ANADARKO PETROLEUM CORPORATION

187 IBLA 77 Decided February 2, 2016

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IBLA 2014-168 Decided February 2, 2016

Appeal from an order, regarding an Outer Continental Shelf lease, directing appellant -- an assignor, who assigned its interests in 1984 -- to perform decommissioning, and to immediately undertake maintenance pending completion of decommissioning.

Affirmed.

1. Oil and Gas Leases: Generally -- Outer Continental Shelf Lands Act: Oil and Gas Leases

   When, under the terms of its Outer Continental Shelf Lands Act (OCSLA) lease, a lessee agreed to retain decommissioning responsibilities, even after the lease is terminated, the lessee remains liable for such responsibilities.

2. Oil and Gas Leases: Generally -- Outer Continental Shelf Lands Act: Oil and Gas Leases

   Standard language for OCSLA leases provides that the lessee is subject to "all regulations issued pursuant to OCSLA *in the future* which provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf (OCS), and the protection of correlative rights therein." A lessee takes an OCS lease with the understanding that it will be subject to future regulations that properly ensure protection of the natural resources of the OCS.

3. Oil and Gas Leases: Generally -- Outer Continental Shelf Lands Act: Oil and Gas Leases

   Current OCSLA regulations, including those concerning decommissioning and those concerning assignments, to

the extent they concern decommissioning, provide for the prevention of waste and the conservation of the natural resources of the OCS, and the correlative rights therein, and therefore a former lessee is subject to such current regulations (instead of the regulations in effect before it assigned its interests in its lease).

4. Oil and Gas Leases: Generally -- Outer Continental Shelf Lands Act: Oil and Gas Leases

When at least one assignee has failed to perform its obligations under a lease, BSEE properly issues the assignor a decommissioning order under the rule governing OCS lease assignments, which provides, "if your assignee, or a subsequent assignee, fails to perform" an obligation under the lease, BSEE may issue an order to the assignor (for obligations the assignor accrued prior to assignment). 30 C.F.R. § 556.62(f) (2015).

5. Oil and Gas Leases: Generally -- Outer Continental Shelf Lands Act: Oil and Gas Leases

Under the regulation at 30 C.F.R. § 556.62(f) (2015) (assignment of OCS leases or interests therein) and the regulation at 30 C.F.R. § 250.1701 (2015) (concerning joint and several responsibility and decommissioning), BSEE properly applies joint and several liability to assignors when at least one assignee has failed to carry out decommissioning obligations.

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OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

I. INTRODUCTION AND SUMMARY

Anadarko Petroleum Corporation (appellant) appeals from a March 7, 2014, letter-order (Order) of the Bureau of Safety and Environmental Enforcement (BSEE), concerning South Timbalier Block 77 (ST 77) in the Gulf of Mexico Outer Continental Shelf (OCS), directing it, as a former co-lessee of lease OCS-G 04827 (the Lease), to

decommission wells, pipelines, platforms, and other facilities, and to immediately undertake maintenance of the facilities and wells on the lease pending completion of decommissioning. Administrative Record (AR), Tab 2.

Appellant was one of the original co-lessees of the Lease. AR, Tabs 7 (Lease) and 5 (Serial Register). Appellant acquired its interests in the lease on July 21, 1981, and the Lease was effective as of September 1, 1981. *Id.* At the time appellant acquired its interest in the Lease (1981) and at the time of its assignment of its entire interest in the Lease (1984), the regulation for assignment of OCS leases or interests therein, 43 C.F.R. § 3319.1 (1980-1982), recodified as 30 C.F.R. § 256.62 (1983-84),[1] provided:

> (d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.
>
> (e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the [OCS Lands Act (OCSLA), 43 U.S.C. § 1331, *et al* (2012)].

However, the Lease, issued pursuant to OCSLA[2] and implementing regulations, provides that the lessee agrees that it will be subject to all regulations issued pursuant to OCSLA in existence upon the effective date (*i.e.*, Sept. 1, 1981), *and* "all regulations issued pursuant to [OCSLA] *in the future* which provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein . . . ." Lease at unpaginated (unp.) 2 (emphasis added).

On May 22, 1997, the agency amended the regulation pertaining to OCSLA assignment of leases or interests. The amended rule, still in effect, provides:

> (d) You, as assignor, are liable for all obligations that accrue under your lease before the date that the Regional Director approves your request for assignment of the record title in the lease. The Regional Director's approval of the assignment does not relieve you of

[1] 47 Fed. Reg. 47006 (Oct. 22, 1982).

[2] The Lease also provided it was issued pursuant to sections 302 and 303 of the Department of Energy (DoE) Organization Act, 91 Stat. 568, codified at 42 U.S.C. § 7152 and 7153 (2012).

