

Rocky Mountain Mineral Law Foundation  
Federal Offshore Oil & Gas  
Leasing and Development

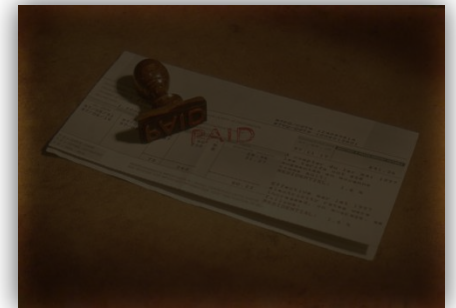


Mike Celata  
Bureau of Ocean Energy Management  
U.S. Department of Interior



# Current BOEM Bonding or Other Financial Assurance Overview

- Codified in the Code of Federal Regulations (CFR)
  - 30 CFR 556 - Subpart I - Bonding or Other Financial Assurance
- General bonds
  - Covers all types of lease obligations
  - Extends beyond the end of lease (i.e., tail)
  - Required by all lessees
  - Lease-specific or area-wide bond amount based on lease activity
- Additional bonds or financial assurance



# NTL No. 2015-N04 General Financial Assurance

- Effective August 15, 2015
- Details the level of activity per Designated Operator
  - No Operations (NOP), No Activity
  - Exploration Plan (EP), Wells
  - Development (DEV), Wells and Facilities
  - ROW
  - RUE
  - G&G Permits
- Regulatory references are outdated

## 30 CFR 556.900

### Bonding Requirements for oil and gas or sulfur leases

- No Operations (NOP), No Activity
- Lease specific bond - \$50,000
- Company areawide bond - \$300,000
  - Gulf of Mexico/Atlantic
  - Pacific including Hawaii
  - Alaska
- Surety bond, treasury securities or alternative security types approved by the Regional Director
- If value of security is reduced or falls below market value you must provide additional security

## 30 CFR 556.901 Additional Bonds

- Exploration Plan (EP)
  - Lease Specific Bond - \$200,000
  - Company Areawide Bond - \$1,000,000
- Development and Production Plan (DPP)
- Development Operations Coordination Document (DOCD)
  - Lease Specific Bond - \$500,000
  - Company Areawide Bond - \$3,000,000

# Required Bond Process

- A bond review will be conducted prior to the request for any changes to a lease assignment or an operational activity such as a EP, DPP or DOCD. This includes any changes to the Record Title owner, or Designated Operator of a lease or a holder of RUE or ROW.
- The Regional Director may authorize you to submit the additional bond after the EP, DPP or DOCD submittal, but before you commence operations.

## 30 CFR 556.901 Additional bonds (continued)

(d) The **Regional Director** may determine that additional security is necessary to ensure compliance with the obligations under your lease and the regulations.

(1) The **Regional Director's** determination will be based on his/her evaluation of your ability to carry out present and future financial obligations demonstrated by:

(i) **Financial capacity** substantially in excess of existing and anticipated lease and other obligations, as evidenced by **audited** financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);

(ii) **Projected financial strength** significantly in excess of existing and future lease obligations based on the estimated value of your existing OCS lease production and proven reserves of future production;

(iii) **Business stability** based on 5 years of continuous operation and production of oil and gas or sulphur in the OCS or in the onshore oil and gas industry;

(iv) **Reliability** in meeting obligations based on:

(A) Credit rating(s); or (B) Trade references

(v) **Record of Compliance** with laws, regulations, and lease terms

(e) The **Regional Director** will determine the amount of supplemental bond required to guarantee compliance.



# 30 CFR 556.901 Additional bonds (continued)

## 30 CFR §556.901 (d) (1) (i) Financial Capacity

- Substantially in excess of existing and anticipated lease and other obligations, as evidenced by **audited** financial statements (including auditor's certificate, balance sheet, and profit and loss sheet);

## 30 CFR §556.901 (d) (1) (ii) Financial Strength

- Significantly in excess of existing and future lease obligations based on the estimated value of your existing OCS lease production and proven reserves of future production;

## 30 CFR §556.901 (d) (1) (iii) Business Stability

- Based on 5 years of continuous operation and production of oil and gas or Sulphur in the OCS or in the onshore oil and gas industry;

