Law and State Law** –

Ownership of submerged lands - In the last century, the United States Supreme Court dealt with the jurisdictional interface between the United States federal and state governments with regard to submerged lands.

*In 1947 [the United States Supreme] Court decided [in the case United States v. California, 67 S. Ct. 1658 (U.S. June 23, 1947)] that no one of the States bordering on the Atlantic or the Pacific Ocean or on the Gulf of Mexico owned any part of the land submerged under the waters lying adjacent to its shores. In 1953 Congress, in the Submerged Lands Act, "restored" to the States what it thought our holding had wrongfully taken away from them. What the Act did was in effect to quitclaim to each coastal State submerged land extending three geographic miles seaward from the State's coastline, except that under certain circumstances States bordering on the Gulf of Mexico were entitled to a maximum of not more than three leagues (roughly nine geographic miles) from the coastline. Under the Act submerged land of the Continental Shelf, more than three miles or three leagues beyond the coastline is the property of the United States.*⁶

Later, the United States Supreme Court in the case *United States v. Maine* (a case involving a dispute between the federal government and the thirteen states that were the thirteen original colonies that created the federal government under the United States Constitution) highlighted the holding in *United States v. California* that the "protection and control of [the marginal sea] has been and is a function of national external sovereignty," *id.*, at 34, and that in our constitutional system paramount rights over the ocean waters and their seabed were vested in the Federal Government."⁷

Likewise, the Property Clause of the U.S. Constitution empowers the federal government with complete power which Congress has "to dispose of and make all needful rules and regulations" over particular public property entrusted to the federal government under the United States Constitution.⁸ As the United States Supreme Court noted in the case *Kleppe v. New Mexico*:

We have noted, for example, that the Property Clause gives Congress the power over the public lands "to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them...." Utah Power & Light Co. v. United States, 243 U.S. 389, 405 (1917). And we have approved legislation respecting the public lands "[i]f it be found to be necessary for

³ U.N. Convention on the Law of the Sea, December 10, 1982, Article 85, 1833 U.N.T.S. 3.

⁴ U.S. Const. art. 3, § 2.

⁵ See for example the *Treaty on Maritime Boundaries between the United States of America and the United Mexican States* (signed 4 May 1978 and entry into force: 13 November 1997), and Presidential Proclamation No. 5030 - *Exclusive Economic Zone of the United States of America* (signed March 10, 1983).

⁶ *United States v. La. (Louisiana Boundary Case)*, 394 U.S. 11 (U.S. Mar. 3, 1969).

⁷ *United States v. Maine*, 420 U.S. 515 (U.S. Mar. 17, 1975).

⁸ USCS Const. Art. IV, § 3, Cl 2.

the protection of the public, or of intending settlers [on the public lands]." Camfield v. United States, supra, at 525. In short, Congress exercises the powers both of a proprietor and of a legislature over the public domain. Alabama v. Texas, supra, at 273; Sinclair v. United States, 279 U.S. 263, 297 (1929); United States v. Midwest Oil Co., 236 U.S. 459, 474 (1915). Although the Property Clause does not authorize "an exercise of a general control over public policy in a State," it does permit "an exercise of the complete power which Congress has over particular public property entrusted to it." United States v. San Francisco, supra, at 30 (footnote omitted).⁹

Preemption – The doctrine of federal preemption rests in the Supremacy Clause of the United States Constitution which states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.¹⁰

As expressed by the United States Supreme Court, the federal statute will preempt state law to the extent "it interferes with the methods by which the federal statute was designed to reach this goal."¹¹ As the Court noted, "it is not necessary for a federal statute to provide explicitly that particular state laws are pre-empted."¹² Preemption may be presumed if a federal statute is "sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation."¹³ Likewise, a federal statute preempts a state law to the extent that the state law "actually conflicts with the federal statute." Thus, courts will find a conflict between federal law and state law "when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'"¹⁴

(3) United States Federal Law and Local Law

Similar to the ability of federal law to preempt state law, federal law will preempt local law. However, this does leave localities with regulatory power to the extent the local law does not conflict with federal powers and individual rights granted under the United States Constitution or federal statute.

An example of the ability of localities to impact activities in the energy industry is how Seattle, Washington's mayor impacted Shell's Arctic drilling activity when Seattle's mayor reminded Shell and the Port of Seattle of the need to apply for a new land-use permit under the existing lease the company had with the Port of Seattle to allow Terminal 5 in the Port of Seattle as a hub for Shell. In siding with environmentalists, Seattle's mayor said the existing permit allowed

⁹ *Kleppe v. New Mexico*, 426 U.S. 529, 96 S. Ct. 2285, 49 L. Ed. 2d 34, 1976 U.S. LEXIS 124, 6 ELR 20545 (U.S. June 17, 1976).

¹⁰ U.S. Const. art. VI, § 2.

¹¹ *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 107 S. Ct. 805, 93 L. Ed. 2d 883, 1987 U.S. LEXIS 416, 55 U.S.L.W. 4138, 17 ELR 20327, 25 ERC (BNA) 1457 (U.S. Jan. 21, 1987).

¹² *Id.* citing *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985).