> accrued lease obligations that your assignee, or a subsequent assignee, fails to perform.
>
> (e) Your assignee and each subsequent assignee are liable for all obligations that accrue under the lease after the date that the Regional Director approves the governing assignment. They must:
> (1) Comply with all the terms and conditions of the lease and all regulations issued under [OCSLA]; and
> (2) Remedy all existing environmental problems on the tract, properly abandon all wells, and reclaim the lease site in accordance with part 250, subpart [Q[3]].
>
> (f) If your assignee, or a subsequent assignee, fails to perform any obligation under the lease or the regulations in this chapter, the Regional Director may require you [the assignor] to bring the lease into compliance to the extent that the obligation accrued before the Regional Director approved the assignment of your interest in the lease.

30 C.F.R. § 256.62 (1997).[4]

As explained in more detail below, in our decision we first address whether appellant is liable for the decommissioning obligations under the Lease under the regulations in effect at the time appellant assigned all of its interests (1984): 30 C.F.R. § 256.62 (1984) (previously codified at 43 C.F.R. § 3319.1 (1980-1982)). We answer that question in the affirmative. Under the Lease, appellant contractually agreed to carry out decommissioning responsibilities, even after the Lease's termination. As discussed herein, applying the 1981-1984 version of the assignment regulation in conjunction with the Lease, we conclude the appellant would be liable for decommissioning obligations it accrued while it was a lessee.

We further find that, regardless, by the terms of the Lease, appellant is subject to all regulations issued under OCSLA, including those issued in the *future* concerning prevention of waste and conservation of the natural resources of the OCS. As discussed herein, the regulations concerning accrual of decommissioning obligations, joint and several liability for decommissioning obligations, and assignment of

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[3] The 1997 codification refers to subpart G, whereas the current codification refers to subpart Q. *Compare* 30 C.F.R. § 256.62(e)(2) (1997) with 30 C.F.R. § 556.62(e)(2) (2015).

[4] In 2011, the regulation was recodified at 30 C.F.R. § 556.62. 76 Fed. Reg. 64432 (Oct. 8, 2011). For ease of reference, we will refer to the current codification.

obligations (at least to the extent they concern decommissioning) fall under this category. Appellant argues it is not liable even under the current regulations, because the current assignment regulation, 30 C.F.R. § 556.62(f) (2015), contains a condition precedent: that "*if* your assignee, or a subsequent assignee, *fails to perform* any obligation under the lease or the regulations . . . [BSEE] may require you [the assignor] to bring the lease into compliance." Appellant states that the term "if" clearly conveys a condition precedent that before an assignor's liability can be triggered, all assignees must have failed to perform. As we discuss, we reject appellant's argument and conclude that the regulatory condition required before an assignor's liability is triggered is the failure of at least one assignee, and that circumstance has been fulfilled in this case. We further reject appellant's argument that BSEE erred in issuing the decommissioning order to appellant, to carry out its obligations accrued while it was a lessee, instead of issuing its orders sequentially, in reverse chronological order, waiting for each party subsequent to the appellant/ assignor to fail to carry out their own obligations. As discussed herein, BSEE's application of joint and several liability to appellant, when at least one assignee has failed to carry out obligations under the Lease, is consistent with the language of the assignment regulation, 30 C.F.R. § 556.62(f) (2015), and the joint liability regulation, 30 C.F.R. § 250.1701 (2015).

II. FACTUAL BACKGROUND

Handwritten notes on the Serial Register identify appellant as "record title owner" from "July 21, 1981 - November 21, 1984." AR, Tab 5 (Serial Register) at 1. The Lease had a sale date of July 21, 1981. AR, Tab 7 at unp. 1; AR, Tab 5 at 1. Other original lessees under the Lease were: Santa Fe Energy Company (Santa Fe) -- later succeeded by Devon SFO Operating, Inc. (Devon), CNG Producing Company (CNG) -- subsequently renamed Dominion Exploration and Production, Inc. (Dominion),[5] and Monsanto Company (Monsanto), each originally holding a 25% interest. AR, Tab 7 at unp. 2; AR, Tab 5 at 1. The effective date of the Lease was September 1, 1981. *Id.*

On November 1, 1984, the Minerals Management Service (MMS), predecessor agency to BSEE, approved appellant's assignment of all of its record title interest in the Lease to CNG.[6] AR, Tab 6, Assignment Approved: Nov. 1, 1984 (Assignment

[5] AR, Tab 5, at 2.

[6] Neither the 1980-1984 OCSLA regulations nor the current OCSLA regulations define the term "record title owner" or "record title interest." However, analogous Department of the Interior regulations define the term "Record title holder" to mean the person(s) to whom the government issued a lease or approved the assignment of

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Approval). In its Assignment Approval, MMS stated, *inter alia*, "The approval of this assignment is restricted to record title interest only, and by virtue of this approval, the Assignee [CNG] is subject to, and shall fully comply with, all applicable regulations now or to be issued under the Outer Continental Shelf Lands Act, as amended." *Id.* The Serial Register page identifies the effective date of CNG's record title interest as April 15, 1984.[7] AR, Tab 5 at 1.