## 30 CFR §556.901 (d) (1) (iv) Reliability

- (A) Credit Rating(s); or
- (B) Trade References

## 30 CFR §556.901 (d) (1) (v) Record of Compliance

- **Record of Compliance** with laws, regulations, and lease terms



# Requiring Additional Security NTL Changes Through the Years

- October 1993
  - 25% liability to net worth
  - 500 employees
  - Minimum net worth of \$35M or gross O&G sales of \$45M
- December 1998
  - 25% liability to net worth
  - Number of years in operation and production
  - Credit ratings, trade references, record of compliance, other indicator of financial strength
  - Produce hydrocarbons in excess of an average 20,000BOE/day
  - Company demonstrates financial strength for present and future financial obligations

# Requiring Additional Security NTL Changes Through the Years

## • June 2003

- 50% liability to net worth
- Number of years in operation and production
- Credit ratings, trade references, record of compliance, other indicator of financial strength

### AND EITHER OF THE ITEMS BELOW

- Produce hydrocarbons in excess of an average 20,000 BOE/day
- Stockholder equity at least \$50M and meets the criteria in the table below

For lessees with stockholders' equity or net worth of:	If the lessee's cumulative lease abandonment liability is $\leq 25\%$ of stockholder's equity or net worth, the lessee's debt to equity ratio (total liabilities/net worth) must be:	If the lessee's cumulative potential lease abandonment liability is $>25\%$ but $\leq 50\%$ of stockholder's equity or net worth, the lessee's debt to equity ratio (total liabilities/net worth) must be:
\$50 Million to \$100 Million	$\leq 2.5$	$\leq 2.0$
Above \$100 Million	$\leq 3.0$	$\leq 2.5$

# NTL 2008-N07

## • August 2008

- Net Worth equal to or greater than \$65M
- 50% liability to net worth
- Number of years in operation and production
- Credit ratings, trade references, record of compliance, other indicator of financial strength

