

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

July 30, 2019

The Honorable David Bernhardt  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Dear Secretary Bernhardt:

Under the terms of offshore leases and Bureau of Safety and Environmental Enforcement (BSEE) regulations, offshore oil and gas leaseholders are required to remove all equipment on leases or rights-of-way (including platforms and pipelines), and permanently plug all wells, within one year after termination of the lease or right-of-way.<sup>1</sup> The Bureau of Ocean Energy Management (BOEM) has the responsibility to ensure that lessees have the financial capacity to conduct the required decommissioning, either by meeting financial performance standards or by posting a bond to cover expected decommissioning costs.<sup>2</sup> Since 2010, however, it has become clear that there are significant problems with this system. Offshore operators and government regulators have been lax in preparing for decommissioning expenses, meaning that taxpayers may have to cover billions of dollars of costs to remove old oil and gas infrastructure if companies go bankrupt.

In December 2015, the Government Accountability Office (GAO) reported that there were approximately \$38.2 billion in decommissioning liabilities in the Gulf of Mexico, but that bonds or other financial instruments covered only \$2.9 billion. Large companies, presumably able to safely cover decommissioning costs on their own, were responsible for \$33 billion, leaving up to \$2.3 billion in uncovered liabilities that would potentially need to be borne by taxpayers if companies went bankrupt, although problems with BOEM's data created a great deal of uncertainty.<sup>3</sup> Furthermore, GAO found problems with the method used by BOEM to assess a company's financial strength and BSEE's method for estimating decommissioning costs. After reassessing their methods for determining decommissioning costs and estimating the required bonding amounts, BSEE and BOEM took regulatory actions intended to protect taxpayers from having to potentially cover these costs.

On December 4, 2015, BSEE published a final rule requiring companies to submit actual decommissioning costs to help BSEE with future cost estimations. On July 18, 2016, BOEM released a Notice to Lessees (NTL) that proposed major changes to the way companies could demonstrate adequate assurance of being able to cover future decommissioning costs.<sup>4</sup> First,

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<sup>1</sup> 30 CFR 250.1700 et seq. (Subpart Q)

<sup>2</sup> 30 CFR 556.53

<sup>3</sup> U.S. Government Accountability Office, *Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities*, GAO-16-40, December 2015.

<sup>4</sup> NTL No. 2016-N01, "Requiring Additional Security," 81 FR 46599 (July 18, 2016).

BOEM changed the way that it would evaluate the financial strength of companies, using methods consistent with the lines of recommendations in the 2015 GAO report. Second, instead of waiving supplemental bonds for companies whose net worth was at least twice their decommissioning obligations, companies would be able to self-insure with up to 10 percent of their tangible net worth, while allowing the self-insurance to be allocated among different potential liabilities.

Related to the July 2016 NTL, in December 2016 BOEM began sending letters requiring additional bonding to operators of properties where there is only a single liable party, known as “sole liability” properties, which BOEM described as presenting, “the greatest programmatic risk to the American taxpayer.”<sup>5</sup> However, in February 2017, BOEM withdrew those orders to, “allow time for the new Administration to review the complex financial assurance program.”<sup>6</sup> In May 2017, former-Secretary Zinke signed Secretarial Order 3350, which directed BOEM to complete the review of the 2016 NTL and compile a report describing options for revising or rescinding the NTL.<sup>7</sup> In June 2017, BOEM announced it was indefinitely postponing the implementation of the 2016 NTL to allow the agency more time to complete its review, even though the agency had previously indicated it would publish new guidance by June 2017.<sup>8,9</sup>

On March 6, 2019, BOEM Acting Director Walter Cruickshank testified before the House Subcommittee on Energy and Mineral Resources that BOEM had completed its review of the 2016 NTL, and later the same month, Dr. Cruickshank indicated during a meeting with Subcommittee staff that a draft financial assurance rule would be published in Spring 2019. However, in April 2019, BOEM stated the draft rule would not be published for public comment until Summer 2019.<sup>10</sup>

We are concerned by BOEM’s decisions to halt the 2016 NTL and rescind the sole liability letters, and its continued failure to develop new financial assurance regulations. With U.S. taxpayers on the hook for potentially billions of dollars of decommissioning costs and platform removals, these actions are unnecessarily risky. To assist the House Natural Resources Committee in carrying out its oversight responsibilities on this issue, please provide the following as soon as possible, but no later than August 30, 2019:

1. All documents and communications of employees and persons between January 20, 2017, and June 22, 2017, within and between the Bureau of Ocean Energy Management, the Office of the Secretary, and the Counselor to the Secretary for Energy Policy regarding BOEM’s decision to withdraw its sole liabilities orders issued in December 2016 or BOEM’s decision to indefinitely postpone the implementation of the 2016 NTL.

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<sup>5</sup> Bureau of Ocean Energy Management, *BOEM Withdraws Sole Liability Orders*, February 2, 2017. <https://www.boem.gov/note02172017/>

<sup>6</sup> *Id.*

<sup>7</sup> Office the Secretary, Department of the Interior. *Secretarial Order No. 3350, America-First Offshore Energy Strategy*. May 1, 2017. <https://www.doi.gov/sites/doi.gov/files/press-release/secretarial-order-3350.pdf>

<sup>8</sup> Bureau of Ocean Energy Management, *BOEM Extends Review Timeline for Notice to Lessees No. 2016-N01*, June 22, 2017. <https://www.boem.gov/note06222017/>

<sup>9</sup> Gronewold, Nathaniel. “Who pays for abandoned rigs? Officials are hashing that out.” *E&E News*. May 11, 2017. <https://www.eenews.net/energywire/stories/1060054370/>

<sup>10</sup> Gronewold, Nathaniel. “U.S. taxpayers could pay \$10B for oil rig cleanup.” *E&E News*. April 9, 2019. <https://www.eenews.net/energywire/stories/1060149999/search?keyword=offshore+decommissioning>

2. All documents and communications of employees and persons between January 20, 2017, and March 6, 2019, within and between the Bureau of Ocean Energy Management, the Office of the Secretary, and the Counselor to the Secretary for Energy Policy and employees and persons representing the oil and gas industry, including but not limited to the American Petroleum Institute, the National Ocean Industries Association, the Gulf Energy Alliance, the Gulf Economic Survival Team, and the Independent Petroleum Association of America, regarding offshore oil and gas decommissioning issues.

Please refer to the attached instructions on how to respond to this document request. As specified therein, upon completion of the document production, please submit a written certification that a diligent search has been completed and all responsive documents have been produced to the Committee. If you have any questions about this request, please contact Natural Resources Committee staff at (202) 225-6065.

Sincerely,



Raúl M. Grijalva  
Chair  
Committee on Natural Resources



Alan S. Lowenthal  
Chair  
Subcommittee on Energy  
and Mineral Resources