¹³ *Id.* citing *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985) quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

¹⁴ *Id.* citing *Hillsborough County v. Automated Medical Laboratories, Inc.*, supra, at 713 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

the loading and unloading of cargo but not the long-term moorage and maintenance of drilling equipment.¹⁵

Abstention - *Burford* doctrine¹⁶

As the United States Court of Appeals for the Fourth Circuit noted in the case *Wash. Gas Light Co. v. Prince George's County Council*, cases involving questions of state and local land use and zoning law are a classic examples of matters that “stem solely from construction of state or local land use or zoning law, not involving the constitutional validity of the same and absent exceptional circumstances . . . , the [federal] district courts should abstain under the *Burford* doctrine [*i.e.* where a federal court’s review of the matter would disrupt a local government’s efforts to establish a coherent policy with respect to a complex matter of substantial local concern] to avoid interference with the State’s or locality’s land use policy.”¹⁷

2. Federal Statutes

Submerged Lands Act (SLA) of 1953¹⁸

The SLA reiterated federal government’s claim to the lands of the Outer Continental Shelf (OCS) (*i.e.*, submerged lands seaward of state jurisdiction), and granted states the power to regulate the natural resources of submerged lands from the coastline up to 3 nautical miles (5.6 km) into the Atlantic, Pacific, the Arctic Oceans, and the Gulf of Mexico. In contrast, Texas’ east and Florida’s west coasts each have jurisdiction that extends from the coastline up to 3 marine leagues (16.2 km) into the Gulf of Mexico.¹⁹

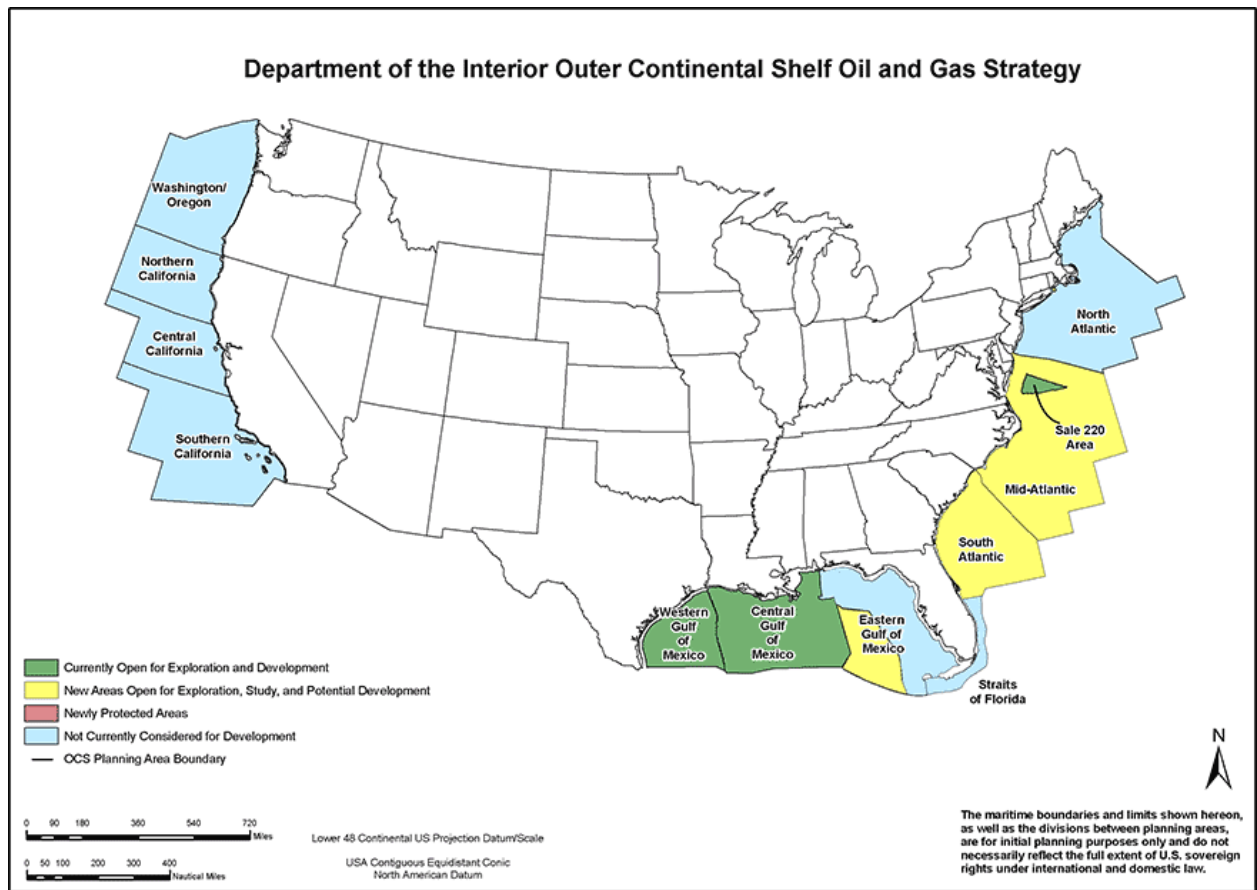
¹⁵ See <http://www.seattletimes.com/seattle-news/shell-abandons-arctic-oil-drilling-impact-in-seattle-unclear/> October 30, 2017.

¹⁶ *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424, 1943 U.S. LEXIS 1103 (U.S. May 24, 1943).

¹⁷ *Wash. Gas Light Co. v. Prince George's County Council*, 711 F.3d 412, 2013 U.S. App. LEXIS 5884, 2013 WL 1189296 (4th Cir. Md. Mar. 25, 2013) quoting *MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 280 (4th Cir. 2008).

¹⁸ 43 U.S.C. §§1301-1315 (2002).

¹⁹ BOEM Governing Statutes | BOEM <https://www.boem.gov/Governing-Statutes/> October 31, 2017.



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Outer Continental Shelf Lands Act of 1953 (OCSLA)

Congress and the President have amended the OCSLA since enactment in 1953.²¹ The OCSLA provides the basic legal framework regarding the federal government's responsibility for the submerged lands of the OCS.²²

OCSLA recognizes that the submerged lands of the United States Outer Continental Shelf under the “jurisdiction, control, and power of disposition” of the federal government.²³ Similarly, the OCSLA expressly provides:

*The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices **permanently or temporarily attached to the seabed**, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (**other than a ship or vessel**) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.*²⁴

²⁰ Map source: <https://www.doi.gov/energy/ocs/lower48-strategy> October 31, 2017.

