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Description of document: Department of the Interior (DOI) Bureau of Safety and Environmental Enforcement (BSEE) memo that describing the process and challenges of obtaining and purchasing samples of oil for the Oil Spill Response Research Program, 2014

Request date: 08-March-2015

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Source of document: Bureau of Safety and Environmental Enforcement
Mail Stop: VAE-BSEE FOIA
45600 Woodland Road
Sterling, VA 20166
Fax: 703-787-1207
Email: BSEEOFIA@bsee.gov

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United States Department of the Interior
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT
WASHINGTON, DC 20240-0001

In Reply Refer To:
Mail Stop HE-2204

April 20, 2015

The Bureau of Safety and Environmental Enforcement (BSEE) FOIA office received your Freedom of Information Act (FOIA) request dated March 8, 2015 on March 9, 2015 and assigned it control number **BSEE-2015-00124**. Please cite this number in any future communications with our office regarding your request.

We are writing today to respond to your request on behalf of the BSEE.

We have enclosed one document consisting of 3 pages, which are being released to you in their entirety.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* [5 U.S.C. 552\(c\)](#). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

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BSEE-2015-00124

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We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. *See [43 C.F.R. § 2.49\(a\)\(1\)](#)*. Therefore, there is no billable fee for the processing of this request.

If you have any questions concerning your request, please contact me at BSEEOFIA@bsee.gov.

Sincerely,

/s/Ashley Rychak
Ashley Rychak
Government Information Specialist (FOIA)
BSEE FOIA Office

Enclosure



United States Department of the Interior


OFFICE OF THE SOLICITOR
1849 C STREET, NW
WASHINGTON, DC 20240

IN REPLY REFER TO:

MAY 23 2014

Memorandum

To: David Moore, Chief, Oil Spill Response Division, Bureau of Safety and Environmental Enforcement

From: Dennis Daugherty, Assistant Solicitor, Branch of Petroleum and Offshore Resources, Division of Mineral Resources 

Subject: BSEE's Authority to Accept Money and Crude Oil to Conduct Testing on Simulated Subsea Dispersant Applications

This memorandum responds to your request for confirmation that the Bureau of Safety and Environmental Enforcement (BSEE) has authority to accept donations from organizations, such as the American Petroleum Institute (API), oil and gas companies, and non-governmental organizations (NGOs), to support BSEE missions. Specifically, you are interested in the authority to accept money and crude oil to conduct testing on simulated subsea dispersant applications at Ohmsett, the Oil Spill Response Research and Renewable Energy Test Facility maintained and operated by BSEE.

Contributions of Money

The Secretary of the Interior has authority to accept money to support oil spill research at Ohmsett. The Consolidated Appropriations Act of 2014¹ grants the Secretary of the Interior the following authority:

CONTRIBUTION AUTHORITY

SEC. 113. In fiscal years 2014 through 2019, the Secretary of the Interior may accept from public and private sources contributions of money and services for use by the Bureau of Ocean Energy Management or the Bureau of Safety and Environmental Enforcement to conduct work in support of the orderly exploration and development of Outer Continental Shelf resources, including preparation of environmental documents such as impact statements and assessments, studies, and related research.

This language authorizes contributions of money from public and private sources, which would include API, oil and gas companies, and NGOs. The authority is not limited to specific BSEE programs; instead, it applies to all work BSEE conducts "in support of the orderly exploration and development of Outer Continental Shelf resources." This language could

¹ Pub. L. No. 113-76, 128 Stat. 5 (2014).

reasonably be read to encompass BSEE's research at Ohmsett to explore methods and technologies that would be used during a response to an oil spill from an offshore oil and gas facility.

Contributions of Oil

As stated above, the Consolidated Appropriations Act of 2014 grants the Secretary of the Interior authority in fiscal years 2014 through 2019 to accept "contributions of money and services." To use this authority to accept crude oil from oil and gas companies, the provision of oil would need to be a "service" provided to BSEE. We reviewed Comptroller General decisions and analogous contribution and donation statutes, but we were unable to find authority for the proposition that the provision of supplies is the same as a contribution of a "service," as opposed to a contribution of goods, supplies, materials, or equipment. In many contribution provisions, "service" is identified in conjunction with "goods," "materials," "supplies," or "equipment," which supports a conclusion that "services" is not the same as goods, materials, supplies, or equipment and instead means the performance of an activity or task. Consequently, BSEE may face questions from outside parties about its ability to rely upon the Consolidated Appropriations Act of 2014 as authority to accept crude oil for research at Ohmsett.

