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

In Reply Refer To:  
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January 18, 2017

Sent via Electronic Mail

The Bureau of Safety and Environmental Enforcement (BSEE) FOIA office received your Freedom of Information Act (FOIA) request, dated January 6, 2017, on January 9, 2017 and assigned it control number **BSEE-2017-00065**. Your request seeks “Copy of the OCS Civil/Criminal Penalties Program Policy and Procedures Guidebook (may be called OCS Civil/Criminal Penalties Program Guidebook).” 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 file consisting of 45 pages, which is being released to you in its entirety.

We have classified you as an “other-use” requester. As such, we may charge you for some of our search and duplication costs, but we will not charge you for our review costs; you are also entitled to up to 2 hours of search time and 100 pages of photocopies (or an equivalent volume) for free. *See* [43 C.F.R. § 2.39](#). If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. *See* [43 C.F.R. § 2.37\(g\)](#).

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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.

BSEE-2017-00065

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If you have any questions concerning your request, please contact me at [BSEEOFIA@bsee.gov](mailto:BSEEOFIA@bsee.gov).

Sincerely,

/s/ Dorothy Tinker

Dorothy Tinker  
Government Information Specialist (FOIA)  
BSEE FOIA Office

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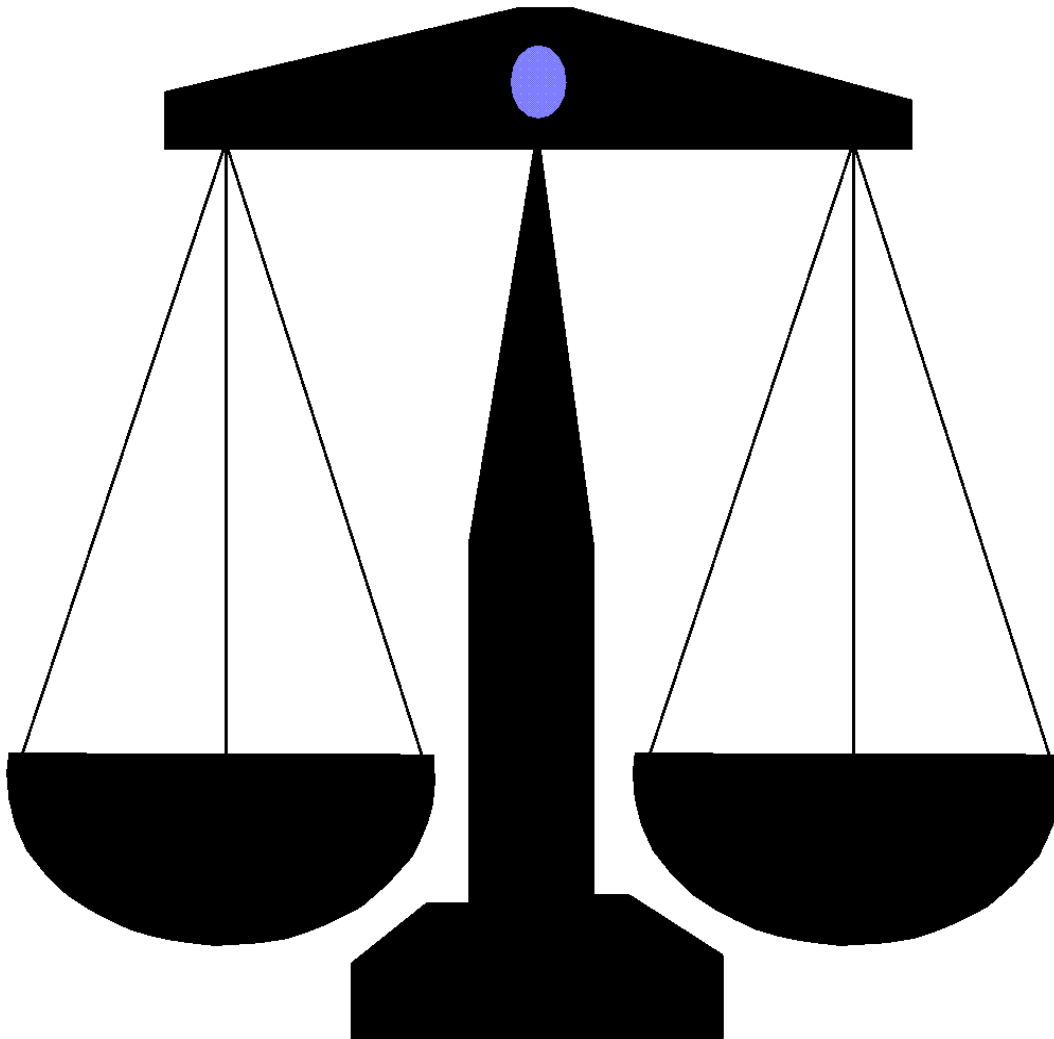


