

# 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

Royal Sonesta Hotel, Houston, Texas  
April 4-5, 2024

Holland & Knight

Copyright © 2024 Holland & Knight LLP. All Rights Reserved

1

## 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).

Holland & Knight

2

2

## 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).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Decommissioning Responsibility and Liability in the Gulf of Mexico and the Evolving Rules of Financial Assurance

Also available as part of the eCourse

[2024 Ernest E. Smith Oil, Gas and Mineral Law eConference](#)

First appeared as part of the conference materials for the

50<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session

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