

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

July 30, 2019

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Bernhardt:

Under the terms of offshore leases and Bureau of Safety and Environmental Enforcement (BSEE) regulations, offshore oil and gas leaseholders are required to remove all equipment on leases or rights-of-way (including platforms and pipelines), and permanently plug all wells, within one year after termination of the lease or right-of-way.¹ The Bureau of Ocean Energy Management (BOEM) has the responsibility to ensure that lessees have the financial capacity to conduct the required decommissioning, either by meeting financial performance standards or by posting a bond to cover expected decommissioning costs.² Since 2010, however, it has become clear that there are significant problems with this system. Offshore operators and government regulators have been lax in preparing for decommissioning expenses, meaning that taxpayers may have to cover billions of dollars of costs to remove old oil and gas infrastructure if companies go bankrupt.

In December 2015, the Government Accountability Office (GAO) reported that there were approximately \$38.2 billion in decommissioning liabilities in the Gulf of Mexico, but that bonds or other financial instruments covered only \$2.9 billion. Large companies, presumably able to safely cover decommissioning costs on their own, were responsible for \$33 billion, leaving up to \$2.3 billion in uncovered liabilities that would potentially need to be borne by taxpayers if companies went bankrupt, although problems with BOEM's data created a great deal of uncertainty.³ Furthermore, GAO found problems with the method used by BOEM to assess a company's financial strength and BSEE's method for estimating decommissioning costs. After reassessing their methods for determining decommissioning costs and estimating the required bonding amounts, BSEE and BOEM took regulatory actions intended to protect taxpayers from having to potentially cover these costs.

On December 4, 2015, BSEE published a final rule requiring companies to submit actual decommissioning costs to help BSEE with future cost estimations. On July 18, 2016, BOEM released a Notice to Lessees (NTL) that proposed major changes to the way companies could demonstrate adequate assurance of being able to cover future decommissioning costs.⁴ First,

¹ 30 CFR 250.1700 et seq. (Subpart Q)

² 30 CFR 556.53

³ U.S. Government Accountability Office, *Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities*, GAO-16-40, December 2015.

⁴ NTL No. 2016-N01, "Requiring Additional Security." 81 FR 46599 (July 18, 2016).

BOEM changed the way that it would evaluate the financial strength of companies, using methods consistent with the lines of recommendations in the 2015 GAO report. Second, instead of waiving supplemental bonds for companies whose net worth was at least twice their decommissioning obligations, companies would be able to self-insure with up to 10 percent of their tangible net worth, while allowing the self-insurance to be allocated among different potential liabilities.

Related to the July 2016 NTL, in December 2016 BOEM began sending letters requiring additional bonding to operators of properties where there is only a single liable party, known as “sole liability” properties, which BOEM described as presenting, “the greatest programmatic risk to the American taxpayer.”⁵ However, in February 2017, BOEM withdrew those orders to, “allow time for the new Administration to review the complex financial assurance program.”⁶ In May 2017, former-Secretary Zinke signed Secretarial Order 3350, which directed BOEM to complete the review of the 2016 NTL and compile a report describing options for revising or rescinding the NTL.⁷ In June 2017, BOEM announced it was indefinitely postponing the implementation of the 2016 NTL to allow the agency more time to complete its review, even though the agency had previously indicated it would publish new guidance by June 2017.^{8,9}

On March 6, 2019, BOEM Acting Director Walter Cruickshank testified before the House Subcommittee on Energy and Mineral Resources that BOEM had completed its review of the 2016 NTL, and later the same month, Dr. Cruickshank indicated during a meeting with Subcommittee staff that a draft financial assurance rule would be published in Spring 2019. However, in April 2019, BOEM stated the draft rule would not be published for public comment until Summer 2019.¹⁰

We are concerned by BOEM’s decisions to halt the 2016 NTL and rescind the sole liability letters, and its continued failure to develop new financial assurance regulations. With U.S. taxpayers on the hook for potentially billions of dollars of decommissioning costs and platform removals, these actions are unnecessarily risky. To assist the House Natural Resources Committee in carrying out its oversight responsibilities on this issue, please provide the following as soon as possible, but no later than August 30, 2019:

1. All documents and communications of employees and persons between January 20, 2017, and June 22, 2017, within and between the Bureau of Ocean Energy Management, the Office of the Secretary, and the Counselor to the Secretary for Energy Policy regarding BOEM’s decision to withdraw its sole liabilities orders issued in December 2016 or BOEM’s decision to indefinitely postpone the implementation of the 2016 NTL.

