RECENT LEGISLATION, LITIGATION AND REGULATIONS IMPACTING OCS OPERATIONS

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THE OCS IS UNIQUE

"The sophisticated nature of offshore drilling and producing operations and the harshness and often unforgiving nature of the OCS environment has no onshore parallel, regulatory or otherwise."

Pacific Offshore Operators, Inc., 165 IBLA 62, 76 (March 3, 2005)

Events in the offshore oil & gas industry have made 2012-2013 a challenging year to work in and represent clients in the offshore oil and gas industry.

The story of the 2010 Deepwater Horizon Oil Spill in Gulf of Mexico continues to be written in the courts and by the regulatory agencies. Many issues remain resolved and questions linger.

Nevertheless, the GOM is rebounding despite regulatory reform.

Despite challenges and uncertainty, the E&P activity in the GOM is embarking on an extended growth cycle and the region is expected to remain a leading center for oil and gas operations.

According to *Offshore Magazine,* June 8, 2013, a recent survey of more than 100 industry professionals conducted by independent advisory firm GL Noble Denton on the impact of regulatory changes in the United States oil and gas industry suggests that the GOM is on the mend.

LEGISLATION – FEDERAL

Political gridlock in Washington has provided some relief for the industry in that legislation has become difficult, if not impossible, to get out of committee, much less to the floor for a vote.

This leaves many of the environmental penalty ceilings and production tax incentives unchanged, at least for the short-term.

On June 6, 2013, the House Energy and Minerals Subcommittee conducted a hearing on HR **2231**, which US Rep. Doc Hastings (R-Wash.), the full committee's chairman, introduced on June 4.

The measure would expand federal offshore oil and gas leasing beyond areas that are part of the 2012-17 OCS program.

"It would safely open up new areas that were previously under moratoria—such as the Mid-Atlantic, Southern Pacific, and Arctic," Hastings said in his opening statement. "This would create over a million new American jobs and generate hundreds of millions of dollars in new revenue to the federal treasury."

He added, “Earlier this year, a single lease sale in the Gulf of Mexico generated $1.2 billion in revenue for the federal government. As wells are drilled and the leases begin to produce, the revenue impact will only grow, along with the prospects for employment in the region and around the country.”

Christopher Guith, vice-president for policy at the US Chamber of Commerce's Institute for 21st Century Energy, said in his written statement that HR 2231 is necessary because more than 86% of the US OCS is presently off-limits to oil and gas activity.

During the immediate aftermath of the oil spill, Senate and House committees in the 111th Congress held more than 60 hearings on a variety of issues.

Members introduced more than 150 legislative proposals related to oil spill matters. The 111th Congress enacted three of these proposals into law (P.L. 111-191, P.L. 111-212, and P.L. 111-281).

Provisions in these laws generally concerned short-term matters that will not have a lasting impact on oil spill governance.

However, H.R. 3619, the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, which the President signed October 15, 2010 (P.L. 111-281), included more substantial changes.

In addition to the enacted legislation, the House in the 111th Congress passed several bills, including H.R. 3534 (the Consolidated Land, Energy, and Aquatic Resources Act, or CLEAR Act), that included multiple oil spill provisions.

The Senate had comparable bills on its legislative calendar, but did not vote on their passage.

Although interest arguably diminished in the 112th Congress, some Members continued to express concerns regarding various oil spill-related policy matters.

On January 3, 2012, the President signed P.L. 112-90 (the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011), which increases civil penalties for violating safety requirements and requires automatic and remote-controlled shutoff valves on newly constructed transmission pipelines;

directs the Department of Transportation to analyze leak detection systems, and after a review by Congress, issue requirements based on this analysis; and

requires the Pipeline and Hazardous Materials Safety Administration to review whether current regulations are sufficient to regulate pipelines transmitting "diluted bitumen," and analyze whether such oil presents an increased risk of release.