²¹ Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et. seq. (1953 as amended).

²² BOEM Governing Statutes | BOEM <https://www.boem.gov/Governing-Statutes/> October 31, 2017.

²³ 43 USCS § 1332.

²⁴ 43 USCS § 1333 (1). **Emphasis** added.

The OCSLA provisions emphasized in the above citation are extremely relevant when balancing and evaluating the jurisdictional interface related to energy installations governed by the OCSLA and those energy installations that constitute ships or vessels and thus are governed by federal maritime law as provided by the Admiralty Clause in the United States Constitution.²⁵

This jurisdictional interface becomes even more complex when considering that the OCSLA expressly provides for state law to supplement federal law to the extent state law is not inconsistent with federal law.

*To the extent that they are applicable and not inconsistent with this Act or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.*²⁶

Oil Pollution Act of 1990 (OPA 90)²⁷

The OPA 90 gave the Secretary of the Interior responsibility for offshore facilities and associated pipelines, with the exception of deepwater ports, for state and federal offshore waters. The Secretary, in turn, delegated this OPA 90 authority to the BOEM. Likewise, the BOEM has responsibility for reviewing spill financial liability limits and certifying spill financial responsibility.²⁸

Energy Policy Act of 2005

As part of a broad energy policy law, the Energy Policy Act of 2005 (EPAct) authorized the promulgation of federal regulations for the general framework for renewable energy development on the OCS.²⁹ Similarly, the “EPAct requires that BOEM coordinate with relevant Federal agencies and affected state and local governments, obtain [a] fair return for leases and grants issued, and ensure that renewable energy development takes place in a safe and environmentally responsible manner.”³⁰

²⁵ U.S. Const. art. III, § 2.

²⁶ 43 USCS § 1333 (2) (A).

²⁷ 33 U.S.C. 2701-2761.

²⁸ BOEM Governing Statutes | BOEM <https://www.boem.gov/Governing-Statutes/> October 31, 2017.

²⁹ <https://www.boem.gov/Regulatory-Framework/> October 30, 2017.

³⁰ *Id.*

III. Regulatory update

1. Federal Regulations

The federal agencies under the authority of the Secretary of Interior promulgated regulations governing the decommissioning of energy facilities issued pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 et seq. and the Energy Policy Act of 2005.³¹ Prior to the BP Macondo incident in the Gulf of Mexico, the Minerals Management Service (MMS) was the agency empowered with the authority to “promoting resource development, enforcing safety regulations, and maximizing revenues from offshore operations.”³² In May of 2010 following the BP Macondo incident in April 2010, the then Secretary of the Interior Ken Salazar signed a Secretarial Order dividing the MMS into three independent entities to better carry out its three missions:

- ensuring the balanced and responsible development of energy resources on the OCS;
- ensuring safe and environmentally responsible exploration and production and enforcing applicable rules and regulations; and
- ensuring a fair return to the taxpayer from offshore royalty and revenue collection and disbursement activities.”³³

On October 1, 2010, the Secretary of Interior reorganized the MMS into the following three agencies to carry out their respective missions while minimizing the risk of conflicts of interest.

- Bureau of Ocean Energy Management (BOEM) – Responsible for managing the development of the nation’s offshore resources,
- Bureau of Safety and Environmental Enforcement (BSEE) – Responsible for enforcing safety and environmental regulations on the nation’s offshore submerged lands, and
- Office of Natural Resources Revenue (ONRR) – Responsible for revenue collection from energy development on the nation’s public lands and oceans.³⁴

The decommissioning regulations for oil, gas, or sulfur operations promulgated under the OCSLA are located in 30 C.F.R. §§ 250.1700-250.1754 and include the following:

³¹ The update Annual Edition of the Code of Federal Regulations following publication in the Federal Register by the respective federal departments and agencies may be found online at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> October 31, 2017.

³² <https://www.boem.gov/Reorganization/> October 31, 2017.

³³ *Id.*

³⁴ *Id.*

General

- § 250.1700 What do the terms "decommissioning", "obstructions", and "facility" mean?
- § 250.1701 Who must meet the decommissioning obligations in this subpart?
- § 250.1702 When do I accrue decommissioning obligations?
- § 250.1703 What are the general requirements for decommissioning?
- § 250.1704 What decommissioning applications and reports must I submit and when must I submit them?
- § 250.1705 [This section was removed and reserved. See 81 FR 25888, 26037, Apr. 29, 2016.]
- § 250.1706 Coiled tubing and snubbing operations.

Permanently Plugging Wells

- § 250.1710 When must I permanently plug all wells on a lease?
- § 250.1711 When will BSEE order me to permanently plug a well?
- § 250.1712 What information must I submit before I permanently plug a well or zone?
- § 250.1713 Must I notify BSEE before I begin well plugging operations?
- § 250.1714 What must I accomplish with well plugs?
- § 250.1715 How must I permanently plug a well?
- § 250.1716 To what depth must I remove wellheads and casings?