Over the years, additional assignments of record title and operating rights interests followed.[8] *See generally* AR, Tabs 5 and 6. For instance, to name a few points in the history of the Lease, as of 2002, record title interest was held by Millennium Offshore Group, Inc. (Millennium Offshore) and Devon (a successor to original co-lessee Santa Fe); in 2003, record title interest was held by Millennium and by various companies with the name "Merit" (*e.g.*, Merit Energy Partners); in early 2006, operating rights interest in certain parts of ST 77, were in Ridgewood Energy Corporation and Millennium. AR, Tab 5 at 1-4. By February 21, 2006, ATP Oil & Gas Corporation (ATP) held 100% record title interest in the lease. AR, Tab 5 at 4; *see also* SOR at 3. From 2006 through the termination of the lease in 2011, various companies held operating interests, including ATP, Millennium Operating Group, LLC (Millennium Operating), and Ridgewood Energy L (and N) Fund, LLC (collectively, Ridgewood). AR, Tab 5 at 4-6. On June 30, 2011, when the Lease terminated for lack of production at ST 77, ATP still held 100% of the record title interest in the Lease. Answer at 2; SOR at 3; *see* AR, Tab 5 at 4-6.

The Bureau of Ocean Energy Management (BOEM) issued a new lease for ST 77, OCS-G 3433, to Bois d'Arc Exploration LLC (Bois d'Arc), effective November 1, 2012. Petition for Stay, Ex. 2. Appellant states that Bois d'Arc is the sole current lessee of ST 77. SOR at 4.

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record title in a lease. 43 C.F.R. § 3160.0-5 (concerns onshore oil and gas operations). The latter regulations also define "Lessee" to mean "any person holding record title or owning operating rights in a lease issued or approved by the United States." *Id.*

[7] However, in the Assignment Approval, the effective date for the assignment is identified as Jan. 4, 1984. *Id.* Regardless, the specific date of the assignment within the year 1984 is immaterial to the Board's conclusion in this case.

[8] Appellant states that the appellants in another pending appeal before the Board, consolidated case *Devon Energy, et al.,* IBLA 2014-170, *et al.*, were subsequent record title holders. Statement of Reasons (SOR) at 3.

ATP began decommissioning the facilities on the Lease, but, on August 17, 2012, before completion, declared bankruptcy. *See* 30 C.F.R. Part 250, Subpart Q; Answer at 2; SOR at 3; *see generally In re ATP Oil and Gas Corp.,* No. 12-36187 (Bankr. S.D. Tex.), ECF No. 2096. On June 21, 2013, the bankruptcy court authorized ATP to abandon or relinquish its obligations relating to the Lease. Order at 1; ECF No. 2096. By letter dated July 8, 2013, ATP notified BSEE that, effective immediately, it would not perform any required maintenance or decommissioning activities related to the Lease. Order at 1.

On November 22, 2013, BSEE issued an order, directing Merit Energy Company (Merit), as a former co-lessee on the Lease, to decommission all wells, pipelines, platforms, and other facilities by November 18, 2014. *See* AR, Tab 5, at 6 (Serial Register, summarizing the order to Merit); *see also* SOR at 4 (discussing the order to Merit). On March 7, 2014, BSEE issued a joint order notifying Devon and Dominion, as former co-lessees of ST 77, that they are responsible for decommissioning all wells, pipelines, platforms, and other facilities for which they accrued decommissioning obligations under 30 C.F.R. § 250.1702 for the Lease, by November 18, 2014, and to immediately undertake maintenance of the facilities and wells on the Lease pending completion decommissioning.[9] Petition for Stay, Ex. 3; AR, Tab 5 at 6 (summarizing the joint order to Devon and Dominion).

Also on March 7, 2014, BSEE issued appellant the Order on appeal to undertake maintenance and decommissioning activities by November 18, 2014. Order at 1. BSEE stated appellant is responsible for decommissioning all wells, pipelines, platforms, and other facilities for which it accrued decommissioning obligations for the Lease under 30 C.F.R. § 250.1702. *Id.* It explained that, as a former co-lessee, appellant's decommissioning obligations include the safe and orderly winding down of all functions associated with all facilities and infrastructure for which appellant is responsible from the date of the Order until decommissioning is complete. *Id.* "Therefore, [appellant] must immediately undertake maintenance of the facilities and wells on the lease pending completion of decommissioning and ensure that the wells are secured in accordance with all provisions of 30 CFR Part 250 that apply to shut-in wells." *Id.*

[9] Although the order to Merit is not part of the administrative record before the Board, based on the parties' filings and the record's summary of the Merit order, we assume it to be consistent with the Mar. 7, 2014, joint order issued to Devon and Dominion, as well as the Mar. 7, 2014, order issued to appellant.

On May 9, 2014, appellant timely filed a Notice of Appeal[10] and a Petition for Stay. BSEE filed an opposition to the stay and appellant filed a reply. On June 23, 2014, the Board issued an order (Stay Order) granting appellant's petition for stay.[11]

On June 12, 2014, the Board issued an order suspending briefing in this appeal pending BSEE's filing of the administrative record, and ordering that appellant shall have 45 days from the date BSEE makes the record available for review to file its SOR. The Board received the administrative record on May 7, 2015. Appellant filed its SOR on June 22, 2015, BSEE filed its Answer on August 17, 2015, and appellant filed a Reply in Support of SOR (Reply) on August 31, 2015. This matter is now ripe for disposition.