OCS-RELATED LITIGATION

Much of the litigation pending in the Deepwater Horizon case relates to earlier decisions of the United States District Court.

On April 9, 2013, the U.S. Fifth Circuit again refused to uphold a contempt finding against the federal government for instituting a second post-Deepwater Horizon drilling ban in the Gulf of Mexico after the initial ban was struck down, finding the new policy did not defy a court injunction.

This decision reverses a contempt finding and fee award in a suit brought by Hornbeck Offshore Services LLC, which sued DOI, Secretary Salazar and others in June 2010 for purposed violations of the Administrative Procedure Act and OCSLA related to the imposition of the six-month drilling ban.

In *Century Exploration New Orleans LLC v. USA*, case number 1:11-cv-00054, the U.S. Court of Federal Claims held that the Department of the Interior did not breach its lease agreement with two oil and gas exploration companies when it imposed new environmental and safety requirements for offshore drilling operations following the Deepwater Horizon disaster.

According to Judge Lynn J. Bush's decision, the DOI's imposition of additional requirements for offshore drilling in the Gulf of Mexico after the Deepwater oil spill, designed to prevent a repeat of the blowout, was not a breach of Century Exploration New Orleans LLC and Champion Exploration LLC's offshore drilling lease.

The lease doesn’t provide any absolute right for exploration or drilling, only the opportunity to drill based on standards set by the agency under the Outer Continental Shelf Lands Act, and the contract explicitly sets out that those standards may change during the leasing period, the judge ruled.

Also, two drilling moratoria imposed by the agency between May and October 2010 hadn’t directly affected the companies, because they had yet to begin drilling or submit an application to do so, the judge said. Even if they had submitted an application in that time, the short drilling pause was within the DOI’s authority under law and the terms of the lease, according to the opinion.

Century, which won the disputed lease in March 2008, filed suit in January 2011, alleging the DOI's post-Deepwater Horizon requirements had made performing its duties under the lease commercially impracticable and would cost it $650 million in lost profits. The DOI joined Champion – which owns about 10 percent of the lease – to the case in April that year.

Appeal to the U.S. District Court was filed by Century and Champion on March 29, 2013.

Torch Energy Advisors Inc. v. Plains Exploration & Production Co., case number 09-12-00698-CV, in the First District Court of Appeals for the State of Texas.

On April 23, 2013, Torch told a Texas appeals court that the trial court erred in refusing to recognize its contractual right to half of an $83 million judgment tied to oil and gas leases that it sold to Plains Exploration & Production Co.

Torch acquired 23 federal oil and gas lease in 1994 from Burdette Ogle, whose predecessors had paid large sums in required bonus payments when the leases were issued between 1968 and 1982. When it purchased the leases, Torch maintained that it knew they were subject to a development suspension ordered by DOI that might be made permanent, rending the assets worthless but giving lease owners a claim against the government for a refund of the bonus payments.

Later that year, Torch sold a half interest in the lease to Plains "without reservation." Then in 1996, Torch and Plains entered into a PSA which assigned Torch remaining half interest in the leases. This time, it excluded from the sale all claims and causes of actions arising from damage to its half-interest prior to the contracts October 1, 1995 effective date.

In 2002, Amber Resource Co and eight other companies including Plains sued for refunds of the bonus payments after the government determined that the 1990 amendments to the Coastal Zone Management Act mandated a permanent development ban. Plains eventually recovered a refund of approximately $84 million.

Torch demanded payment of one-half of the recovery and the trial court ruled that the sales contract did not entitle Torch to a share of the restitution award.

Goodwin v. Anadarko Petroleum Corp. et al., case number 4:12-cv-00900, in the U.S. District Court for the Southern District of Texas.

This is a class action suit filed on March 26, 2012 by a class of investors that allege that Anadarko deceived investors by downplaying its potential liability in the aftermath of the Deepwater Horizon accident.