Temporary Abandoned Wells

- § 250.1721 If I temporarily abandon a well that I plan to re-enter, what must I do?
- § 250.1722 If I install a subsea protective device, what requirements must I meet?
- § 250.1723 What must I do when it is no longer necessary to maintain a well in temporary abandoned

Removing Platforms and Other Facilities
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| <ul style="list-style-type: none">• § 250.1725 When do I have to remove platforms and other facilities?• § 250.1726 When must I submit an initial platform removal application and what must it include?• § 250.1727 What information must I include in my final application to remove a platform or other facility?• § 250.1728 To what depth must I remove a platform or other facility?• § 250.1729 After I remove a platform or other facility, what information must I submit?• § 250.1730 When might BSEE approve partial structure removal or toppling in place?• § 250.1731 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE?• § 250.1731 Who is responsible for decommissioning an OCS facility subject to an Alternate Use RUE? |
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Site Clearance for Wells, Platforms and Other Facilities

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| <ul style="list-style-type: none">• § 250.1740 How must I verify that the site of a permanently plugged well, removed platform, or other removed facility is clear of obstructions?• § 250.1741 If I drag a trawl across a site, what requirements must I meet?• § 250.1742 What other methods can I use to verify that a site is clear?• § 250.1743 How do I certify that a site is clear of obstructions? |
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Pipeline Decommissioning

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| <ul style="list-style-type: none">• § 250.1750 When may I decommission a pipeline in place?• § 250.1751 How do I decommission a pipeline in place?• § 250.1752 How do I remove a pipeline?• § 250.1753 After I decommission a pipeline, what information must I submit?• § 250.1754 When must I remove a pipeline decommissioned in place? |
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The **decommissioning regulations for renewable energy and alternative uses of existing facilities on the OCS** were promulgated following amendments to subsection 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337), as expressed in section 388(a) of the Energy Policy Act of 2005 (EPAAct) (Pub. L. 109-58). Following the delegation of authority by the Secretary of the Interior, the BOEM promulgated the corresponding regulations in 30 C.F.R. §§ 585.900 - 585.913 and including the following:

Decommissioning Obligations and Requirements

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| <ul style="list-style-type: none"> • § 585.900 Who must meet the decommissioning obligations in this subpart? • § 585.901 When do I accrue decommissioning obligations? • § 585.902 What are the general requirements for decommissioning for facilities authorized under my SAP, COP, or GAP? • § 585.903 What are the requirements for decommissioning FERC-licensed hydrokinetic facilities? • § 585.904 Can I request a departure from the decommissioning requirements? |
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Decommissioning Applications

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| <ul style="list-style-type: none"> • § 585.905 When must I submit my decommissioning application? • § 585.906 What must my decommissioning application include? • § 585.907 How will BOEM process my decommissioning application? • § 585.908 What must I include in my decommissioning notice? |
|---|

Facility Removal

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| <ul style="list-style-type: none"> • § 585.909 When may BOEM authorize facilities to remain in place following termination of a lease or grant? • § 585.910 What must I do when I remove my facility? |
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Decommissioning Report

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| <ul style="list-style-type: none"> • § 585.912 After I remove a facility, cable, or pipeline, what information must I submit? |
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Compliance with and Approved Decommissioning Application

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| <ul style="list-style-type: none"> • § 585.913 What happens if I fail to comply with my approved decommissioning application? |
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2. State Law

Within their offshore boundaries, states in the United States have:

- (1) Title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and*
- (2) The right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law....³⁵*

As a result, the individual states are responsible for administering the decommissioning activity on state submerged lands. With regard to United States offshore oil and gas activity in the Gulf of Mexico, Pacific, Atlantic, and Arctic, certain states have established regularity regimes for decommissioning of offshore installations on their submerged lands (*e.g.*, Texas see 16 TAC § 3.14 Plugging, 16 TAC § 3.14 §3.15 Surface Equipment Removal Requirements and Inactive Wells and 16 TAC § 3.14 §3.16 Log and Completion or Plugging Report).³⁶ This state oversight also applies to offshore renewable energy projects which are in the early stages of development in the United States, but have received substantial support at the state level (*e.g.*, “[Rhode Island] Coastal Resources Management Council (CRMC) unanimously approved the final submerged lands lease and two joint licenses and assents for the five-turbine wind farm project off Block Island”³⁷).

3. Decommissioning Obligations on the OCS

As Marino and Gower so candidly stated in their 2015 article:

*On a superficial level, an OCS lease is an ordinary two-party contract between the federal government and a willing third party. However, an OCS lease implicates far more than the usual "four corners" of the contract because lessees and their agents must navigate a labyrinth of rules and regulations to remain in compliance with their lease obligations. Given the large volumes of oil and gas production from the OCS, understanding this maze is a daunting, yet important, task.*³⁸ Categorizing decommissioning obligations provides an outline that may better facilitate understanding of the decommissioning obligations that arise on the OCS. I will now consider the following as typical categories of decommissioning obligations on the OCS:

- lessee decommissioning obligations to the federal government,
- decommissioning obligations between co-lessees/co-grantees, and
- decommissioning obligations to contractors.

Lessee decommissioning obligations to the federal government

The United States federal government does execute contractual documents with lessees on the OCS. The documents include the following:

³⁵ 43 U.S.C. §1311 (a).

³⁶ See [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=16&pt=1&ch=3&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=16&pt=1&ch=3&rl=Y) October 31, 2017.

³⁷ CRMC Council approves final DWW permits, see http://www.crmc.state.ri.us/news/2014_1117_dww.html October 31, 2017.

³⁸ Anthony C. Marino and C. Jacob Gower, *Oil and Gas Mineral Leasing and Development on the Outer Continental Shelf of the United States*, 4 LSU J. of Energy L. & Resources (2015).

- BOEM-2005 Oil and Gas Lease of Submerged Lands Under the OCS Lands Act, and
- BOEM-0008 Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS).

The BOEM issues the above leases pursuant to the OCSLA and these leases are subject to the OCSLA and all regulations promulgated thereunder in existence on the effective date of the lease. Likewise, “the Lessee bears the risk that such may increase or decrease the Lessee’s obligations under the lease.”³⁹

The federal government has sought to limit the risk of decommissioning costs to U.S. taxpayers. A critical part of this risk reduction strategy has been maximizing the pool of parties responsible for decommissioning costs and also enhancing the financial assurance requirements for these responsible parties.

