

Update: BOEM Withdraws Sole Liability Orders Issued Under NTL 2016-01

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The Bureau of Ocean Management (BOEM) announced that it will withdraw its orders issued in December 2016 to provide additional security for sole-liability properties to Outer Continental Shelf (OCS) oil and gas lease and grant holders. “Sole-liability properties” are leases, rights of way (ROWs) and right of use easements (RUEs) for which there are no co-lessees/co-owners and no prior interest holders responsible for the outstanding obligations. BOEM stated the reason for the withdrawal is “to allow time for the new Administration to review the complex financial assurance program” and that it will welcome “continued industry engagement on [the] important issue [of financial assurance].” As you may be aware, the sole liability concept has raised numerous issues and concerns. For example, because RUEs cannot be conveyed, BSEE has considered each platform and other facility under a RUE to be a sole liability asset, even if such platform or facility was also covered by a prior RUE or, as is often the case, by an earlier oil and gas lease so that multiple parties have accrued liability for the decommissioning of such platform or facility. A similar issue arises for pipeline ROWs. Although BSEE’s predecessor (the MMS) had allowed ROWs to be owned by more than one party, BSEE now does not grant, or approve assignments for, split-ownership of ROWs. Thus, BSEE has categorized many ROWs as sole liability assets, even though those ROWs and the associated pipe are in fact owned by multiple parties.

As our recent blogs posted on January 6, 2017 and January 9, 2017 have discussed, BOEM previously announced a six-month delay of the effectiveness of NTL 2016-01 for non-sole liability properties. BOEM will now also consider any implementation issues associated with the sole liability orders as part of its review of the NTL. Despite the six-month extension, operators and lessees on the OCS should be aware that “BOEM may re-issue sole liability orders before the end of the six-month period if it determines there is a substantial risk of nonperformance of the interest holder’s decommissioning liabilities.”

The effective date of the NTL was pushed to March 12, 2017 by the six-month delay. As the effective date fast approaches, we expect that the current supplemental bonding uncertainty facing OCS lessees and operators will continue as BOEM may either revise the NTL or further delay its implementation.