On April 24, 2013, Anadarko asked the federal court to dismiss the class action stating that a remark made two weeks after the spill by an Anadarko senior vice president during a conference call with market analysts suggesting that the company was not involved with approving the flawed design of the well was too vague to support a securities fraud suit.

Anadarko argued that it “made a non-operator investment in which BP had sole authority ... and received the same generalized information as if we were building a house and the architect gave us the plans," "They have to allege proof that he knew [the statement] was false."

The shareholders argued that Anadarko's joint operating agreement with BP and other well design documents the company would have reviewed during a "due diligence" period in September 2009 before it bought into the well for $24 million prove that the company at least implicitly signed off on the well. "Anadarko had a contractual right to receive information, and they did ... on a 24/7, real-time basis.”

But when Anadarko's liability later became clear after it was revealed that a spill response plan prepared by BP and apparently accepted by Anadarko before it bought into the well, the company's stock tanked another 20 percent, wiping out about $19 billion in market capitalization, Anadarko ultimately paid about $4 billion to settle liability claims tied to the explosion.

The court will issue a written ruling on Anadarko's motion to dismiss at a later date.

***Warrior Energy Services Corporation v. ATP TITAN*, 2013 WL 1739378 (E.D. La. April 22, 2013)**

Judge Vance of the U.S. District Court for the Eastern District of Louisiana in *Warrior Energy Services Corporation v. ATP TITAN*, 2013 WL 1739378 (E.D. La. April 22, 2013) addressed whether the ATP TITAN, a permanently moored floating production facility (otherwise known as a SPAR), qualifies as a vessel.

The plaintiffs, affiliates of Superior Energy Services, Inc., sought to enforce a maritime lien against the TITAN for certain well recompletion services they provided to the TITAN's operator. In order to have a maritime lien, among other things, a lien claimant's services or supplies must be provide to, or for the benefit of, a vessel.

The TITAN is a triple-column deep-draft, floating production facility of a hybrid semisubmersible - spar-type.

Since its installation in 2010, the TITAN has been permanently moored to the floor of the OCS by 12 taut-leg chain/polyester mooring lines, each measuring over 6500 feet in length, and by its production infrastructure of flowlines, export pipeline systems, and import flowline and umbilicals.

The TITAN has no means of self propulsion, and will remain in its current location at MC Block 941 for the remaining productive life of the field, which is estimated to be between 5-8 years. To move the TITAN would take approximately 15 – 29 weeks and would cost between $70 and $80 million.

Judge Vance had no difficulty finding that the TITAN is not a vessel as matter of law. Judge Vance cited to a recent vessel status test established by the United States Supreme Court in in *Lozman v. City of Riviera Beach, Fla.*, – U.S. –, 133 S.Ct. 735, 184 L.Ed.2d 604 (2013).

In *Lozman,* the Supreme Court held that a floating home constituted a vessel, stating that "a structure does not fall within the scope of this statutory phrase unless a reasonable observer, looking to the [structure]'s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water."

Judge Vance found that the reasonable observer test established by *Lozman* supports the conclusion that the TITAN is not a vessel.

Judge Vance's ruling is currently on appeal to the United States Fifth Circuit. The parties are awaiting a brief schedule from the court that outlines the relevant brief submission dates.

United States of America v. ATP Oil & Gas Corporation, et al., No. 2:13-cv-262, USDC, E.D. La.

In February 2013, the U.S. Department of the Interior and the Environmental Protection Agency filed a complaint in the Eastern District of Louisiana seeking an injunction and civil penalties against both the owner and the operator of the ATP Innovator production platform based on alleged violations of the Clean Water Act ("CWA"). Specifically, the plaintiffs claim that the defendants were concealing oil discharges by injecting a chemical dispersant into an outfall pipe.

According to the plaintiffs, the alleged use of dispersants constitutes the "discharge of a pollutant" as prohibited by CWA Section 301 and also violates the defendants' general wastewater permit issued under the CWA's National Pollutant Discharges Elimination System. The plaintiffs further claim the oil discharges violate CWA section 311, which generally prohibits the discharge of harmful quantities of oil. A motion to dismiss filed by one of the defendants is currently pending.