III. DISCUSSION

Appellant argues that BSEE erred in holding it liable for the ST 77 decommissioning, because the 1984 version of 30 C.F.R. § 256.62(d)-(e), the "operative" rule in effect at the time it assigned its entire interest in the Lease, did not impose "residual contingent decommissioning liability" on assignors. SOR at 6; Petition for Stay at 7.[12]

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[10] Under 30 C.F.R. § 290.3, an appellant from a BSEE order must file its appeal within 60 days after receipt of BSEE's final decision or order. "A Decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented." 30 C.F.R. § 290.3. The record does not show when appellant received delivery of the Order. However, using the tracking number for the Order, the Federal Express website identifies appellant's receipt date as Mar. 10, 2014, for the Order (Tracking No. 8044 8682 1655). *See* https://www.fedex.com/fedtrack (last visited Sept. 21, 2015). We conclude, therefore, appellant timely filed its appeal within the 60 day deadline.

[11] When the Board granted appellant's petition for stay, we had neither the administrative record, which includes the Lease, nor the additional extensive briefing the parties now have filed, (including, *e.g.*, BSEE's Answer), and we made clear that our ruling was based on a cursory, preliminary analysis. Stay Order at 5.

[12] We note that, in its arguments on appeal, appellant explicitly refers to 30 C.F.R. § 256.62(d)-(e) (1984), the assignment regulation in place November 1984, when it assigned all of its interests in the Lease, as the "operative" Regulation. Petition for Stay at 7. Appellant does not refer to the 1981 assignment regulation, 43 C.F.R. § 3319.1(d)-(e) (1981), in place when the Lease became effective, which uses identical language, nor explain the significance of its effective embrace of the concept that it is

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BSEE too asserts the regulations, in place at the time of the assignment, control in this case, Answer at 10, but counters that the 1984 assignment regulation, along with the Lease's language requiring the Lessee to perform decommissioning within a year after termination of the Lease, dictate that appellant remains liable for the ordered decommissioning. SOR at 4-5.

In the alternative, appellant argues that, even if it were subject to the current regulations, BSEE erred in issuing the Order because assignees subsequent to the appellant in the chain of title have not yet all failed to perform their decommissioning obligations, accrued under the Lease. SOR at 9. Appellant argues against BSEE's position that it can be held jointly and severally liable, contending that, because the current assignment regulation, 30 C.F.R. § 556.62(f) (2015), contains a condition precedent that "*if* your assignee, or a subsequent assignee, *fails to perform* any obligation under the lease or the regulations . . . [BSEE] may require you [the assignor] to bring the lease into compliance," the term "if" clearly conveys a condition precedent before an assignor's liability can be triggered: assignee's failure to perform. SOR at 9-10. BSEE counters, *inter alia,* that appellant is attempting to read into the regulations, including the joint and several liability provision at 30 C.F.R. § 250.1701(a) (2015), a requirement that does not exist -- that joint and several liability can only be imposed among contemporaneous lessees and operators, instead of former lessees and operators, and must be imposed in reverse chronological order. Answer at 10-11.

As we discuss below, the Board holds that, under the terms of the Lease, the current regulations apply, including the current assignment regulation, at least to the extent it concerns decommissioning obligations. Nevertheless, even if the Board were to disregard the current regulations, we would conclude appellant must carry out decommissioning obligations which it accrued prior to assignment of its interests in the Lease. We therefore affirm BSEE's Order directing appellant to decommission wells, pipelines, platforms, and other facilities, and to immediately undertake maintenance of the facilities and wells on the Lease pending completion of decommissioning.

A. The 1981-1984 Assignment Regulation, Read in Conjunction with the Lease (Section 22), does not Absolve Appellant/Assignor of its Decommissioning Obligations Accrued under the Lease

In its Answer, BSEE argues appellant (assignor) accrued obligations and was not relieved of those obligations, under the 1984 regulations, when those regulations are

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subject to OCSLA regulations promulgated after the effective date of the Lease, which appears to contradict the underlying foundation of its principal argument.

read in conjunction with Section 22 of the Lease, which provides that "[w]ithin a period of one year after termination . . . the Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease in accordance with applicable regulations and orders of the Director." SOR at 4-5. In its Reply, appellant does not address Section 22 of its Lease.

We agree. The assignment regulation in effect in 1984, 30 C.F.R. § 256.62 (1984), does not carve out an exception or, in any other way, exempt an assignor, from responsibility for decommissioning obligations, which accrued under its lease. Instead, as explicitly stated, it only: (1) made the assignor liable for all obligations accruing under the lease prior to approval of the assignment, and (2) made the assignee liable for obligations after the assignment:

> (d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.
>
> (e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the [OCSLA, 43 U.S.C. § 1331, *et al* (2012)].

Nowhere in that regulation did the agency provide that the assignor's liability for accrued obligations is extinguished upon execution of the assignment.[13] In fact that regulation makes no mention of any termination of an assignor's accrued obligations as the result of an assignment.[14] Moreover, under Paragraph 22, appellant committed to carrying out decommissioning obligations even after termination of the Lease.