Joint and several liability regime

Maintaining a joint and several liability regime for decommissioning costs maximizes the pool of parties responsible for these costs. In accordance with 30 CFR 250.1701 for oil and gas projects 30 CFR 585.900 for renewable energy projects on the OCS, the regulations promulgated by the federal government provide expressly for a joint and several liability regime for decommissioning and abandonment obligations.⁴⁰ This joint and several liability regime makes a predecessor-in-interest potentially liable for all or a portion of the decommissioning and abandonment costs of the project even though the predecessor-in-interest may have left the project many years previously. Likewise, a successor-in-interest is also responsible for decommissioning costs for facilities and obstructions that a predecessor-in-interest installed on the lease or right of way. Thus, there is continuing joint and several liability for successors-in-interest as well as a predecessors-in-interest for which a party, especially a predecessor-in-interest received no economic benefit.

Financial assurance requirements

BOEM’s Regulatory Authority - Financial Assurance

The OCSLA grants the Secretary of Interior with the authority to require bonds or other forms of financial assurance on the OCS. 30 CFR § 556.900 *et seq.* is the primary regulatory source regarding BOEM’s financial assurance requirements. Correspondingly, the Secretary of Interior delegated this authority to the BOEM and previously to the BOEM’s predecessor the MMS, which have promulgated the regulations establishing financial assurance requirements. In 2008, the MMS issued a notice to lessees (*i.e.* NTL 2008-No7), and in 2016 the BOEM

³⁹ <https://www.boem.gov/BOEM-2005/> and <https://www.boem.gov/BOEM-0008/>. October 31, 2017.

⁴⁰ See 30 CFR 250.1701

(a) Lessees and owners of operating rights are jointly and severally responsible for meeting decommissioning obligations for facilities on leases, including the obligations related to lease-term pipelines, as the obligations accrue and until each obligation is met.

(b) All holders of a right-of-way are jointly and severally liable for meeting decommissioning obligations for facilities on their right-of-way, including right-of-way pipelines, as the obligations accrue and until each obligation is met.

30 CFR 585.900

(a) Lessees are jointly and severally responsible for meeting decommissioning obligations for facilities on their leases, including all obstructions, as the obligations accrue and until each obligation is met.

(b) Grant holders are jointly and severally liable for meeting decommissioning obligations for facilities on their grant, including all obstructions, as the obligations accrue and until each obligation is met.

issued NTL 2016-No1 on July 14, 2016, and effective September 12, 2016, superseding and replacing NTL No. 2008 –N07 revising the financial assurance requirements.⁴¹

Prior to issuing NTL 2016-No1, the BOEM cited several points of concern raised by BSEE under 30 CFR § 556.901(d)-(f) for leases, pipeline rights-of-way (ROW), and rights-of-use and easement (RUE):

- “*Routine*” oil and gas facility decommissioning liability in the Gulf of Mexico currently totals \$40 billion;
- An accident or hurricane event can result in a tenfold (or more) increase in “*routine*” decommissioning cost;
- Existing Pacific and Gulf of Mexico oil and infrastructure is aging. BSEE records indicate 245 Gulf of Mexico platforms currently fit idle iron criteria; and
- Although Arctic infrastructure is in its infancy, it is important to get adequate decommissioning bonding policies in that area in place from the onset. Also, Arctic decommissioning costs rival Gulf of Mexico deepwater decommissioning costs in magnitude.⁴²

Ultimately, these concerns resulted in the BOEM issuing the revised financial assurance requirements in NTL 2016-No1 containing the BOEM’s new financial strength consideration of the following five factors:

- financial capacity – financial criteria,
- projected financial strength – OCS production,
- business stability – 5 years of production (OCS or onshore),
- reliability – Moody’s or S&P credit rating, and
- record of compliance – compliance with OCS regulations including affiliates and subsidiaries.

Following the Presidential election in November 2016 and the inauguration of the administration in January 2017, the BOEM announced on February 17, 2017, the withdrawal of the sole liability orders issued to OCS oil and gas lease and grant holders to permit the new Administration to review the complex financial assurance program.⁴³ Similarly in April 2017, the President issued a Presidential Executive Order *Implementing an America-First Offshore Energy Strategy* under “the authority vested in [the President] by the Constitution and the laws of the United States of America, including the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., and in order to maintain global leadership in energy innovation, exploration, and production, it is hereby ordered as follows:...”⁴⁴

Sec. 6. Reconsideration of Notice to Lessees and Financial Assurance Regulatory Review. *The Secretary of the Interior shall direct the Director of BOEM to take all necessary steps consistent with law to review BOEM’s Notice to Lessees No. 2016 N01 of September 12, 2016 (Notice to Lessees and Operators of Federal Oil and Gas, and Sulfur Leases, and Holders of Pipeline Right-of-Way and Right-of-Use and Easement Grants in the Outer Continental Shelf), and determine whether*

⁴¹ See <https://www.boem.gov/NTL-No-2008-N07/> and <https://www.boem.gov/BOEM-NTL-2016-N01/>.

⁴² See <https://www.boem.gov/2016-02-04-PLANO-Risk-Presentation-Celata/>.

⁴³ <https://www.boem.gov/note02172017/> October 30, 2017.

⁴⁴ <https://www.whitehouse.gov/the-press-office/2017/04/28/presidential-executive-order-implementing-america-first-offshore-energy> October 30, 2017. **Emphasis** added.

modifications are necessary, and if so, to what extent, to ensure operator compliance with lease terms while minimizing unnecessary regulatory burdens. The Secretary of the Interior shall also review BOEM's financial assurance regulatory policy to determine the extent to which additional regulation is necessary.