IBLA Appeal 2012-183

Apache Corporation (Apache), the lessee and operator of Lease OCS G-02580, appealed from IBLA's March 1, 2012, decision of the Bureau of Safety and Environmental Enforcement (BSEE), affirming five Incidents of Noncompliance (INCs) issued to Apache for regulatory violations stemming from a September 2, 2010, fire outbreak on Vermillion Block 380, Platform A (the Platform), in the Gulf of Mexico roughly 102 miles off the coast of Louisiana.

The OHA affirmed the IBLA decision, finding that it was reasonable in light of the evidence of record. Apache failed to show by a preponderance of the evidence that BSEE's decision was not based on a careful consideration of the record.

ISSUES IN BANKRUPTCY LITIGATION

OVERRIDING ROYALTY INTERESTS v. NET PROFITS INTERESTS

Prior to its Chapter 11 filing, ATP entered into transactions creating term and perpetual ORRI/NPI interests for approximately $500 million related to certain offshore wells.

During the pendency of the bankruptcy, ATP now labels these ORRI/NPI interests as financing transactions in order to bring the interests back into the bankruptcy estate.

A number of the holders of these ORRI/NPI Interests have filed adversary proceedings in Bankruptcy Court seeking validation of transactions as true sales.

See TM Energy Holdings LLC, et al. v. ATP Oil & Gas Corporation, Adv. No. 12.03429 U.S. Bankruptcy Court, So. Dist Texas, Houston Division. Motion for Summary Judgment was heard in this case on June 19, 2013, limited to the issue of whether there are provisions in the parties contracts that are inconsistent with classifying the interest created as a “term overriding royalty interest” under Louisiana law.

The following adversary proceedings are also filed in the Bankruptcy Court and are the subject of extensive motion practice:

Seacor Marine LLC v. ATP Adv. No. 12.03450 U.S. Bankruptcy Court, So. Dist Texas, Houston Division.

Diamond Offshore Company v. ATP Adv. No. 12.03425 U.S. Bankruptcy Court, So. Dist Texas, Houston Division.

Macquarie Investments LLC v. ATP Adv. No. 12.03516 U.S. Bankruptcy Court, So. Dist Texas, Houston Division.

NGP Capital Resources Company v. ATP Adv. No. 12.03443 U.S. Bankruptcy Court, So. Dist Texas, Houston Division.

The Bankruptcy Court will first consider "financing issues"; that is, are the ORRI/NPI interests outright transfers of ownership or are these interests disguised financing transactions.

If the Court finds that the ORRI/NPI interests are disguised financing vehicles and not true sales, the Court will have to determine the priority of the competing interests because the ORRI/NPI interests will be deemed to be property of the bankruptcy estate and the court will determine who has claim to the assets.

Issues presented by the Court's ORRI/NRI Determination

What is the nature of a Federal, offshore oil and gas lease?

Are the ORRI/NPI interests to be classified as *real rights in property* or as *contract rights* subject to rejection under Section 365 of Bankruptcy Code?

If they are real property rights, the ORRI/NPI holders would retain their interests.

If they are contract rights subject to rejection, ATP can retain the interest or recharacterize the transaction as disguised financing instruments .

Issues presented by the Court's ORRI/NRI Determination

What law applies to determinations of these matters:

Under Louisiana law a production payment is a real property interest.

Under the Bankruptcy Code, a production payment is not property of the estate.

Under OCSLA choice of law provisions, apply state law unless state law conflicts with Federal law.

Recent Ruling in ATP Bankruptcy

On June 21, 2013, Judge Marvin Isgur of the United States Bankruptcy Court for the Southern District of Texas, Houston Division, issued an order pursuant to 11 U.S.C. §365(A)(I), authorizing the rejection of certain unexpired leases and executor contracts related to certain ATP properties, relinquishment of its interest in the remaining properties and/or the abandonment of any continuing interest in the subject properties or leasehold interests, and approving procedures for the rejection of unexpired leases and executor contracts.