⁵ Bureau of Ocean Energy Management, *BOEM Withdraws Sole Liability Orders*, February 2, 2017. <https://www.boem.gov/note02172017/>

⁶ *Id.*

⁷ Office the Secretary, Department of the Interior. *Secretarial Order No. 3350, America-First Offshore Energy Strategy*. May 1, 2017. <https://www.doi.gov/sites/doi.gov/files/press-release/secretarial-order-3350.pdf>

⁸ Bureau of Ocean Energy Management, *BOEM Extends Review Timeline for Notice to Lessees No. 2016-N01*, June 22, 2017. <https://www.boem.gov/note06222017/>

⁹ Gronewold, Nathaniel. “Who pays for abandoned rigs? Officials are hashing that out.” *E&E News*. May 11, 2017. <https://www.eenews.net/energywire/stories/1060054370/>

¹⁰ Gronewold, Nathaniel. “U.S. taxpayers could pay \$10B for oil rig cleanup.” *E&E News*. April 9, 2019. <https://www.eenews.net/energywire/stories/1060149999/search?keyword=offshore+decommissioning>

2. All documents and communications of employees and persons between January 20, 2017, and March 6, 2019, within and between the Bureau of Ocean Energy Management, the Office of the Secretary, and the Counselor to the Secretary for Energy Policy and employees and persons representing the oil and gas industry, including but not limited to the American Petroleum Institute, the National Ocean Industries Association, the Gulf Energy Alliance, the Gulf Economic Survival Team, and the Independent Petroleum Association of America, regarding offshore oil and gas decommissioning issues.

Please refer to the attached instructions on how to respond to this document request. As specified therein, upon completion of the document production, please submit a written certification that a diligent search has been completed and all responsive documents have been produced to the Committee. If you have any questions about this request, please contact Natural Resources Committee staff at (202) 225-6065.

Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources



Alan S. Lowenthal
Chair
Subcommittee on Energy
and Mineral Resources

Responding to Committee Document Requests

In responding to document requests from the Committee on Natural Resources, please apply the instructions and definitions set forth below:

Instructions

1. In complying with the request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or individual denoted in this request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., memory stick or thumb drive) in lieu of paper productions. Documents produced in electronic format should also be organized, identified, and indexed electronically. Consult with the Committee to determine the appropriate format in which to produce the information.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box, or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
8. It shall not be a basis for refusal to produce documents that any other person or entity also possesses a non-identical or identical copy of the same documents.

9. If compliance with the request cannot be made in full, compliance should be made to the extent possible and should include an explanation of why full compliance is not possible.
10. In the event that any document or part of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or part of a document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
13. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
14. All documents should be Bates-stamped sequentially and produced sequentially.
15. Documents produced to the Committee in response to this request should be delivered to majority staff in Room 1324 of the Longworth House Office Building.

Definitions

1. The term "**document**" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, text messages, MMS or SMS messages, other mobile-to-mobile messages, instant messages or online chat messages, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or

representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "**documents in your possession, custody, or control**" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "**communication**" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, facsimile, mail, e-mail (desktop or mobile device), text message, MMS or SMS message, other mobile-to-mobile message, instant message or online chat, telexes, releases, personal delivery, or otherwise.
4. The terms "**and**" and "**or**" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "**person**" or "**persons**" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The term "**identify**," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The terms "**referring or relating**," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.
8. The term "**employee**" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.