As the United States House of Representatives Subcommittee on Energy and Mineral Resources noted in a recent hearing on the topic of financial assurance:

*The financial assurance debate illustrates the need for ongoing transparency and collaboration between BOEM and its lessees. A **practical approach to designing financial assurance requirements is necessary to ensure that decommissioning obligations are both realistic and sufficient.***⁴⁵

Decommissioning obligations between co-lessees and co-grantees

Even though a joint and several liability regime governs the decommissioning obligations of lessees and grantees with the federal government, lessees and grantees may have recourse against other parties. For example, a party may have claims under an applicable agreement such as a joint operating, assignment or farm-out agreement against another party for decommissioning costs. If a party does not have rights under an agreement, a party may have potential subrogation rights at law for payment of decommissioning costs. In accordance, the terms of the applicable agreements or as applicable under the terms of the OCSLA, federal or state law may apply to enforcement of these contribution claims.

Decommissioning obligations to contractors

Typically, lessees and grantees do not perform decommissioning work but instead, the lessees and grantees often hire contractors to perform the decommissioning work.⁴⁶

4. OCS Decommissioning Cases

The disputes that have arisen regarding decommissioning obligations demonstrate the complexity of the maze that lessees face on the OCS. I will now examine some of the cases that highlight the complexity of decommissioning obligations on the OCS.

Impact of a termination of a lease on an OCS lease with regard to lessor's obligations in the background law

In the case *Noble Energy, Inc. v. Jewell*, the Court examined whether BSEE's interpretation of a lessee's abandonment obligations under the federal regulations are independent of the obligations of the lease and were, therefore, not discharged by the government's material breach of the lease.⁴⁷ The Court noted that in 1979 Noble Energy had acquired a lease on federal submerged lands off the coast of California and then drilled an exploratory oil well (*i.e.*, Well 320-2) on this lease. Following discovery of oil and gas in this exploration well, Noble energy

⁴⁵ <http://docs.house.gov/meetings/II/II06/20170712/106227/HHRG-115-II06-20170712-SD002.pdf> October 30, 2017. **Emphasis** added.

⁴⁶ La. R.S. 9:4861-9:4873 *Louisiana's Oil Well Lien Act*.

⁴⁷ *Noble Energy, Inc. v. Jewell*, 110 F. Supp. 3d 5 (D.D.C. June 8, 2015).

temporarily plugged and abandoned the well in 1985 and the well remained temporarily plugged and abandoned giving rise to the dispute between Noble Energy and BSEE.⁴⁸

The issue the Court had to consider was whether BSEE had the ability to require Noble Energy to permanently plug and abandon this well. ⁴⁹In making this determination, the Court highlighted that following an earlier dispute over the suspension of this on other leases:

*That the government had effectively 'repudiated the lease agreements by putting into practice the new [court-mandated] rules applicable to the availability of requested suspensions.'" Noble II, 671 F.3d at 1243 (quoting Amber Res. Co. v. United States, 538 F.3d 1358, 1370 (Fed. Cir. 2008)) (alteration in original). Noble Energy and other lessees, together, received \$1.1 billion in restitution. Id. In addition, pursuant to the common law of discharge, Noble Energy (along with the other lessees) was discharged from all of the obligations arising from its lease, including the obligation to "remove all devices, works, and structures from the premises no longer subject to the lease."*⁵⁰

The Court then noted that a year after the Court of Appeals for the Federal Circuit issued the ruling in the case cited above concerning the federal government's breach of Noble Energy's lease, the MMS ordered Noble Energy to permanently plug and abandon the well in accordance with Noble Energy's decommissioning obligations under the federal regulations including 30 C.F.R. 250.1723. Noble Energy challenged this order in court on the basis that "the government's material breach of its lease discharged its obligations under the regulations on which the agency relied."⁵¹ The trial court ruled that "the common law doctrine of discharge did not relieve Noble of the regulatory obligation to plug its well permanently, an obligation that the lease did not itself create."⁵²

Following an appeal by Noble Energy to the Court of Appeals for the District of Columbia the appeals court stated the decision in the case depended "*on the meaning of the decommissioning regulations*:"

- If the regulations impose an obligation to plug Well 320-2 regardless of the government's breach of the lease contract, Noble's argument fails.
- If the regulations release the duty to plug once the government materially breaches the lease agreement, then Noble prevails." Id. at 1245. The Court of Appeals also concluded that the agency was "'entitled to interpret its own regulations in the first instance.'" Id. (quoting *Am. Petroleum Inst. v. EPA*, 906 F.2d 729, 742, 285 U.S. App. D.C. 35 (D.C. Cir. 1990))"

Since the appeals court could not determine if the federal agency (*i.e.*, the MMS and now BSEE) had interpreted these regulations under the original order issued by the MMS), the appeals court "*instructed the District Court to vacate the order of the Minerals Management Service and to remand to BSEE—which had assumed the responsibilities of the Minerals Management Service relevant to this action—for further proceedings.*"⁵³

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* **Emphasis added.**

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

Following this ruling by the appeals court, BSEE issued a new order interpreting the applicable federal regulations. BSEE interpreted these regulations as “*independent of the obligations of the lease and were, therefore, not discharged by the government's material breach of the lease.*” As a result, BSEE ordered Noble Energy to “*promptly and permanently plug*” the well, including “*all related activity necessary to fully satisfy its decommissioning obligations, including wellhead and casing removal and site clearance.*” NOB0957⁵⁴

Noble challenged this interpretation of the regulations on the basis that BSEE’s actions were “arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with law.” After completing an examination of the level of deference that the Court should give BSEE’s interpretation of the regulations, the Court examined BSEE’s interpretation of BSEE’s regulations with “substantial deference” and thus permitting BSEE’s interpretation to control unless the Court found that BSEE’s interpretation of the regulations was “plainly erroneous or inconsistent with the regulation.”⁵⁵

The Court noted:

