



Check Your Mail: BSEE Inviting All of Its Friends to Pay for GOM Decommissioning

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While bankruptcies and the passage of time have dried up the well of operator resources available to pay for these decommissioning obligations,¹ BSEE has begun to turn to less traditional responsible parties and others from the past. Beginning at the end of last year and continuing today, the Bureau sent waves of Orders to Decommission to former operators, parties who assigned their interests years ago, and even lessees with no operating interest whatsoever, asserting that “as [a] former co-lessee [or operator, the party] is responsible for decommissioning all wells, pipelines, platforms, and other facilities for which it accrued decommissioning obligations under 30 CFR § 250.1702 for [the subject] lease.”

In reaching out to these historical entities, BSEE argues that OCSLA regulations deem lessees and owners of operating rights jointly and severally liable “for meeting decommissioning obligations for facilities on leases, including the obligations related to lease-term pipelines. . . .” BSEE argues that the duty to decommission accrued (and continue to survive until satisfied) when a party does any one of the following:

1. Drills a well;
2. Installs a platform, pipeline or other facility;
3. Creates an obstruction to other users of the outer continental shelf;
4. Is or becomes a lessee or the owner of operating rights of a lease on which there is a well that has not been permanently plugged according to [this subpart,] a platform, a lease term pipeline, or other facility or an obstruction;
5. Is or becomes the holder of a pipeline right-of-way on which there is a pipeline, platform, or other facility, or an obstruction; or

6. Re-enters a well that was previously plugged according [to this subpart].²

Accordingly, BSEE now seeks to enforce decommissioning obligations against parties holding old and inactive interests in oil and gas assets in the Gulf of Mexico, particularly where a current lessee or operator is insolvent. As this is becoming more common, parties with interests in the GOM should develop a contingency plan to respond to BSEE's invitation. In the least, and to evaluate the availability of certain defenses, interested parties should familiarize counsel with lease, assignment, and farmout records governing historical facilities, as these may prove helpful in any appeal based upon statute of limitations grounds or the divisibility of the obligations, as well as in interpreting BSEE guidance as to the appropriate order and priority of any payees. The administrative appeal process is highly regulated, thus parties should immediately notify their legal counsel upon receipt of an Order to Decommission.

¹ The recent ATP Oil & Gas Corporation bankruptcy case is a prominent example of a court permitting an insolvent entity to abandon certain OCS properties, including the accompanying decommissioning obligations. See In re ATP Oil & Gas Corp., 2013 WL 3157567, (Bankr. S.D. Tex. June 19, 2013); See also Dana E. Dupre and Rick M. Shelby (2014, April). *Trending Risks and Liabilities on the OCS*. Paper presented at the 61st meeting of the Mineral Law Institute, Baton Rouge, LA.

² 30 C.F.R. § 250.1702.

Categories

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