Although the most recent contribution authority granted to BSEE may not provide authority to accept oil, Congress granted the bureau additional contribution authority, which appears in 43 U.S.C. § 1473 and currently reads as follows:

Acceptance of contributions from private and public sources by Mineral Management Service

In fiscal year 1987 and thereafter, the Minerals Management Service is authorized to accept land, buildings, equipment and other contributions, from public and private sources, which shall be available for the purposes provided for in this account, including, in fiscal years 2010 through 2013, contributions of money and services to conduct work in support of the orderly exploration and development of Outer Continental Shelf resources, including but not limited to, preparation of environmental documents such as impact statements and assessments, studies, and related research.^[2]

As a successor agency to the Minerals Management Service (MMS), BSEE may use this authority to accept "land, buildings, equipment, and other contributions"—which is broader than "money and services"—"for the purposes provided for in this account." The Department of the Interior's Office of Budget reports that the language "this account" referred to the Minerals

² We acknowledge the possibility that some may interpret the 2014 Consolidated Appropriations Act provision as replacing 43 U.S.C. § 1473, such that the authority Congress granted in 43 U.S.C. § 1473 no longer exists. In light of the circumstances of the enactment of the 2014 Consolidated Appropriations Act, however, we believe that the intent of the new language was to clarify BSEE's and the Bureau of Ocean Energy Management's ability to accept contributions for the preparation of environmental documents and not to impliedly repeal 43 U.S.C. § 1473 or limit the scope of the authority Congress granted for fiscal year 1987 and thereafter.

Management Service Leasing and Royalty Management appropriation.³ At the time, the “purposes provided for in this account” included oil spill planning and research by the MMS Technology Assessment and Research Program. Accordingly, this language provides sufficient authority for BSEE to accept contributions of crude oil from oil and gas companies for oil spill research.

We understand that Ohmsett was operated by the Environmental Protection Agency until 1987, and MMS did not assume responsibility for it until 1990. Even if Ohmsett was not MMS’s responsibility when Congress granted the contribution authority, we believe the location of the research is less relevant than the subject matter (*i.e.* oil spill research), which was specifically provided for in the MMS account. In light of the language used in the statute, the practical difficulty of finding an alternative oil supply, and the benefits of the program, we suggest that the risk presented by accepting contributions of oil is low. The contribution authority granted in 43 U.S.C. § 1473 is reasonably interpreted to provide the authority to accept oil from private sources for oil spill research.

Recommendation

Please note that our conclusion with respect to BSEE’s authority to accept money is specific to the authority granted by the 2014 Consolidated Appropriations Act, which applies to fiscal years 2014 through 2019. We recommend that BSEE work with the Office of Budget to ensure the continuance beyond 2019 of the language in section 113 of the 2014 Consolidated Appropriations Act. We also recommend that the language be modified to provide for acceptance of “contributions of money, materials, and services,” so that contributions of oil will be included in the scope of this authority as well as the authority granted in 43 U.S.C. § 1473.

Ethics Considerations

If BSEE decides to use the contribution authority provided by the Consolidated Appropriations Act of 2014 and 43 U.S.C. § 1473 to accept money from API and crude oil from industry for oil spill research at Ohmsett, BSEE must then analyze the contributions using the process set forth in the Department’s donation policy, which is found at 374 Departmental Manual (DM) 6. The DM sets forth acceptance considerations and responsibilities bureaus must use “in determining whether the circumstances of the donation and its acceptance would maintain the integrity and impartiality of the Department and public confidence in the Department.” 374 DM 6.6. The DM provision “covers the acceptance of donations to bureaus and offices with explicit statutory authority to accept donations” and is designed to ensure that “[a]cceptance of donations [is] done in a legally and ethically appropriate manner.” 374 DM 6.3A, 6.6. If BSEE has questions about the donation policy, please contact Tim Murphy, Assistant Solicitor for General Legal Services, at (202) 208-3510.

This memorandum was written in consultation with the Office of the Solicitor’s Division of General Law, General Legal Services. If you have any questions about this memorandum, please contact Silvia Riechel at (202) 219-3031.

³ The BSEE’s oil spill research program is currently funded by the Oil Spill Liability Trust Fund. The current funding source is not relevant to our analysis of the meaning of “this account” when Congress drafted this language.