*With respect to the purpose of the decommissioning regulations, the agency's conclusion that the purpose of the regulatory requirements supports the agency's interpretation that the regulations are independent of contractual obligations stated in individual leases is also reasonable. In BSEE's view, the decommissioning regulations serve the statutory purpose of protecting the environment. Plaintiff responds that, while the purpose of the statute might demonstrate the importance of the decommissioning activities, it does not show that it is important for a particular party such as Plaintiff Noble Energy to carry out those activities. Once again, the Court's deferential standard of review is important. In a world of limited resources and competing bureaucratic priorities, it is reasonable for the agency to conclude that requiring a former lessee—even one whose contractual obligations have been discharged—to complete decommissioning activities, rather than relying on the agency to undertake those obligations, would serve the ultimate purpose of protecting the marine and coastal environments.*⁵⁶

As a result, the Court concluded and thus held:

*...[T]he agency's reasoning passes muster: the agency has adequately explained, based on the purpose and the text of the regulations, its conclusion that the regulatory decommissioning obligations are wholly independent from the contractual decommissioning obligations and, therefore, they continue to apply to a party freed from the contractual obligations stated in an individual lease.*⁵⁷

Decommissioning obligations between lessees

Subrogation claim

In the case *In re ATP Oil & Gas Corp.*, the Court examined whether a federal bankruptcy court could permit a debtor to discharge the decommissioning obligations of OCS property (*i.e.*, the Gomez Properties) and thus force a predecessor-in-title (*i.e.*, Anadarko E & P Onshore LLC

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*, cert. denied, Case No. 16-368 (U.S. Mar 20, 2017).

“Anadarko”) “to absorb all or a portion of the more than \$100,000,000 cost of decommissioning.”⁵⁸

The Court stated that ATP owned or had an interest in many OCS properties including the Gomez properties. The Gomez Properties contained a floating offshore platform, gathering lines, as well as several wells. Prior to ATP filing for bankruptcy, ATP had assigned most of its rights to the cash proceeds from the petroleum production from the Gomez Properties. Since ATP did not have the right to receive these cash proceeds, ATP operated the Gomez Properties while incurring a substantial financial loss. However, because the Gomez Properties were OCS submerged lands leased by ATP, ATP still owed the decommissioning obligations required under the federal regulations, and the costs for this decommissioning work might exceed \$100,000,000.00.⁵⁹

With costs continuing to mount, ATP filed a motion with the bankruptcy court in order to “abandon the Gomez Properties and to reject the related executory contracts and leases.”⁶⁰ Even though there were numerous parties that objected to ATP’s motion, all but one of the objections got resolved.

As a result, the Court then examined the abandonment by ATP of the Gomez Properties on the OCS-based Anadarko’s objection that the basis that “the abandonment of the Gomez Properties [would] pose a serious, imminent threat both to navigation and to the environment.”⁶¹

The United States will come into possession of the Gomez Properties upon termination of the underlying lease. To ensure public health and safety, the United States can commence decommissioning and seek reimbursement. Under its agreement with ATP, the United States will retain an administrative claim for the decommissioning costs. As it is unlikely the estate will be capable of paying such a large administrative claim, presumably the United States will attempt to protect taxpayers by pursuing ATP's predecessors-in-interest (like Anadarko) for some or all of the decommissioning costs.

This case presents two starkly contrasting choices for dealing with the Gomez Properties, which the evidence shows pose a risk to public health and safety:

- *Allow a "stalemate" to occur by requiring that ATP retain the Gomez Properties. Pending the resolution of the stalemate, public health and safety will be at risk because ATP does not have the funds to maintain its platform or to decommission its wells and gathering facilities.*
- *Allow abandonment of the Gomez Properties, thereby allowing the United States to undertake the decommissioning on a temporary or permanent basis, and seek reimbursement or performance from other responsible parties and from ATP.*

*ATP and the United States agree that the second course should be pursued.*⁶²

⁵⁸ *In re ATP Oil & Gas Corp.*, 2013 Bankr. LEXIS 2608, 58 Bankr. Ct. Dec. 28, 2013 WL 3157567 (Bankr. S.D. Tex. June 19, 2013).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

Consequently, the Court analyzed the potential risk to Anadarko but noted that Anadarko's claim going forward as well, even if recovery might be remote or minimal.

The Court is not unsympathetic to Anadarko. It may be forced to bear a substantial cost as a result of ATP's financial woes. Nevertheless, like many things in a bankruptcy case, the cost that Anadarko may bear is a reflection of the credit risk it took. Anadarko sold a portion of the Gomez Properties to ATP, and required ATP to bear the financial burden of plugging and abandonment in accordance with applicable federal law. This unfortunate position is no different from that of any other creditor that relies on the promise of performance from an eventually failed entity.

*Anadarko is not without some potential help from the law. The Court has previously held that a party paying decommissioning costs may be subrogated to the economic rights of the United States. In re Tri-Union Development Corp., 314 B.R. 611 (Bankr. S.D. Tex. 2004). As to whether Anadarko can prevail on such a claim is well beyond the purview of the present dispute. **However, if it is subrogated to the economic rights of the United States, Anadarko may be entitled to enforce an administrative claim for the costs of the cleanup.***⁶³

Contract interpretation

For cases relating to contract interpretation (*i.e.*, contract law interpreted under state law and thus supplementing federal law) with regard to OCS decommissioning obligations, please see the following:

- Interpretation of a letter agreement containing an assignment of interest in the lease block of the OCS - *Mariner Energy, Inc. v. Devon Energy Prod. Co.*, 690 F. Supp. 2d 558, 2010 U.S. Dist. LEXIS 11847, 179 Oil & Gas Rep. 838 (S.D. Tex. Feb. 11, 2010),
- Interpretation of continuing obligations under a joint operating agreement following an assignment of interest in an OCS lease - *Nippon Oil Exploration U.S.A. Ltd. v. Murphy Exploration & Prod. Co. - USA*, 2011 U.S. Dist. LEXIS 63445 (E.D. La. June 15, 2011), and
- Interpretation of a farmout agreement and joint operating agreement for decommissioning costs of a platform on a neighboring OCS lease block - *Apache Corp. v. W & T Offshore, Inc.*, 626 F.3d 789, 2010 U.S. App. LEXIS 23613, 175 Oil & Gas Rep. 845, 41 ELR 20020 (5th Cir. La. Nov. 16, 2010).

