U.S. Offshore Regulatory Policies in Decommissioning and Abandonment

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Agenda

Photo source – The Texas Tribune - *Abandoned Oil Wells Raise Fears of Pollution* (June 8, 2013)

- Regulatory History
- Current Decommissioning Regulatory Framework
- Revised Financial Assurance Requirements
- Takeaways
Regulatory History
U.S. Offshore Regulatory History

Source: US Chamber of Commerce
U.S. Offshore Regulatory History

- Maritime Jurisdiction
- Federal Statutes
- State Law
Maritime Jurisdiction

- Article III Section 2 of the United States Constitution grants federal jurisdiction to admiralty and maritime cases.
Federal Statutes

- Submerged Lands Act (SLA) of 1953
- Outer Continental Shelf Lands Act of 1953 (OCSLA)
- Oil Pollution Act of 1990 (OPA 90)
Submerged Lands Act (SLA) of 1953

• Reiterated Federal Government’s claim to the lands of the Outer Continental Shelf (OCS) \(i.e.\) submerged lands seaward of state jurisdiction

• Granted most 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

• Texas and the Florida’s west coast have jurisdiction that extends from the coastline up to 3 marine leagues (16.2 km) into the Gulf of Mexico

Source [https://www.boem.gov/Governing-Statutes/]
Outer Continental Shelf Lands Act of 1953 (OCSLA)

- Congress and the President have amended OCSLA since enactment in 1953. See http://www.epw.senate.gov/ocsla.pdf
- OCSLA provides the basic legal framework regarding Federal responsibility over the submerged lands of the OCS.
  - Source http://www.boem.gov/Governing-Statutes/
Oil Pollution Act of 1990 (OPA 90)

- Gave the Secretary of the Interior authority over 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 BOEM.

- BOEM has responsibility for the following:
  - Reviewing spill financial liability limits, and
  - Certifying spill financial responsibility.

State Law – Texas Administrative Code (TAC)

- TAC TITLE 16 PART 1 § 3.14 Plugging
- TAC TITLE 16 PART 1 § 3.15 Surface Equipment Removal Requirements and Inactive Wells
- TAC TITLE 16 PART § 3.16 Log and Completion or Plugging Report

Cases


- *Noble Energy, Inc. v. Jewell*, 650 Fed. Appx. 9, 2016 (D.C. Cir. 2016) Court ruled that BSEE’s determination that the regulations operated independently from any lease agreement and impose an independent obligation on Noble to permanently plug the well.

Current Regulatory Framework
30 CFR 250.1702 - When do I accrue decommissioning obligations?

- (a) Drill a well;
- (b) Install a platform, pipeline, or other facility;
- (c) Create an obstruction to other users of the OCS;
- (d) Are or become 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;
- (e) Are or become the holder of a pipeline right-of-way on which there is a pipeline, platform, or other facility, or an obstruction; or
- (f) Re-enter a well that was previously plugged according to this subpart.
30 CFR 250.1703 What are the general requirements for decommissioning?

- **When your facilities are no longer useful for operations, you must:**
- **(a)** Get approval from the appropriate District Manager before decommissioning wells and from the Regional Supervisor before decommissioning platforms and pipelines or other facilities;
- **(b)** *Permanently plug all wells.* Permanently installed packers and bridge plugs must comply with API Spec. 11D1 (as incorporated by reference in § 250.198);
- **(c)** Remove all platforms and other facilities, except as provided in §§ 250.1725(a) and 250.1730.
30 CFR 250.1703 What are the general requirements for decommissioning?

- (d) Decommission all pipelines;
- (e) Clear the seafloor of all obstructions created by your lease and pipeline right-of-way operations;
- (f) Follow all applicable requirements of subpart G of this part; and
- (g) Conduct all decommissioning activities in a manner that is safe, does not unreasonably interfere with other uses of the OCS, and does not cause undue or serious harm or damage to the human, marine, or coastal environment.
30 CFR § 250.1710 - When must I permanently plug all wells on a lease?

- You must *permanently plug all wells on a lease within 1 year after the lease terminates.*
Regulatory policies in Decommissioning and Abandonment

30 CFR § 250.1711 - When will BSEE order me to permanently plug a well?

- BSEE will order you to permanently plug a well if that well:
  - (a) Poses a hazard to safety or the environment; or
  - (b) Is not useful for lease operations and is not capable of oil, gas, or sulphur production in paying quantities.
30 CFR § 250.1713 - Must I notify BSEE before I begin well plugging operations?

- You must notify the appropriate District Manager at least 48 hours before beginning operations to permanently plug a well.
30 CFR § 250.1712 - What information must I submit before I permanently plug a well or zone?

- **Before you permanently plug a well or zone,** you must submit form BSEE-0124, Application for Permit to Modify, to the appropriate District Manager and receive approval. A request for approval must contain the following information:
  - (a) **The reason you are plugging the well (or zone),** for completions with production amounts specified by the Regional Supervisor, along with substantiating information demonstrating its lack of capacity for further profitable production of oil, gas, or sulfur;
  - (b) **Recent well test data and pressure data,** if available;
30 CFR § 250.1712 - What information must I submit before I permanently plug a well or zone?