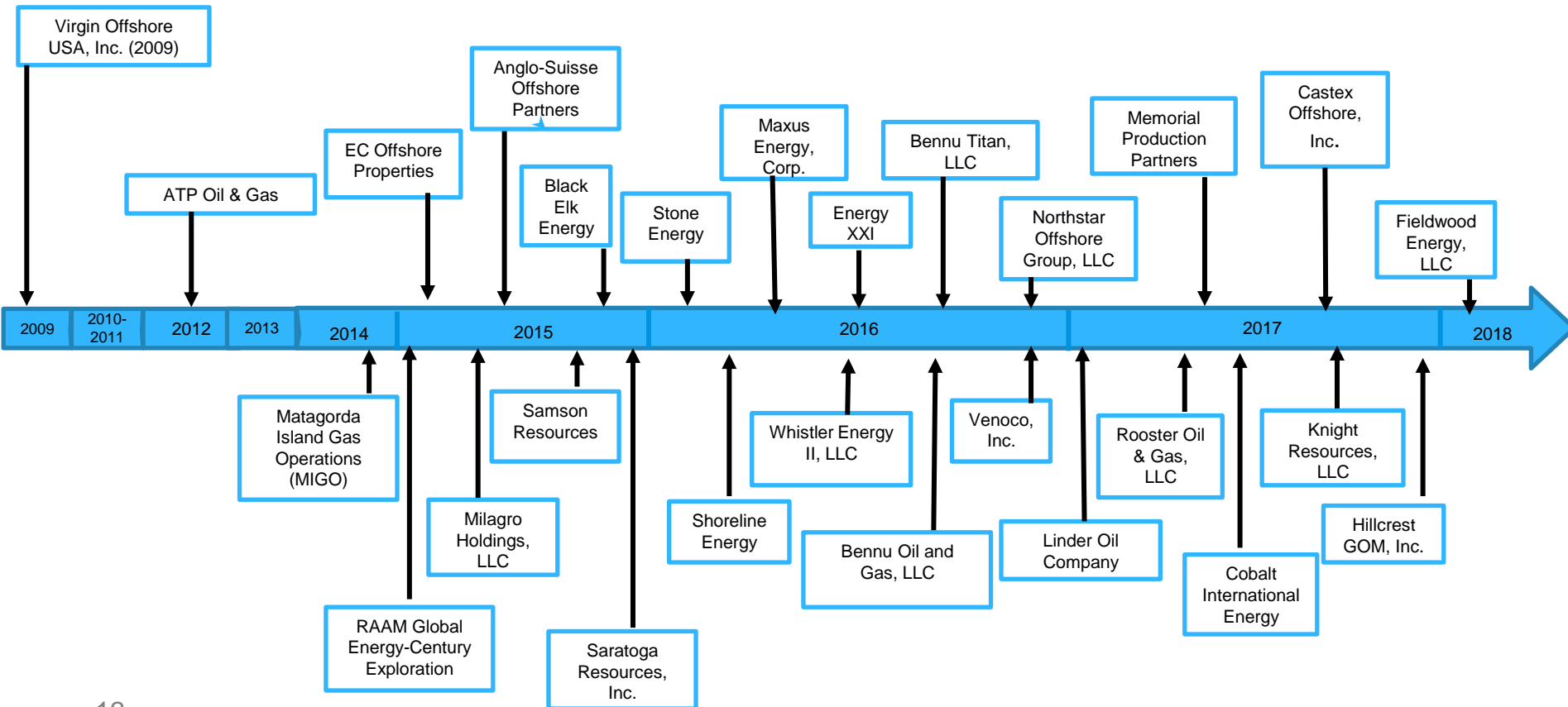
### AND EITHER OF THE ITEMS BELOW

- Produce hydrocarbons in excess of an average 20,000 BOE/day
- Stockholder equity at least \$65M and meets the criteria in the table below

For lessees with stockholders' equity or net worth of:	If the lessee's cumulative decommissioning liability is $\leq 25$ percent of stockholder's equity or net worth, the lessee's debt to equity ratio (total liabilities/net worth) must be:	If the lessee's cumulative potential decommissioning liability is $>25$ percent but $\leq 50$ percent of stockholder's equity or net worth, the lessee's debt to equity ratio (total liabilities/net worth) must be:
\$65 Million to \$100 Million	$\leq 2.5$	$\leq 2.0$
Above \$100 Million	$\leq 3.0$	$\leq 2.5$

# Bankruptcy Trends

Significant increase in companies operating in the OCS experiencing financial distress/bankruptcy, which is expected to continue.



# BOEM's Financial Assurance Goals

**Protect the United States from financial loss or environmental damage when a leaseholder or operator is unable to pay rents and royalties or perform required decommissioning.**

**Protect the U.S. Taxpayer from exposure to financial obligations and liabilities associated with OCS exploration and development.**

- Incorporate front end risk management tools that provide a fair, equitable and transparent approach to financial assurance and loss prevention
- Monitoring company financial data and developing criteria to detect declining financial performance
- Develop and implement comprehensive financial assurance practices that mitigate exposure to liabilities
- Consider additional forms of financial assurance

# NTL 2016-N01 Self Insurance Model Evaluation Criteria

Financial Ability will continue to be determined using the following criteria:

## Financial Capacity

- Based on the most recent (not more than 12 months old) independently audited financials (Pass 5 of 9 ratios = 5% self insurance, pass less than 5 of 9 ratios = 0% self insurance)

## Projected Strength

- Estimated value of existing OCS lease production and proven reserves of future production ( PDP). Add PDP value to tangible net worth

## Business Stability

- Five years of continuous operation and production on the OCS or onshore (0% to -5% based years below 5 year requirement)

## Reliability

- Ratings by Moody's, Standard and Poor's; (5% to -5% range based on ratings); trade references (2% to -2% range)

## Record of Compliance

- Based on record of non-compliance with laws, regulation and lease terms including but not limited to: (-1% to -3% reduction)
  - Civil penalties
  - Revocation of Ownership
  - Debarment
  - Idle Iron
  - Cancellation of Leases
  - Non-payment/under-payment
  - INCs

*The criteria cited above are established in 30 CFR § 556.901(d)(1)  
The Self Insurance percentage is multiplied by tangible net worth*

# NTL 2016-N01 Key Changes

## Waiver

- Lessees will no longer be granted waivers for their supplemental bond obligations.

## Minimum Net Worth

- Lessees will be able to apply for self-insurance *regardless* of their Net Worth.