United States Department of the Interior  
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT



OCS CIVIL PENALTY PROGRAM  
POLICY AND PROCEDURES GUIDEBOOK

Revision Date: September 2013



The policies and procedures established in this Guidebook are solely for internal BSEE use in the exercise of its statutory and regulatory authority. BSEE reserves the right to act at variance with these policies and procedures on a case-by-case basis, and will review and revise this Guidebook periodically, as it deems appropriate. This Guidebook does not create a right or a benefit, substantive or procedural, that is enforceable at law or in equity by any person. In the event that any provision in this Guidebook conflicts with applicable BSEE regulations, the regulations will control.

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## Introduction

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The goal of BSEE's OCS Civil Penalty Program (Program) is to ensure safe and environmentally sound operations on the Outer Continental Shelf (OCS). Through the pursuit, assessment, and collection of civil penalties, the Program is designed to encourage compliance with the Outer Continental Shelf Lands Act (OCSLA), its implementing regulations, and all other laws applicable to OCS energy operations, leases; approved plans; approved applications; permits; pipeline rights-of-way; rights-of-use and easement; conditions of approval; or any other applicable laws and regulations for which BSEE has enforcement authority under OCS statutes, regulations, lease and permit terms, or other requirements.

OCSLA authorizes the Secretary of the Department of the Interior to assess civil penalties under certain conditions for violations of any provision of the statute; any term of a lease or permit; or any regulation or order implementing OCSLA (43 USC § 1350(b)). Under Secretarial Order 3299 (May 19, 2010), the Secretary assigned BSEE the authority to assess civil penalties. BSEE has issued regulations pertaining to the assessment of civil penalties. These regulations may be found in the Code of Federal Regulations at 30 CFR Part 250 Subpart N.

Not all violations warrant civil penalty review. Pursuant to 30 CFR § 250.1404, review for potential civil penalties is triggered by the following: (a) violations that are not corrected within the period BSEE grants; (b) violations that BSEE determines may constitute, or constituted, a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment; (c) violations that cause serious, irreparable, or immediate harm or damage to life (including fish or other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment; (d) violations of the oil spill financial responsibility requirements at 30 CFR part 553.

OCSLA directs the Secretary of the Interior to adjust the maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index prepared by the U.S. Department of Labor. The purpose of this adjustment is to ensure that punitive assessments keep up with inflation. As of July 2011, the maximum civil penalty amount is \$40,000 per violation per day (see 30 CFR § 250.1403; Notice to Lessees 2011-N06 (July 31, 2011)).

The purpose of this Guidebook is to provide guidance to BSEE employees regarding procedures for processing OCS civil penalty cases. The Guidebook was developed to ensure that (1) the program is conducted in a consistent manner throughout BSEE, and (2) the Reviewing Officer is provided with enough information in a civil penalty case file to determine whether a civil penalty is warranted, and if so, the appropriate penalty amount. This Guidebook should be used in conjunction with the civil penalties component of the Technical Information Management System (TIMS), a BSEE computer database that records information about leases, permits, lessees, operators, and pipeline right-of-way holders, among other data.

