

BSEE JURISDICTION BOUNDARIES

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USA RESPONSE TO DEEPWATER HORIZON EXPLOSION

Federal Government splits the Minerals Management Service (MMS) into 3 separate Divisions:

- Office of Natural Resources Revenue (ONRR)
- Bureau of Ocean Energy Management (BOEM)
- Bureau of Safety and Environmental Enforcement (BSEE)



ENFORCEMENT

Pre-Deepwater Horizon

- MMS pursued Lessees and Operators via Incidents of Non-Compliance and Civil Penalties
- Contractors and sub-contractors not held liable
- USA admits that Department of Interior did not pursue anyone other than lessees and operators
- 60 year practice altered due to Deepwater Horizon

Post Deepwater Horizon

- CHANGE IN ENFORCEMENT
- BSEE claims it has the authority to pursue civil and criminal remedies against contractors and sub-contractors

HOW DOES BSEE ENFORCE

Enforcement based on the Outer Continental Shelf Lands Act (OCSLA) of 1953

Regular Inspections

- inspectors will show up with zero warning
- examine everything – logs, equipment, structures, personnel
- post casualty investigations

Issue Incidents of Non-Compliance (INC's) for violations

Assign Civil Penalties through OCS Civil Penalties Program

BSEE Criminal Review-recommend criminal charges

DEEPWATER HORIZON CRIMINAL CHARGES

- BP
- Transocean
- Halliburton
- David Rainey – VP for BP
- Anthony Badalmenti – Manager for Halliburton
- Robert Kaluza – BP Company Man
- Donald Vidrine – BP Company Man

USA V. ROBERT KALUZA AND DONALD VIDRINE

- 11 Counts of Involuntary Manslaughter
- 11 Counts of Seaman's Manslaughter
- 1 Clean Water Act Violation

- Challenged USA's use of Seaman's Manslaughter Statute
- Court agreed – Seaman's Manslaughter charge dismissed
- USA dropped all charges

USA V. BLACK ELK
U.S.D.C. EASTERN DISTRICT OF LOUISIANA

USA indicted Black Elk – lessee/operator with criminal violations of OCSLA

Also indicted contractors and their employees with criminal violation of OCSLA

Contractors filed Motion to Dismiss

USA conceded that contractors were neither designated operators nor designated agents as defined by OCSLA

USA V. BLACK ELK RULING

District Court agreed with the Contractors

- Dismissed the indictments
- 43 USC § 1350 creates criminal liability that is not applicable to contractors
- Contractors do not fit the statutory definition of “You”
- “Plain language of OCSLA and its regulations – do not support a criminal charge against contractors”
- “No court has ever found a contractor liable for its own violations”
- The USA’s arguments “impermissibly extend the application of OCSLA regulations to Contractors”

Bureau of Safety and Environmental Enforcement
Interim Policy Document

Issuance: August 15, 2012

IPD No. 12-07

Effective Date: N/A

Series: 650 - Inspection and Enforcement

Title: Issuance of an Incident of Non Compliance (INC)

Originating Office: Office of Offshore Regulatory Prog

1. **Purpose:** The policy provides for consistency in the Environmental Enforcement's (BSEE) enforcement a the bureau will consider the issuance of INCs to conti offshore exploration, development and production act

2. **Authority:** The Secretary of the Interior ("the Secretary") has regulatory jurisdiction over all entities that perform activities under provisions related to leasing of the Outer Continental Shelf (OCS) under the Outer Continental Shelf Lands Act (OCSLA) (43 USC §§ 1334 (a) and 13509b)) Under Secretarial Order 3299, the Secretary has delegated to environmental enforcement functions including, but r inspect, investigate, summon witnesses and produce c activities; and oversee safety, response and removal p exercised its authority over contractors by issuing INT Deepwater Horizon tragedy for violations found to hi

3. **Policy/Action:** Any person performing an activity un Continental Shelf Lands Act (OCSLA) has responsibi to that activity, is obligated to take corrective action, i comply. As a general matter, because all operations c workmanlike manner and work areas maintained in a (a) (2)), contractors performing regulated activities ca conduct.

Guidance on issuance of Incidents of Noncompliance

BSEE will hold lessees and operators directly and full lease issued or maintained under OCSLA without lim against contractors.

While the primary focus of BSEE's enforcement actions will continue to be on lessees and operators,

BSEE will, in appropriate circumstances, issue incidents of noncompliance ("INCs") to contractors for serious violations of BSEE regulations. The issuance of an INC to a contractor does not relieve the lessees from liability. In fact, in instances in which also be issued to the lessee or operator.

BSEE will consider the following four factors in deter

1. The type of the violation,
 - Did the act or failure to act violate her

1. **Purpose:** The policy provides for consistency in the application of the Bureau of Safety and Environmental Enforcement's (BSEE) enforcement authority by establishing the parameters by which the bureau will consider the issuance of INCs to contractors in addition to the operators conducting offshore exploration, development and production activities.

2. **Authority:** The Secretary of the Interior ("the Secretary") has regulatory jurisdiction over all entities that perform activities under provisions related to leasing of the Outer Continental Shelf (OCS) under the Outer Continental Shelf Lands Act (OCSLA) (43 USC §§ 1334 (a) and 13509b)) Under Secretarial Order 3299, the Secretary has delegated to BSEE responsibility for safety and environmental enforcement functions including, but not limited to, the authority to permit activities, inspect, investigate, summon witnesses and produce evidence; levy penalties; cancel or suspend activities; and oversee safety, response and removal preparedness. Starting in 2011, BSEE has exercised its authority over contractors by issuing INCs to Transocean and Halliburton following the Deepwater Horizon tragedy for violations found to have contributed to the loss of well control.

While the primary focus of BSEE's enforcement actions will continue to be on lessees and operators, BSEE will, in appropriate circumstances, issue incidents of noncompliance ("INCs") to contractors for serious violations of BSEE regulations. The issuance of an INC to a contractor does not relieve the lessees from liability. In fact, in instances in which INCs are issued to a contractor, INCs will also be issued to the lessee or operator.

ISLAND OPERATING CO. V. JEWELL ET. AL.
U.S.D.C. WESTERN DISTRICT OF LOUISIANA

Island Operating was issued an INC and Civil Penalty

- facts confirm that IOC's employees violated safety regulations
- no other personnel were aboard platform

IOC timely filed an appeal

Appeal denied by Interior Board of Land Appeals

IOC filed suit in Federal Court

Trial held on the Briefs

ISLAND OPERATING CO. V JEWELL ET. AL.
RULING

Only lease holders or permit holders as identified in 43 U.S.C. § 1348 have a duty related to environmental and safety standards

Island was not a lease or a permit holder

- IOC cannot have violated a duty with which it has not been charged
- No regulatory penalties or fines should have been issued to IOC
- Only lease holders and permit holders are subject to OCSLA

THE WAY FORWARD

Contractors –

- Appeal any INC's or Civil Penalty assessed by BSEE
- Do not wait for Civil Penalty to Appeal on INC
 - BSEE can delay Civil Penalty until appeal runs out
 - Failure to timely appeal means you can only challenge the amount of the fine

Lessors and Operators –

- Consider adding indemnity clauses to your MSA's

QUESTIONS?



THANK YOU!

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