[1] We thus conclude that the assignment regulation at 30 C.F.R. § 256.62 (1984) did not absolve appellant from remaining responsible for obligations it accrued under the Lease prior to assignment, since under Paragraph 22 of the Lease appellant agreed to carry out decommissioning responsibilities, even after the Lease was

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[13] We note that the rule at 30 C.F.R. § 250.15(a) (1980-1984), titled "Drilling and Abandonment of Wells," does not specify when a lessee's decommissioning obligations accrue or absolve an assignor/lessee of its obligations upon assignment. Instead, it concerns when the agency should require decommissioning: "Whenever practicable, the Director shall require the plugging and abandonment of any well which the Director determines is no longer useful." 30 C.F.R. § 250.15(a) (1980-1984).

[14] Given our analysis and disposition, we see no reason to reiterate or address the parties' debate regarding statements made by Department employees concerning enforcement of the 1984 assignment regulation, years after promulgation of the regulation and appellant's assignment of its Lease interests.

terminated. When, under the terms of its OCSLA lease, a lessee agreed to retain decommissioning responsibilities, even after the lease is terminated, the lessee remains liable for such responsibilities. Accordingly, we find that BSEE's issuance of the decommissioning Order on appeal, requiring appellant to undertake the decommissioning obligations it accrued under the Lease, is consistent with the terms of the Lease and the regulatory language that was in place at the time the Lease became effective, and also in place at the time appellant assigned the Lease. To find otherwise would be to render meaningless the language of the Lease.[15]

B. 1981 OCSLA Lease Is Subject to Current Decommissioning Regulations

[2] Section 1 of the Lease, which appellant executed in 1981, "Statutes and Regulations," provides that the lessee is subject to all regulations issued pursuant to OCSLA in existence upon the effective date , *and* "all regulations issued pursuant to [OCSLA] *in the future* which provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein . . . ." Lease § 1 (emphasis added). As the Board stated in a previous case concerning appellant, this provision is a standard term for OCS leases. *Anadarko Petroleum Corp.,* 183 IBLA 1, 12 (2012). A lessee takes an OCS lease with the understanding that it will be subject to future regulations, which provide for the protection of the natural resources of the OCS. *Id.* Authority for subjecting OCS leases to new or revised regulations is found in section 5 of OCSLA, 43 U.S.C. § 1334(a) (2012):

> [The agency] may at any time prescribe and amend such rules and regulations [for leasing on the OCS] as [it] determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the [OCS] and the protection of correlative rights therein, and . . . , such rules and regulations shall, as of their effective date, apply to all operations conducted under [an OCS lease].

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[15] Appellant does not dispute that at some time during its tenure as a lessee (*i.e.,* 1981-1984) there were two platforms at the facility: ". . . BSEE has conceded that [appellant] could at most retain accrued liability for two platforms." SOR at 16. Appellant made its point about two platforms, in arguing against perceived logistical obstacles towards having it carry out tasks regarding two platforms, while BSEE "would need to call on more recent lessees to perform the rest of the work." *Id*. Because there were at least two platforms prior to appellant's assignment of its interests, for purposes of adjudication of this appeal we need not determine whether BSEE conceded there are only two platforms for which appellant would be responsible under the Order.

See Century Exploration New Orleans, LLC, 745 F.3d 1168, 1176-77 (Fed. Cir. 2014), *cert. denied,* 135 S. Ct. 1175 (2015); *Nexum Petroleum,* 157 IBLA 286, 300 (2002), *aff'd,* Civ. No. 02-3543 (E.D. La. Mar. 31, 2004), *appeal dismissed,* No. 04-30435 (5th Cir. Dec. 6, 2004).

In *Anadarko,* the Board rejected an argument that new regulatory requirements and procedures for approval of operations, established by the Department after the BP Deepwater Horizon moratorium[16] went into effect, breached lease provisions. 183 IBLA at 3-4 n.2, 12, 21-22.[17] Similarly, the U.S. Court of Appeals for the Federal Circuit recently held that new worst case discharge requirements issued pursuant to OCSLA did not breach the express terms of the same standard OCS lease language in Section 1 of the Lease in this appeal, making the lessee subject to new OCSLA requirements that provide for the prevention of waste and the conservation of the natural resources of the OCS, and the protection of correlative rights therein. *Century Exploration,* 745 F.3d at 1178.

Case law construing OCSLA, 43 U.S.C. § 1334 (2012) (administration of leasing), gives broad scope to the phrase "prevention of waste and conservation of natural resources," making clear that it extends to environmental protection. *Century Exploration,* 745 F.3d at 1177 (citing Federal court cases). Furthermore, "It is the United States' policy that OCS operations be conducted in a safe manner 'using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the wastes or subsoil or seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health. 43 U.S.C. § 1332(6) . . . .'" *Pacific Operators Offshore, Inc.,* 181 IBLA 165, 176-77 (2011).