## Self-Insurance

- Will change from 50% of *Net Worth* to a maximum of 10% of *Tangible Net Worth*.
- If eligible, the amount of self insurance will range from 1% to 10% of Tangible Net Worth, based in part, on its financial strength as assessed from the proposed financial criteria.

## Decommissioning Liabilities

- BOEM will consider 100% of each lessee's decommissioning liability for every lease, ROW and RUE in which the lessee holds an interest.



# NTL 2016-N01 Key Changes

## Co-lessees

- No longer consider the combined financial strength of co lessees when determining a lessee's ability to meet its decommissioning liability financial assurance requirements.
- With multiple co-lessees, it will be up to the co-lessees to determine how best to fulfill BOEM's requirement for 100% assurance of OCS decommissioning liabilities.

## Redundant Bonding

- It is not the Bureau's intent to double bond.
- BOEM will work with lessees on solutions to reduce "Redundant Bonding" through mechanisms such as "Multi Party" bonds.

## Tailored Plans

- BOEM may consider alternative forms of financial assurance to provide additional flexibility.

## Phased-in Approach

- There will be a phase-in period for compliance.

# NTL 2016-N01 Activities

## NTL Issue Date

- General Notification Letter July 14, 2016

## NTL Effective Date

- September 12, 2016

## Self-Insurance Letter

- September - November 2016

## Proposal Letter

- October 2016

## Sole Liability Order Letter

- December 2016

# Financial Assurance Pause Status

## NTL Pause Status

- January 2017 BOEM announced 6-month extension of NTL implementation timeline for non-sole liability properties
- February 2017 Rescission of Sole Order Demand Letters

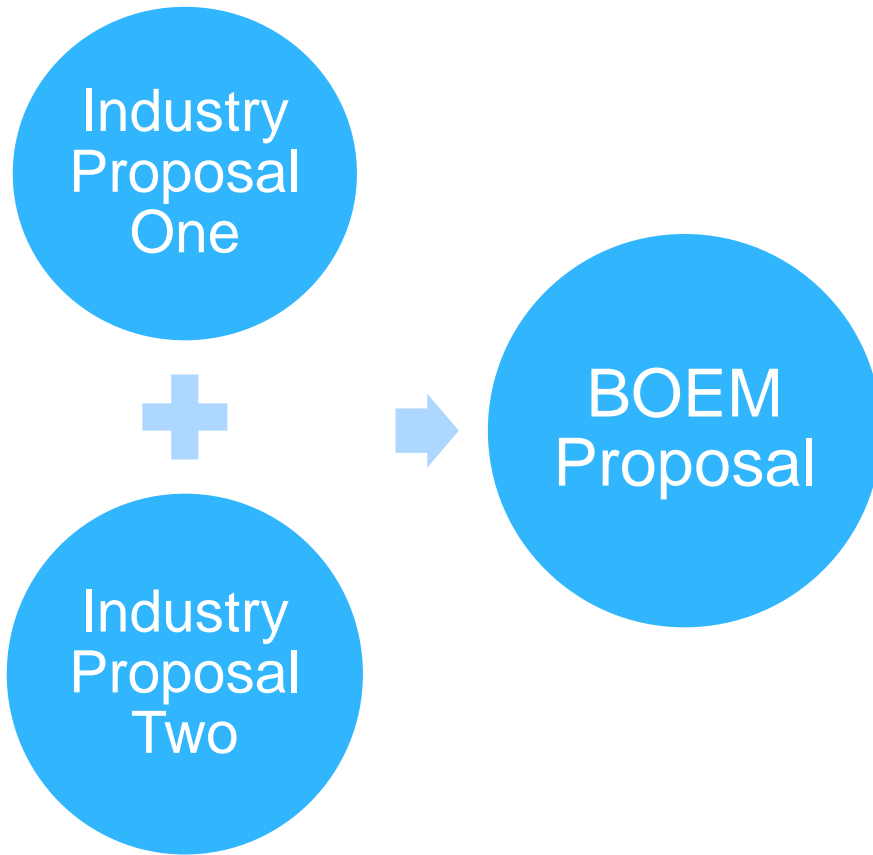
## High Risk Lessees Bond Demands

- BOEM determines substantial risk of nonperformance of the interest holder's decommissioning liabilities

## Industry Engagement

- BOEM has engaged industry on the path forward
- BOEM has received two industry proposals from the Offshore Operators Committee and the Gulf Energy Alliance

# Industry and BOEM Proposals



Both proposals address:

- Lessee Evaluation
- Property Evaluation
- Co-Lessees
- Predecessors

BOEM has taken these into consideration.