Decommissioning obligations to contractors

Since the OCSLA permits the application of state law supplementing federal law to the extent such state law does not conflict with federal law, lessees and grantees may find that their contractors and even sub-contractors may file claims under applicable state law to enforce claims that the contractors or sub-contractors may have especially with regard to payment for work performed. In *Cutting Underwater Techs. USA, Inc. v. Con-Dive, LLC*, Eni faced such a claim for work performed by a subcontractor.⁶⁴ The Court summarized the case as follows:

⁶³ *Id.* **Emphasis added.**

⁶⁴ *Cutting Underwater Techs. USA, Inc. v. Con-Dive, LLC*, 2011 U.S. Dist. LEXIS 29325 (E.D. La. Mar. 22, 2011).

This case arises out of contracts for the provision of services in connection with the removal of a toppled platform on the Outer Continental Shelf (OCS). In September 2005, Hurricane Rita toppled and dismantled the Vermilion Block 313-A platform located offshore Vermilion Parish, Louisiana. At that time, the platform was no longer in service, the oil and gas wells to which it was connected had been plugged, and the casings connecting the wells to the platform had been cut. In March 2007, Dominion Exploration & Production, Inc., the then-lessee, entered into a contract with Con-Dive, LLC, under which Con-Dive agreed to remove the toppled platform. In turn, Con-Dive subcontracted various work to T. Baker Smith, Inc. (TBS), Cutting Underwater Technologies USA, Inc., and Cheramie Marine LLC. In its contract with Dominion, Con-Dive warranted that it would not allow any liens to be asserted over Dominion's property.

In June 2007, Dominion conveyed 50 percent of its record title and operating rights in the lease to Eni Petroleum. Together with Eni Operating, Eni Petroleum also acquired all of Dominion's contractual rights and obligations relating to the lease. Con-Dive eventually failed to pay TBS and the other subcontractors for the services they rendered. In response, in October 2008, Cutting Underwater filed suit in state court against Con-Dive. In November and December 2008, TBS, Cutting Underwater, and Cheramie Marine also recorded liens over Eni's property in the records of Vermilion Parish. In January 2009, Cutting Underwater amended its state court petition, adding Eni as defendant. In its petition, Cutting Underwater asked that Con-Dive be held liable for breach of contract and that its lien over Eni's property be recognized as valid under the Louisiana Oil Well Lien Act (LOWLA), La. Rev. Stat. Ann. § 9:4861 et seq.⁶⁵

After reviewing the applicable federal regulations on well abandonment and facilities decommissioning as well as the LOWLA, the Court concluded:

...[B]y providing survey and positioning services in Vermilion Block 313 in order to help remove a platform following well depletion, TBS performed "operations" under LOWLA. La. Rev. Stat. Ann. § 9:4861(4)(a). The work that it did was both "on a well site" and involved "abandoning a well" within the meaning of the statute. Id. Accordingly, the lien that it has asserted is valid and enforceable. See id. § 9:4862(A)(1).⁶⁶

IV. Conclusions

Marino and Gower provided a straightforward reminder to practitioners and stakeholders when they stated that “lessees and their agents must navigate a labyrinth of rules and regulations to remain in compliance with their lease obligations. Given the large volumes of oil and gas production from the OCS, understanding this maze is a daunting, yet important, task.”⁶⁷

This “labyrinth” includes a legal framework (*i.e.*, international, federal, state and local level) and regulatory changes that might substantially change the profile of companies investing and operating on the OCS and also substantially impact the way investors view the US offshore regulatory environment.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Anthony C. Marino and C. Jacob Gower, *Oil and Gas Mineral Leasing and Development on the Outer Continental Shelf of the United States*, 4 LSU J. of Energy L. & Resources (2015)

Likewise, as evidenced by this review of the current regulatory environment, even if a lessee or grantee assign their interest in the submerged lands of the outer continental shelf of the United States, these assignors will have continuing decommissioning obligations to the United States Federal Government. Thus, emphasizing the point The Eagles expressed in their song *Hotel California*:

...'Relax' said the night man,

'We are programmed to receive.

You can check out any time you like,

But you can never leave!⁶⁸

Therefore, considering the *Hotel California* nature of the regulatory environment on the United States Outer Continental Shelf, we, as practitioners and stakeholders, should note the United States Congress recently highlighted that “transparency and collaboration.” as well as “a practical approach [are] necessary to ensure that decommissioning obligations are both realistic and sufficient.”⁶⁹

Bearing in mind the level of maturity of the U.S. offshore oil and gas industry, one might think that these continuing decommissioning obligations, as well as the joint and several liability regime might hinder future development on the United States Outer Continental Shelf. Likewise, considering the general international political push to limit future development of petroleum resources, some might view this as an appropriate outcome. However, I must emphasize that the same continuing decommissioning obligations, as well as the joint and several liability regime govern the nascent offshore wind industry as well. Therefore, those who want to develop the offshore wind industry in the United States should also appreciate that the decommissioning regulatory regime the petroleum industry now faces is the same decommissioning regulatory regime that the wind industry will face going forward on the United States Outer Continental Shelf.

⁶⁸ Don Felder (music), Don Henley, and Glenn Frey (lyrics), *Hotel California*, Eagles album *Hotel California*, Produced by Bill Szymczyk, Asylum label (1977). **Emphasis** added.

⁶⁹ <http://docs.house.gov/meetings/II/II06/20170712/106227/HHRG-115-II06-20170712-SD002.pdf> October 31, 2017.