[3] Decommissioning regulations promulgated under OCSLA, including the regulations currently in effect, provide for the prevention of waste and the

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[16] *See Rocksource Gulf of Mexico Corp*., 184 IBLA 34, 36-37 (2013).

[17] *See also, e.g., Nexum,* 157 IBLA at 300 (the Department can apply revised royalty regulations to pre-existing onshore or offshore leases); *cf. Petroleum, Inc., et al,* 161 IBLA 194, 218-19 (2004), *aff'd sub nom Rex Monahan,* Civ. No. 04-CV-205-ABJ (D. Wyo. July 20, 2004), *aff'd,* No. 05-8068, 2007 U.S. App. LEXIS 24211, at *14-17 (10th Cir. Oct. 15, 2007) (onshore lessees are subject to future regulations, under standard onshore lease language of "all rules and regulations of the Secretary of the Interior now or hereafter in force, when not inconsistent with any express or specific provisions therein . . . .").

conservation of the natural resources of the OCS, and the protection of correlative rights therein. The regulations generally require lessees to "[c]onduct all decommissioning activities in a manner that is safe, does not unreasonably interfere with other uses of the OCS, and does not cause undue or serious harm or damage to the human, marine, or coastal environment," and to "[c]lear the seafloor of all obstructions created by your lease . . . ." 43 C.F.R. § 250.1703(e), (f) (2015). Furthermore, agency statements indicate the decommissioning regulations are designed to protect the environment and minimize obstructions to other uses (*i.e.*, conserve resources) of the OCS. 67 Fed. Reg. 35398, 35404-05 (May 17, 2002) ("The new or expanded requirements are written in plain language and designed to ensure that lessees decommission facilities to protect the environment and minimize obstructions to other uses of the OCS."); 62 Fed. Reg. 27948, 27948-49 (May 22, 1997) (objectives listed for the regulations include, among others, to "protect the environment from threat of harm that might result from a lessee's failure to timely carry out proper well abandonment and site clearance operations . . . .").

Moreover, "[t]he OCSLA regulatory and lease requirements for decommissioning offshore platforms are designed to minimize the environmental and safety risks inherent in leaving unused structures in the ocean, and to reduce the potential for conflicts with other users of the Federal OCS (*i.e.*, commercial fishing/ aquaculture, military activities, transportation industry, other oil and gas/renewable energy operations, etc.)." http://www.bsee.gov/ Exploration-and- Production/ Decommissioning/FAQ/ (last visited Jan. 13, 2016); *see* Notice to Lessees (NTL) 2010-G05, Decommissioning of Wells and Platforms Guidance to Gulf of Mexico Region OCS (Sept. 15, 2010) at 2;[18] *Noble Energy, Inc. v. Jewell,* Civil Action No. 14-898 (CKK) (D.D.C. June 8, 2015), at 10-11, *available at,* 2015 U.S. Dist. LEXIS 73462, at *14, *17 ("In BSEE' s view, the decommissioning regulations serve the statutory purpose of protecting the environment."), appeal filed, No. 15-5202 (D.C. Cir. July 22, 2015).

Furthermore, as to current regulations on assignments of OCS leases, they too provide for the prevention of waste and the conservation of the natural resources of the OCS, and the correlative rights therein, at least to the extent they concern decommissioning obligations, and ensuring that assignors retain responsibility despite an assignment. In a 1995 preamble to the 1997 OCSLA regulations, the agency explained it was clarifying, *inter alia*, its position that assignors and assignees and co-lessees are jointly and severally liable for compliance with OCS lease requirements, and that "[t]hese changes are needed to reduce the risk of default . . . ." 60 Fed. Reg.

[18] Available at: http://www.bsee.gov/Regulations-and-Guidance/Notices-to-Lessees/ 2010/10-g05/ (last visited Jan. 13, 2016).

63011, 63011 (Dec. 8, 1995) (preamble to proposed rule). It provided "with respect to the liability of assignees, assignors, and lessees (record title owners) for the plugging and abandonment of wells, removal of platforms and other facilities, and clearance of well and platforms [*i.e.*, decommissioning obligations] . . . . These obligations are joint and several in nature." *Id.* at 63012.

Based on the foregoing, we conclude the current regulations, including those concerning decommissioning (30 C.F.R. Part 250, Subpart Q (2015)) and assignments, at least to the extent they concern decommissioning (30 C.F.R. Part 556 (2015)), provide for the prevention of waste and the conservation of the natural resources of the OCS, and the correlative rights therein; therefore, appellant is subject to them.

Moreover, under the current regulations, decommissioning obligations accrue when one is or becomes a lessee or the owner of operating rights of a lease on which there is a well that has not been permanently plugged,[19] *a platform*, a lease term pipeline, or other facility, or an obstruction.[20] 30 C.F.R. § 250.1702(d) (2015) (emphasis added). Furthermore, appellant's Lease, at Paragraph 22, provided, "Within a period of one year after termination of this [L]ease in whole or in part, the Lessee shall remove all devices, works, and structures from the premises no longer subject to the [L]ease in accordance with the applicable regulations and orders . . . ." As we noted *supra,* appellant does not dispute at some time during its tenure as a lessee (*i.e.,* 1981-1984), there were platforms at the facility. SOR at 16. Accordingly, under the plain language of 30 C.F.R. § 250.1702 (2015) and Paragraph 22 of the Lease, appellant accrued decommissioning obligations for at least two platforms, during its time as a Lessee (1981-1984).

