

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

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Context

- **Recent Wave of Offshore Bankruptcies:** 37 corporate bankruptcies involving offshore oil & gas companies since 2009 – *nearly all driven by decommissioning liability**
 - **Fieldwood Energy – 2020**
 - ~\$9 billion in decommissioning liability – nearly all absorbed by co-owners and predecessors
 - **Cox – 2023**
 - ~\$6 billion in decommissioning liability – predecessors expected to absorb most of liability with significant “sole liability” properties likely to be absorbed by American taxpayer
- **Existing Bonding “Inadequate”:** Department of Interior (DOI) estimates**
 - ~\$3.5 billion in bonds to secure decommissioning liability held by DOI
 - ~\$40-70 billion in cumulative decommissioning liability

* Source: *In Re: Fieldwood Energy LLC et al.*, No. 20-33984 (Bankr. S.D. Tex.) and *In Re: MLCJR LLC, Cox Oil Offshore LLC, et al.* No. 23-90324 (Bankr. S.D. Tex.).

** Source: Report to Congressional Requesters, *Offshore Oil and Gas – Interior Needs to Improve Decommissioning Enforcement and Mitigate Risks*, Government Accountability Office (GAO-24-106229)(Published February 20, 2024) and Fed. Reg. Vol. 88 42136 (June 29, 2023).

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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.)

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).

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*:*
 - “**Lessees**, 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 a right-of-way** 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 right-of-use** 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-of-use 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).

Accrual of Decommissioning Liability

When Do I accrue decommissioning obligations?

You accrue decommissioning obligations when you do any of the following:

- (a) Drill a well;
- (b) Install a platform, pipeline, or other facilities;
- (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... a platform, or a lease term pipeline, or other facility, or an obstruction;
- (e) Are or become a holder of a pipeline **right-of-way** grant on which there is a pipeline, platform, or other facility, or an obstruction;
- (f) Are or become the holder of a **right-of-use** and easement grant on which there is a well, platform, or other right-of-use facility, or an obstruction; or
- (g) Re-enter a well that was previously plugged...

* Source: 30 CFR § 250.1702 (emphasis added).

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