- (c) Maximum possible surface pressure, and how it was determined;
- (d) Type and weight of well-control fluid you will use;
- (e) A description of the work;
30 CFR § 250.1712 - What information must I submit before I permanently plug a well or zone?

- (f) A current and proposed well schematic and description that includes:
  - (1) Well depth;
  - (2) All perforated intervals that have not been plugged;
  - (3) Casing and tubing depths and details;
  - (4) Subsurface equipment;
§30 CFR § 250.1712 - What information must I submit before I permanently plug a well or zone?

- (5) Estimated tops of cement (and the basis of the estimate) in each casing annulus;
- (6) Plug locations;
- (7) Plug types;
- (8) Plug lengths;
- (9) Properties of mud and cement to be used;
- (10) Perforating and casing cutting plans;
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30 CFR § 250.1712 - What information must I submit before I permanently plug a well or zone?

- (11) Plug testing plans;
- (12) Casing removal (including information on explosives, if used);
- (13) Proposed casing removal depth; and
- (14) Your plans to protect archaeological and sensitive biological features, including anchor damage during plugging operations, a brief assessment of the environmental impacts of the plugging operations, and the procedures and mitigation measures you will take to minimize such impacts; and
30 CFR § 250.1712 - What information must I submit before I permanently plug a well or zone?

- (g) Certification by a **Registered Professional Engineer** of the well abandonment design and procedures and that all plugs meet the requirements in the table in § 250.1715. In addition to the requirements of § 250.1715, the Registered Professional Engineer must also certify the design will include two independent barriers, one of which must be a mechanical barrier, in the center wellbore as described in § 250.420(b)(3). **The Registered Professional Engineer must be registered in a State of the United States and have sufficient expertise and experience to perform the certification.** You must submit this certification with your APM (Form BSEE-0124).
30 CFR § 250.1723 - What must I do when it is no longer necessary to maintain a well in temporary abandoned status?

- If you or BSEE determines that continued maintenance of a well in a temporary abandoned status is not necessary for the proper development or production of a lease, you must:
  - (a) Promptly and permanently plug the well according to § 250.1715;
  - (b) Remove any casing stub or mud line suspension equipment and any subsea protective covering. You must submit a request for approval to perform such work to the appropriate District Manager using form BSEE-0124, Application for Permit to Modify; and
  - (c) Clear the well site according to §§ 250.1740 through 250.1742.
30 CFR § 556.604 What are my rights and obligations as a record title owner?

- (d) Every current and prior record title owner is **jointly and severally liable**, along with all other record title owners and all prior and current operating rights owners, for compliance with all non-monetary terms and conditions of the lease and all regulations issued under OCSLA, as well as for fulfilling all non-monetary obligations, including decommissioning obligations, which accrue while it holds record title interest.
30 CFR 556.807 What is the effect of an assignment of operating rights on an assignee's liability?

- As assignee, you and any subsequent assignees are liable for all obligations that accrue after the effective date of your assignment. As assignee, you must comply with all the terms and conditions of the lease and regulations issued under OCSLA. In addition, you must remedy all existing environmental and operational problems on the lease, properly abandon all wells, and reclaim the site, as required under 30 CFR part 250.
Revised Financial Assurance Requirements
NTL No. 2008 –N07

- **BOEM generally presumed financial strength if a company could demonstrate a net worth equal to or greater than $65 million,**
- **Cumulative decommissioning liability less than or equal to 50 percent of net worth,**
- **A certain level of production or debt to equity ratio,** and
- **Taking into consideration the number of years in operation and production.**

- Source: BOEM
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.

Source: BOEM
BOEM/BSEE Causes of Concern

- “Routine” oil and gas facility decommissioning liability in 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 & Gulf of Mexico oil and infrastructure is aging.

Source: BOEM presentation Regulatory Considerations for Ensuring Decommissioning & Other Lease Obligations
BOEM/BSEE Causes of Concern

- *BSEE records indicate 245 GOM platforms currently fit idle iron criteria.*
- *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 GOM deepwater in magnitude.*

- *Source: BOEM presentation Regulatory Considerations for Ensuring Decommissioning & Other Lease Obligations*
NTL No. 2016-N01 Effective 9/12/16

- Self-Insurance Letter from BOEM – self-insurance that BOEM will allow Lessee
- Proposal Letter from BOEM – additional security to be required
- Order Letter from BOEM – 60 Days for Sole Liability property, 120 days for Designated Operators to comply
- Tailored Plan – submit within 10 days after order

*Source: BOEM*
BOEM’s New Financial Strength Considerations

- 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
- Record of compliance – compliance with OCS regulations including affiliates and subsidiaries

Source: BOEM
Takeaways
Takeaways

- New policies and procedures will likely substantially change the profile of companies investing and operating on the OCS
- Joint and several liability obligations enable the regulators to go after the companies with greater resources in the chain of title especially if companies with less resources are unable to fulfill their obligations
Takeaways

➢ May substantially impact the way investors view the US offshore regulatory environment