# Key Industry Issues

## Financial Evaluation of Companies

- Lessees financial evaluation will be based on 30 CFR §556.901
- Proposed Tier evaluation system
- Reflects market valuation of default risk

## Evaluation of Properties

- Proposed valuation system for individual offshore properties designed to predict whether properties have realizable market value

## Co-Lessee and Predecessor Liability

- Current co-lessees are responsible for decommissioning
- Based on proposed co-lessees Tier evaluation, property may be subject additional financial assurance

## Decommissioning Estimates

- BSEE Decommissioning Cost
- Asset Retirement Obligations
- 3<sup>rd</sup> party estimates

# Key Industry Issues

## Chain Of Title

- Potential process of requiring financial assurance/performance of decommissioning in chronological order

## Redundant Bonding

- BOEM will work with lessees on solutions to reduce “Redundant Bonding” through mechanisms such as “Multi Party” bonds.

## Implementation Phased-in Approach

- There will be a phase-in approach will be based on lessees and property evaluations.

## 30 CFR 556.902 General requirements for bonds

- Payable to Regional Director
- Guarantee compliance with all lease, operating rights and operator obligations
- Surety Bonds from a surety listed on the U.S. Department of Treasury Circular 570
- Bonds in form approved by Director
- Bond Forms are on the Internet:  
<https://www.boem.gov/Bonding/>



## 30 CFR 556.906 Termination and Cancellation

- Termination of the Period of Liability ends the period during which the obligations continue to accrue but does not relieve the Surety of obligations during the period of liability.
- Cancellation terminates the Period of Liability and relieves the Surety of all obligations

For the following type of bond	The period of liability will end	Your bond will be cancelled
(1) Base bonds submitted under §556.900(a), §556.901(a), or (b)	When the Regional Director determines that you have met all of your obligations under the lease,	Seven years after the termination of the lease, 6 years after completion of all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligation, whichever is the latest.
(2) Additional bonds submitted under §556.901(d)	When the Regional Director determines that you have met all your obligations covered by the additional bond,	When you meet your bonded obligations, unless the Regional Director: (i) Determines that the future potential liability resulting from any undetected problem is greater than the amount of the base bond.

# Termination/Cancellation Process

- 30 CFR § 556.906 provides BOEM 90 days to process a termination request, but we are now striving to complete the process within 37 days.
- Concurrence is requested within 30 days from the “committee” comprised of representatives from:
  - Risk Management Operations Group (RMOG)
  - ONRR
  - BSEE Civil Penalty Case Manager
  - BSEE Pipelines for ROWs
  - BOEM Plans for RUEs
- Once your request clears the committee, the Program Specialist e-mails a prepared letter to the principal and surety granting your termination/cancellation.
- Your termination/cancellation is updated in our system.

## How can you can help the process?

- If you know you owe back royalties or civil penalties or your cancellation will leave an uncovered decommissioning balance, save us the time and please do not request the cancellation until you resolve the outstanding items.
- Make sure the person requesting the cancellation is an authorized officer listed on your company qualification card and signs exactly as listed.
- Make sure the collateral numbers and Lease/ROW/RUE numbers are included with a full bond description and correct.

## 30 CFR 556.903, 904, 905 and 907

- 30 CFR 556.903 Lapse of bonds
  - Advise Regional Director and replace
- 30 CFR 556.904 Lease-specific abandonment account
- 30 CFR 556.905 Using a third-party guarantee
- §556.907 Forfeiture of bonds and/or other securities

# Questions





Thank You

Visit BOEM Website @ [www.boem.gov](http://www.boem.gov)

BOEM manages the responsible exploration and development of offshore energy and marine mineral resources on the OCS. The bureau promotes energy independence, environmental protection and economic development through responsible management of these offshore resources based on the best available science.