REGULATORY LITIGATION

SOPs and NTL No. 2011-N10

Exxon Mobil Corporation v. Salazar, et al. Case No. 2:11-cv-01474 (W.D. La.)

Background: ExxonMobil and Statoil appealed the MMS's 2008 denial of an SOP request for the Walker Ridge 627 Unit ("Julia Unit") to the IBLA, which reversed the decision by order dated December 22, 2009.

The MMS requested further review of the decision from the Director of the Office of Hearing and Appeals ("OHA"), who reversed the IBLA decision by order dated May 31, 2011;

ExxonMobil and Statoil filed suit against DOI for judicial review of the OHA in USDC for the Western District of Louisiana, Lake Charles Division.

The OHA decision concerned MMS's denial of ExxonMobil's requires for an SOP for the Julia Unit, a five block deep water unit containing a Lower Tertiary discovery.

At the time, the MMS had never denied an SOP request for a deep water unit and had never denied a request for an SOP for a Lower Tertiary prospect.

ExxonMobil, as unit operator, requested the SOP to allow for time to tie-back to the Jack-St. Malo host, a production facility that had not yet been constructed.

MMS had already granted SOPs to the owners of the Jack and St. Malo units for the same reason.

MMS denied ExxonMobil's request, finding a lack of commitment to production required by the regulations.

MMS Reasons for Denial of SOP

Exxon's purported commitment to produce the WR 627 Unit was not based on activities within Exxon's control. MMS explained that Exxon's commitment was based on (1) the potential fabrication and installation of a facility by another operator in the field, (2) the proposed facility is not controlled by Exxon and Exxon is not a party to its construction, (3) the future success of obtaining a contact with the operator of the proposed facility in order to tie-back to the WR 627 Unit wells was not assured, and (4) a proposed facility that would not be likely to handle the unit production upon startup.

Exxon and Statoil appealed the MMS denial to the IBLA. The IBLA granted their appeal, finding that the SOP application (i) does not need to own, control or operate the host facility; (ii) may plan to use not yet built transportation facilities and/or transportation facilities used by their parties.

The IBLA also found that MMS had unlawfully applied a different commitment to production standard to ExxonMobil's request than it had applied to other SOP requests. See Statoil Gulf of Mexico LLC, 178 IBLA 244 (2009).

The MMS requested that the Director, DOI Office of Hearings and Appeals, review the IBLA decision. The Director accepted jurisdiction and reversed the IBLA. DIR-2010-0027 (May 31, 2011).

ExxonMobil and Statoil filed suit against DOI for judicial review of the OHA in USDC for the Western District of Louisiana, Lake Charles Division. The parties entered into a settlement agreement approved by the district court on January 17, 2012.

The settlement is filed of record in the Court documents. And according to its terms, has no precedential value and shall not be admissible in any other proceeding. It provides for an Activity Schedule attached to the Settlement in order for ExxonMobil and Statoil to bring the Julia Unit into production. It further provides that if the parties adhere to the agreed-upon Activity Schedule and the terms of the Settlement, DOI will grant a second SOP of the Julia Unit up to and including August 31, 2014.

The troubling issue is that the Settlement is of no value to other parties similarly situated.

Thus under the OHA Director's decision,

Deepwater host facilities are "production facilities" which serve no transportation function.

Neither OCSLA nor regulations authorize on SOP to allow for construction or negotiation for use of a "production faculty" – only a transportation facility.

Lessee cannot obtain an SOP to have time to tie back to a host facility unless the lessee either planned to build its own host facility or has executed a contract with the host facility owner (PHA) prior to lease expiration.