C. An Assignee (ATP) Failed to Perform Its Obligations Under the Lease

In an alternative argument, appellant argues that even if it were subject to the current regulations, the Order is deficient because the assignees subsequent to the appellant in the chain of title have not all yet failed to perform their accrued decommissioning obligations. SOR at 9-10.

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[19] The rules pertaining to permanently plugging wells are found at 30 C.F.R. Part 250, Subpart Q ("Decommissioning Activities"), 30 C.F.R. § 250.1710-250.1717 (2015).

[20] Alternatively, one accrues decommissioning obligations when one drills a well; installs a platform, pipeline, or other facility; creates an obstruction to other users of the OCS, becomes the holder of a pipeline right-of-way on which there is a pipeline, platform, or other facility, or an obstruction; or re-enters a well that was previously plugged. 30 C.F.R. § 250.1702(a)-(f) (2015).

Appellant contends that because the current assignment regulation, 30 C.F.R. § 556.62(f) (2015), contains a condition precedent that "*if* your assignee, or a subsequent assignee, *fails to perform* any obligation under the lease or the regulations . . . [BSEE] may require you [the assignor] to bring the lease into compliance," the term "if" clearly conveys a condition precedent before an assignor's liability can be triggered: assignee's failure to perform. SOR at 9-10.

[4] Appellant fails to recognize, however, that the regulation at 30 C.F.R. § 556.62(f) (2015) does not state if "*the* assignee" fails to perform, but instead provides, "if your assignee, *or a subsequent assignee,* fails to perform." (Emphasis added.) Appellant appears to be boxing shadows, since, in the case at hand, at least one assignee -- ATP -- has failed to perform its obligations under the Lease. *See* Order at unp. 1 (recites that on July 8, 2013, ATP notified BSEE that effective immediately it would not perform any required maintenance or decommissioning activities related to the Lease). BSEE issued the Order to appellant (and similar orders to other former lessees or operators of the Lease)[21] *after* ATP's July 8, 2013, notification to BSEE that, effective immediately, it would not perform any maintenance or decommissioning obligations required under the Lease. *Id.* Because the record is clear that at least one assignee, ATP, had failed to perform its obligations under the Lease prior to BSEE's order to appellant, appellant has not shown that, under 30 C.F.R. § 556.62(f) (2015), BSEE's order to bring the Lease into compliance was premature and in error.

D. Joint and Several Liability for Former Lessees/Assignors Versus Sequential Liability

Appellant further argues against being held jointly and severally liable, and instead contends that BSEE erred by issuing the Order against it because all assignees subsequent to the appellant in the chain of title have not yet failed to perform their accrued decommissioning obligations. SOR at 9. Appellant argues that by including a condition precedent in 30 C.F.R. § 556.62(f) (2015) -- "if your assignee, or a subsequent assignee, fails to perform" -- the regulation imposes only a "contingent" and "residual" obligation on a former lessee. *Id*. at 10-11. According to appellant, BSEE's application of joint and several liability to assignors "would impermissibly render meaningless" the regulatory language. *Id.* at 11. Under appellant's theory of sequential liability, it believes BSEE's first targets should have included Ridgewood, which it says held operating rights with ATP until lease termination, and it believes BSEE should also pursue the current ST 77 lessee, Bois d'Arc (who is under a new lease), and that if Ridgewood and Bois d'Arc fail to perform, BSEE must next proceed against appellants in IBLA 2014-170 (Devon, Dominion, and Merit). *Id.* at 16-17.

[21] SOR at 4; *see* AR, Tab 5, at 6; SOR, Ex. 3.

[5] We conclude that appellant's interpretation of the regulations is incorrect and not supported by the regulatory language. The Board does not construe the "if your assignee, or a subsequent assignee, fails to perform" language as precluding joint and several liability, when -- as is the circumstance in the present case -- at least one assignee (here, that is ATP) has failed to perform its obligations under the Lease.

First, the language of the joint and several liability regulation, 30 C.F.R. § 250.1701(2015), is written broadly enough to cover former lessees, such as appellant, who accrued obligations as to facilities installed under the authority of a lease. In particular, it provides,

> (a) Lessees . . . are jointly and severally responsible for meeting decommissioning obligations for facilities on leases, including the obligations related to lease-term pipelines, *as the obligations accrue and until each obligation is met.* [Emphasis added.]
>
> . . . .
>
> (c) In this subpart, *the terms "you" or "I" refer to lessees . . . , as to facilities installed under the authority of a lease* . . . . [Emphasis added.]

As we discussed *supra,* appellant accrued decommissioning obligations under the Lease while it was a Lessee (1981-1984), as to at least two platforms at ST 77. The parties do not dispute that the decommissioning obligations for those two platforms have not been met, or that the platforms were installed under the authority of the Lease while appellant was a Lessee (1981-1984).

