

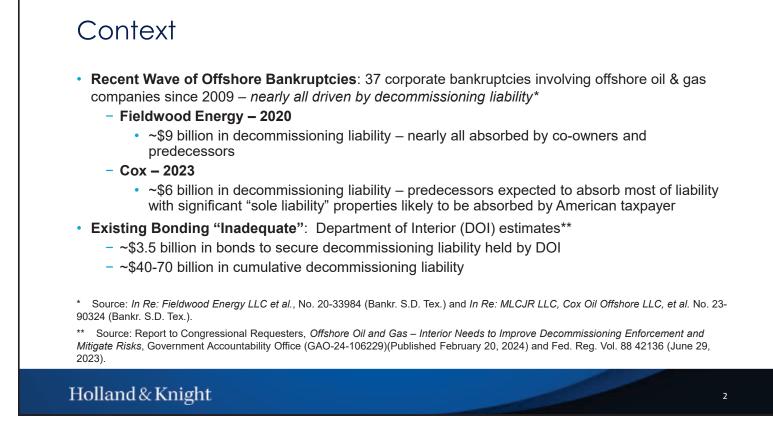
Decommissioning Responsibility and Liability in the Gulf of Mexico and the Evolving Rules of Financial Assurance

50th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute Jim Noe

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Choice of Law

- Outer Continental Shelf Lands Act (OCSLA) enacted in 1953 to end years of jurisdictional/boundary litigation between the States and the Federal government
- OCSLA governs offshore oil & gas activity occurring from the seaward boundary of each State and imposes application of Federal law*
 - Generally, 3 nautical miles from the shore (with exceptions) to the limit of the U.S. continental shelf
 - · Texas waters extend for 3 marine leagues from its coast
- OCSLA includes an exclusive, Congressionally mandated choice-of-law provision to "fill gaps" in Federal law
 - Law of the "adjacent State" applies
 - Determining "adjacent State" both "science" and "art"
- Application of Choice-of-Law in Decommissioning:
 - Federal law: scope and timing of decommissioning obligations/liability 30 CFR subchapter Q.
 - State law: contribution/subrogation, security rights (mortgage, liens, etc.), contract interpretation (indemnities, etc.)

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Federal Decommissioning Law

Decommissioning Defined:

- Ending all oil and gas operations
- Permanently plugging and abandoning wells
- Removing platforms and structures
- Securing pipelines historically "flush and fill" and leave on bottom
- Site clearance clearing the seafloor*

Deadline for Decommissioning:

 1-year from lease termination or when Decommission facilities are no longer useful for operations**

Exception to Decommission:

- "Rigs-to-Reef"***
 - · Reef in place or tow to recognized reefing location maintained by coastal States
- * Source: 30 CFR §§ 250.1700, 1703, 1712, 1725, and 1750.
- ** Source: See e.g., 30 CFR §§ 250.1710 (wells) and 1725 (platforms).

*** Source: See National Fishing Enhancement Act of 1984, Pub. L. No. 98-623, 98 Stat. 3394 (1984), codified at 33 USC §§ 2104 et seq. and 30 CFR § 250.1703 (BSEE authorized to issue deviation from platform removal requirement and donation to rigs-to-reef program.

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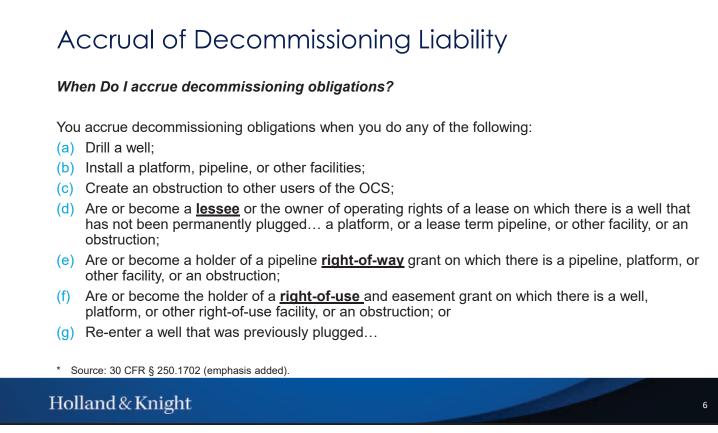
Federal Decommissioning Liability

- BOEM current lease form requires permanent plugging of wells and removal of facilities when facilities "are no longer useful for operations"
- Federal regulatory source of decommissioning liability: 30 CFR Subpart Q:*
 - "<u>Lessees</u>, owners of operating rights, and their predecessors are jointly and severally liable for meeting decommissioning obligations for facilities on leases... as the obligations accrue and until each obligation is met."
 - "All holders of <u>a right-of-way</u> grant and their predecessors are jointly and severally liable for meeting decommissioning obligations on their right-of-way... as the obligations accrue and until each obligation is met."
 - "All <u>right-of-use</u> and easement grant holders and prior lessees or owners of operating rights of the parcel on whose leases there existed facilities or obstructions that remain on the right-ofuse and easement grant are jointly and severally liable for meeting decommissioning obligations... as the obligations accrue and until each obligation is met."*

* Source: 30 CFR §§ 250.1700 et seq.

** Source: 30 CFR § 250.1701 (emphasis added); see also, 30 CFR §§ 556.604(d)(record title owners) and 556.5(e)(operating rights owner).

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