Supplemental Bonding and Bankruptcy Implications

Applicable BOEM regulations concerning surety bonds (30 C.F.R. 556.52, et seq.), designation of operators (30 C.F.R. §550.143), and lease transfers (30 C.F.R. §§556.62 and 556.64) include provisions regarding joint and several liability for the performance of non-monetary obligations imposed by the lease and applicable laws and regulations.

In particular, 30 C.F.R. §556.64(h)(1) and (2) provide that co-lessees, prior lessees, and operating rights owners holding an interest at the time the obligation accrued are jointly and severally liable for all lease and regulatory non-monetary obligations, and that sublessees and operating rights owners are jointly and severally liable for the performance of each non-monetary obligation under the lease to the extent that: (i) the obligation relates to the area embraced by the sublease; (ii) those owners held their respective interests at the time the obligation accrued; and (iii) the rule does not otherwise provide.

30 C.F.R. §556.62(d) further provides that an assignor shall be liable for all lease obligations accruing prior to approval of the assignment by the BOEM; however, such approval does not relieve the assignor of accrued lease obligations that the assignee, or subsequent assignees, fails to perform, and 30 C.F.R. §556.62(e) states that the assignee and each subsequent assignee shall be liable for all obligations under the Subject Lease subsequent to the date that the BOEM approves the assignment.

Furthermore, the assignor of lease interests remains liable for abandonment obligations associated with wells drilled or used and platforms and facilities installed while the assignor held an OCS leasehold interest. 30 C.F.R. §250.1700, *et seq.*; see also 30 C.F.R. §§556.62 (f); and 30 C.F.R. §556.64(h).

SUPPLEMENTAL BONDING AND BANKRUPTCY IMPLICATIONS

Industry and regulatory responses to the Chapter 11 petition filed by ATP Oil & Gas Corp. in the face of production delays have been vociferous and have underlined concerns of regulators and oil and gas exploration and production companies as they try to understand the future of supplemental bonding obligations.

As a result of the bankruptcy filing of ATP Oil & Gas Corporation and the magnitude of uncovered decommissioning liabilities being addressed therein, BOEM and BSEE are currently in the process of changing how decommissioning liabilities for Gulf of Mexico owners and operators are assessed and where and at what levels bonding or financial security will be required on a prospective basis.

ATP was exempt from supplemental bonding until July 31, 2012. After the exemption was revoked, ATP did not have the financial resources to provide security and it filed for bankruptcy, leaving its assessed decommissioning liabilities un-bonded.

As a result, BSEE undertook a comprehensive review of all of ATP’s decommissioning liabilities and realized, in its view, that the assessments in effect were inadequate.

As a result of this realization, BOEM and BSEE have undertaken a policy review of assessments and bonding and will implement potentially severe changes in the near future.

At a meeting on May 23, 2013, BOEM and BSEE conducted an Industry Forum on Bonding Issues in which it put forth new approaches to ***Decommissioning Cost Assessments*** and ***Supplemental Bond Issues Related to Decommissioning Liability***.

To summarize, the following information was gathered:

First, BSEE is in the process of re-assessing leases and increasing, sometimes significantly, the decommissioning assessments for a number of leases.

Although ATP’s problems are primarily deepwater related, it appears that increased assessments will most likely also affect shelf properties.

Therefore, all companies operating and owning leases in the Gulf of Mexico will most likely be impacted by increased decommissioning assessments for their leases and rights of use and easement.

This will increase the supplemental bond requirements for non-exempt companies, and some exempt companies may lose their exemptions altogether.

Second, BOEM has determined that it will require bonds for rights of way, which traditionally have not been required.

As such, BSEE is most likely in the process of assessing all pipeline rights of way in the Gulf of Mexico and BOEM demands for security to cover same will be forthcoming. It is too early to tell what the magnitude of these new bond/security demands may be, especially for shelf properties.

Third, BOEM has determined that it may require bonds for operating rights interests. Traditionally, bonds have been required (or an exemption had to be in place) for record title interests only (which effectively cover all interests in the lease, including operating rights).