It is important to note that while this Guidebook provides guidance to BSEE employees, it does not attempt to cover all possible situations that may be encountered during the review of a violation that may result in a civil penalty. To process cases under the Program, BSEE employees should use good judgment and have a detailed knowledge of OCSLA and the rules, regulations, and terms or provisions of leases, permits, or rights-of-way issued under OCSLA. In addition, the Department of the Interior's Office of the Solicitor and the National OCS Civil Penalty Program Coordinator are available for assistance, if needed.

This Guidebook does not create any enforceable rights or benefits.

# Chapter 1 – OCS Civil Penalty Policy

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## **I. Violations that Warrant Civil Penalty Review**

As stated in the introduction, not all violations warrant review for initiation of civil penalty proceedings. However, violations that cause injury, death, environmental damage, or pose a threat to human life or the environment will trigger such review.

At a minimum, the following types of violations should be referred for review:

- Failure to correct operational/field incidents of noncompliance (INCs) within the time allowed by BSEE.
- Unsafe and unworkmanlike operations that pose a threat of, or result in, injury to humans or a pollution event.
- Use of safety devices (e.g., surface and subsurface safety valves, emergency shut-down systems, etc.) or sump pumps which are:
  - (a) bypassed, rendered out of service, or removed without a valid reason and/or prior approval or without lockout-tagout, flagging, or monitoring; or
  - (b) inoperable (i.e., experienced a failure) but are left in service without repair.
- Unauthorized discharge of pollutants into offshore waters.

Other violations to consider for civil penalty review include, but are not limited to, the following:

- Failure to correct violations other than operational/field INCs within the time allowed by BSEE (e.g., failure to submit operational or geological and geophysical data and information, noncompliance with bond requirements, failure to correct office INCs).
- Violations of the Oil Spill Financial Responsibility (OSFR) requirements.
- Submission of false information (punishable under the Federal Oil and Gas Royalty Management Act (FOGRMA)). Please contact the National OCS Civil Penalty Coordinator and the Solicitor's Office for assistance with processing FOGRMA civil penalties.
- Violations of permit conditions or lease stipulations.
- Violations of a BSEE Order or an Order of the Director (43 USC § 1350(b)).

## **II. Guidelines for Determining a Threat**

A violation may be considered to pose a threat of serious, irreparable, or immediate harm or damage to human life, property or the marine, coastal, and human environment if there is evidence that it is causing, has caused, or could have caused any of the following:

- Harm, injury, or death to humans;

- Destruction or damage to property or equipment;
- Harm to commercial fishing, tourism, or recreational facilities;
- Discharge of oil, non-permitted drilling fluids, or toxic, chemical, liquid or solid wastes and pollutants into the ocean;
- Waste of resources by non-permitted flaring or venting of hydrocarbons into the atmosphere;
- Harm, injury, or death to seabirds, fish, marine mammals or other aquatic life;
- Destruction or disturbance of any biological, archaeological, or historic resource;
- Harm to endangered or threatened species protected under applicable OCS statutes, BSEE regulations, lease stipulations or permit conditions;
- Destruction or pollution of coastal wetlands, wildlife/fish habitats, beaches, lagoons and salt ponds; or
- A violation of Federal, State, or County air quality standards, as may be identified by BSEE or any other Federal, State, or local agencies implementing provisions of Federal or State laws applicable to the OCS operation that has caused the violation.

The determination of whether a violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to the marine, coastal, and human environment should be coordinated with the office that issued the INC.

Note that this chapter is intended to provide guidelines to consider when making a determination as to whether a violation is or was a threat to human life, property or the marine, coastal, and human environment. This determination is not a determination on “harassment” or “taking,” etc., under the Endangered Species Act, Marine Mammal Protection Act, or other law; such determinations are made by other agencies. However, BSEE may review other agency determinations to assist in making a decision on whether or not to initiate a civil penalty proceeding under OCSLA.