Further, in a preamble to the 1997 regulations, the agency indicated it will apply joint and several liability to any and all assignors when a subsequent party has failed to meet its end-of-lease obligations. Under "Assignors, Assignees, and Co-Lessees Liable for Compliance," the agency stated, "*When the designated operator is unable to meet end-of-lease obligations,* [the agency] will require *any or all* of the lessees to bring the lease into compliance." 60 Fed. Reg. at 63012 (emphasis added). As we discussed *supra,* at least one assignee -- ATP -- has failed to carry out its obligations. Additionally, the agency explained that assignors, assignees, and co-lessees, are all jointly and severally liable for decommissioning, and that in promulgating the 1997 regulations, the agency intended to "clarify [the agency's] position that assignees, assignors, and co-lessees are jointly and severally liable for compliance with OCS oil and gas and sulphur leases . . . ." 60 Fed. Reg. at 63011. Moreover, it stated:

> Relationship Between these Regulations and The Liability Regulations Published by MMS's Royalty Management Program: This proposed rule

> clarifies MMS's position with respect to the liability of assignees, assignors, and lessees (record title owners) for the plugging and abandonment of wells, removal of platforms and other facilities, and clearance of well and platform locations. These obligations are joint and several in nature. The obligations are not divisible, *and a degree of residual liability is attached* (*i.e.*, *an assignor may be required to perform* lease and well abandonment and clearance obligations when an assignee refuses or is unable to carry out any or all of these responsibilities).

Id. at 63012.

Contrary to appellant's assertions, our decision here is consistent with the Board's decision in *Fairways Offshore Exploration, Inc.*, 186 IBLA 58 (2015). In that case, a former lessee appealed a decommissioning order, alleging that BSEE should have first required the current lessee to undertake decommissioning. The Board concluded that the former lessee's decommissioning obligations accrued when appellant acquired its interest in the lease and survived lease termination; as such, BSEE had not erred in holding the former lessee liable for decommissioning obligations. 186 IBLA at 67, 68 ("Fairways misunderstands the law when it argues that BSEE first must order a lessee under a subsequent lease agreement . . . to carry out decommissioning obligations . . . before ordering Fairways to undertake its decommissioning obligations.").

Accordingly, appellant has not shown BSEE to have erred when it ordered appellant (an assignor) to carry out its decommissioning obligations that accrued while it was a lessee (including, *e.g.,* two platforms which existed while appellant was a lessee), instead of proceeding in reverse chronological order, and waiting for each party subsequent to the appellant/assignor to fail to carry out its own obligations. BSEE's Order, applying joint and several liability to assignors when at least one assignee has failed to carry out obligations under the Lease, is consistent with the applicable assignment and joint and several liability regulations, at 30 C.F.R. § 556.62(f) (2015) and 30 C.F.R. § 250.1701 (2015).

IV. CONCLUSION

To summarize, appellant contends BSEE erred in issuing a decommissioning order to appellant, which assigned its interests in its OCS Lease in 1984, because it was subject only to the 1984 rules in existence at the time of its assignment.

As discussed herein, without regard to the current regulations, the Board reads the language of Paragraph 22 of the Lease, providing that, after termination of the Lease, appellant, as assignor, remained responsible for decommissioning obligations,

along with the 1981-1984 assignment regulation (43 C.F.R. § 3319.1(d)-(e) (1980-1982); (recodified as 30 C.F.R. § 256.62(d)-(e) (1983-84)), and concludes that appellant remains liable for decommissioning obligations it accrued prior to assignment. Although the 1981-1984 assignment regulation provided that, upon assignment, an assignee becomes responsible for obligations it accrued prior to assignment, it did not also absolve the assignor of its obligations accrued under the Lease.

We further discussed that, under Paragraph 1 of the Lease, appellant is subject to "all regulations issued pursuant to [OCSLA] *in the future* which provide for the prevention of waste and the conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein . . . ." Lease at unp. 2 (emphasis added). Such future regulations include those concerning accrued decommissioning obligations and joint and several liability for such obligations, at 30 C.F.R. §§ 250.1701-1702 (2015), and the assignment regulation, 30 C.F.R. § 556.62(d)-(f) (2015), explicitly clarifying that an assignor is not relieved of its obligations. Under current regulations, if any assignee has failed to carry out its obligations, BSEE may order an assignor to fulfill obligations it accrued under its Lease prior to assignment. Here, at least one assignee -- ATP -- has failed to carry out its obligations. Under such circumstances, BSEE properly holds an assignor jointly and severally liable. The regulations do not command that BSEE issue decommissioning orders in sequential order, waiting for each most recent assignee to fail to carry out its obligations, before finally ordering an original lessee/assignor, such as the appellant. Accordingly, BSEE did not err in issuing the decommissioning order to the appellant, and did not err in holding it jointly and severally liable.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

/s/
Christina S. Kalavritinos
Administrative Judge

I concur:

/s/
Amy B. Sosin
Administrative Judge