At present, it is unclear how BSEE will make an assessment which will be effective only against a specific aliquot/depth associated with carved out operating rights, and it is unclear what BOEM may demand from a financial security standpoint solely from operating rights, but a change in policy associated with supplemental bonding for operating rights is clearly underway.

A hidden issue is the fact that several companies can presently avoid supplemental bonding if a single record title holder is exempt.

With the BSEE re-assessments underway, it is hard to predict which or how many companies may lose their exemptions, which may then require a party on the lease block to provide supplemental bonding or an alternative form of security.

In addition, if operating rights owners need to provide a separate and independent supplemental bond or alternative form of security, significant analysis of each individual block would need to be undertaken to fully analyze the ramifications of this change in policy.

ATP BANKRUPTCY: BONDING REVIEW AND ISSUES

BOEM and BSEE met with representatives of ATP on July 31, 2012, at which time BOEM informed ATP that its review of ATP's current audited financial information demonstrated that ATP no longer qualified for a supplemental bond waiver.

On August 17, 2012, BOEM issued an Order to ATP (the "August 17th Order"), demanding supplemental bonds on 25 of ATP's OCS leases and 5 of its rights of use and easements.

ATP timely filed an appeal of the August 17th Order with the IBLA (IBLA No. 2013-0010) and a motion for stay pending appeal, neither of which have been ruled on to date by the IBLA.

After issuance of the August 17th Order and during the pendency of this appeal, ATP commissioned TSB to prepare independent cost estimates for decommissioning certain properties made the subject of the August 17th Order. These TSB estimates were submitted to BOEM and BSEE and discussed during several meetings with ATP.

Ultimately, ATP, BOEM, and BSEE reached a settlement on most of the properties in the August 17th Order.

For those properties that were non-producing ("Idle Iron Properties"), the parties agreed to a schedule by which they would be decommissioned, and funds from the DIP budget were utilized for such work.

For the producing properties, ATP established five different decommissioning trust accounts ("DTA") on November 15, 2012 to fund the required supplemental bond obligations on ten properties.

After these DTAs were established, the parties reached a settlement of the IBLA Appeal on a number of the properties included in the DTAs, agreeing to reduce the assessments and associated funding obligations. As a result, the DTAs were amended so that some were eliminated entirely and others had their funding requirements reduced to reflect the settlement.

On December 20, 2012, BOEM issued a second order demanding supplemental bonds on 10 OCS leases and 39 ROWs (the "December 20th Order").

Two of those leases were part of the August 17th Order but had their assessments significantly increased in the December 20th Order. BOEM then amended its December 20th Order on January 18th to add properties and increase several assessments again

ATP timely filed an appeal of the December 20th Order, as amended, with the IBLA (IBLA No. 2013-87) and a motion for stay pending appeal, neither of which have been ruled on to date by the IBLA.

On March 14, 2013, BOEM issued an Incident of Noncompliance to ATP for failure to comply with the December 20th Order and provide supplemental financial security for those properties included therein (the “March 14th INC”).

ATP timely filed an appeal of the March 14th INC with the IBLA (IBLA No. 2013-109) and a motion for stay pending appeal, neither of which have been ruled on to date by the IBLA.

On May 8, 2013, upon joint motion of ATP and BOEM, the IBLA issued an order consolidating all three appeals, which will proceed under IBLA 2013-10. On June 13, 2013, the IBLA issued an order granting BOEM's unopposed motion to suspend the appeals, pending progress of the bankruptcy proceedings.

SEMS FINAL RULE

SEMS Final Rule (SEMS II)

The SEMS II Rule became effective on June 4, 2013. The SEMS II final rule expands the original Workplace Safety Rule (SEMS) issued in October 2010.

The final rule assures greater protection by requiring an operator to supplement its SEMS programs through employee training, by giving field level personnel authority to make safety management decisions and by strengthening auditing procedures by independent third party providers.