### **III. Automatic Civil Penalty Review**

When an INC is issued because a safety device or system is bypassed, but not bypassed due to startup, testing, or maintenance, the INC should be reviewed for civil penalty. Although API RP 14C does not recognize sump pumps as a safety device, sump pumps are included in this policy in certain instances. This policy encompasses the following PINCs:

- P-103 – Is each surface or subsurface safety device, which is bypassed or blocked out of service, out of service due to start-up, testing, or maintenance and is it flagged and monitored by personnel?
- E-103 – Does the sump system automatically maintain the oil at a level sufficient to prevent discharge of oil into the offshore waters? Note that this INC should trigger automatic civil penalty review only when issued for a bypassed fuel system, where the system is not bypassed due to startup, testing, or maintenance.

## **Chapter 2 – OCS Civil Penalty Procedures**

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This chapter provides detailed procedures for BSEE personnel to follow when handling civil penalty cases. The procedures are written so that all employees involved in the civil penalty process are aware of their role in a civil penalty assessment. In addition to this Guidebook, please refer to the TIMS help program for additional instructions related to using TIMS to process civil penalties.

Most civil penalty cases result from violations of the regulations administered by the District Offices. However, if other BSEE or Bureau of Ocean Energy Management (BOEM) personnel discover violations, they may use these procedures also. For example, assume that a permittee fails or refuses to give a regional office a copy of processed geophysical information by a prescribed date. If the permittee still has not submitted the data after a reasonable time for corrective action has elapsed, the appropriate Manager/Supervisor would initiate a civil penalty review. The Manager/Supervisor would approve the action and forward the report to the BSEE Regional OCS Civil Penalty Program Coordinator. The flowcharts in Appendix A detail each of the steps in the civil penalty process.

All BSEE staff involved in the civil penalty process must cooperate fully with other entities, such as the BSEE Investigations and Review Unit (IRU), the U.S. Coast Guard (USCG), or the DOI Office of the Inspector General (OIG), if those entities are investigating an incident. When such investigations are ongoing, BSEE staff shall coordinate with the investigating office regarding all communications with a party who received an INC, or with any person employed by or associated with the relevant operator, lessee, contractor, or permittee. BSEE staff should not disclose the fact of an active investigation to the entity that received the INC or to anyone other than representatives of the investigating federal office.

BSEE staff are encouraged to use all resources available to them in BSEE (e.g., Environmental Enforcement Division and Oil Spill Response Division), BOEM, or elsewhere in the Department of the Interior, as appropriate, in investigating and processing a civil penalty case.

Violations investigated by BOEM or the USCG will be processed by BSEE Reviewing Officers in accordance with procedures in this Guidebook. BSEE has a Memorandum of Agreement (MOA) with the USCG concerning civil penalty assessment. (See Appendix D.)

### **I. District and Program Office Procedures**

An INC goes through several levels of review in the District Office (or Program Office, if the INC originates outside of a BSEE District Office) before it can be referred to the Region for civil penalty assessment. This section discusses the levels of review.

#### **A. The INC Case File**

Typically, the civil penalty process begins with the collection and assembly of the INC case file by an inspector or employee. The case file must provide information that will enable a BSEE Reviewing Officer to determine whether to assess a civil penalty and, if so, the amount of penalty to assess. Documentation of all violations is critical, since any violation could result in civil or criminal penalty proceedings. In addition, the case file will be the basis of the administrative record that would be submitted to the Interior Board of Land Appeals (IBLA) if an INC or civil penalty assessment is appealed.

The INC case file should include a copy of the INC Form (BSEE-1832), and a copy of the notification letter if one is used. The INC, whether issued by INC Form or notification letter, must contain documentation of all violations the inspector or employee identified in accordance with BSEE procedures.

The INC must include the requirement that was violated (e.g., lease term, permit, regulation, right-of-way, etc.), how the violation occurred, and by when to correct it. It should include a full description of the applicable regulation and the conduct or activity being cited. The professional opinions and judgment of the inspector should be well-supported and explained clearly.

The BSEE inspector or employee should ensure that the documentation or the information reported on the INC Form itself includes sufficient detail to enable reviewers to make a determination that the particular violation may have included either of the following:

- A threat of serious, irreparable, or immediate harm or damage to life (including fish, seabirds, mammals, and other aquatic life that may or may not involve an endangered/threatened species); property; any mineral deposit; or the marine, coastal, or human environment, or
- Serious, irreparable, or immediate harm or damage to life (including fish, seabirds, mammals, and other aquatic life that may or may not involve an endangered/threatened species); property; any mineral deposit; or the marine, coastal, or human environment.

Refer to Chapter 1 for guidance on determining whether a threat or occurrence of harm or damage has taken place.

Where appropriate, the violation should be corroborated by contemporaneous photos, other physical evidence, and witness statements. The case file should also include evidence of the degree of seriousness of the violation and the extent of (or threat of) irreparable or immediate harm or damage that resulted or could have resulted from the violation.

Depending upon the type of violation and available evidence, the INC case file may also include the following evidence gathered at the time of the inspection:

- Identification of witnesses
- Statements from involved personnel
- Photographs
- Samples/sampling data
- Equipment, equipment testing, and/or maintenance records
- Manuals
- Operating data
- Any pertinent physical evidence
- For permit, plan, or lease violations: the permit, plan or lease, or relevant excerpts, identifying the provisions violated.

These materials may be assembled on shore within 5 days of the inspection. For ongoing violations, evidence to document whether the violation was corrected—photographs, witness statements, samples and copies of records, and other pertinent information or physical evidence—should be collected within 5 days after the end of the period for correction.

If an operator or a particular witness will not cooperate or give a statement voluntarily, the inspector or employee should immediately consult his or her management, who should in turn contact the IRU and the Solicitor's Office.

## **B. Initiating a Civil Penalty Review**

The BSEE inspector or employee forwards any INC that may warrant further review for civil penalties to his or her next-level supervisor (e.g., Supervisory Inspector or Section Chief). Civil penalty review shall be initiated immediately after the INC is issued, whether or not the period for the appeal of the INC has lapsed. The inspector or employee must place an “X” in the appropriate TIMS field to flag the violation for a civil penalty review.

The Supervisory Inspector or Section Chief (the BSEE inspector or employee’s next-level supervisor) reviews all INCs (including those flagged in TIMS), violation letters, and accident reports for potential civil penalty actions. The Supervisory Inspector or Section Chief discusses with the inspector or employee any violations brought to his or her attention that may warrant further review.

Although typically civil penalty reviews will progress from the inspector to the Supervisory Inspector or Section Chief, sometimes—for example, after an accident investigation—an INC will go straight to the Chief Engineer or the District or Program Manager for review.

The first supervisor to review the INC (i.e., Supervisory Inspector or Section Chief, or, if appropriate, the Chief Engineer or District or Program Manager) initiates a civil penalty review in TIMS and enters all of the required information. In the interest of establishing consistency within BSEE, before initiating a civil penalty review in TIMS, the supervisor should review the TIMS database or discuss the violation with appropriate personnel from other BSEE Districts, Offices, or Regions to determine if there are relevant precedents. If a decision is made not to initiate a civil penalty review, the supervisor enters the rationale for that decision into the TIMS database and, if the INC originated with a BSEE inspector or employee, explains the decision to the inspector or employee.

As the INC is reviewed by higher level supervisors, BSEE may continue to gather information and supplement the INC case file. The supervisors may seek assistance from the BSEE inspector or employee to gather more information about the case.

## **C. Approval of Referral**

If civil penalty review is deemed appropriate, the District or Program Manager must approve and forward the INC, the case number assigned by TIMS, a summary of the investigation, and the case file to the Regional OCS Civil Penalty Coordinator. When approving a civil penalty review, the District or Program Manager must enter the date of approval into the civil penalty module in TIMS.

All reviews at the district or program level—including review by the Inspector, Supervisory Inspector, Section Chief, or Chief Engineer, if he or she reviews the INC first—must be completed within 60 calendar days after the date the INC is issued. On a case-by-case basis, more time may be taken if a note to the file is prepared justifying the need for additional time. The note to the file should specify the date of INC issuance, and a copy of the note should be sent via email to the National Civil Penalties Coordinator.

The potential appeal of an INC should not slow the civil penalty review process, which should progress without regard to whether the INC may be appealed. An INC is effective when issued and does not require a favorable opinion by the IBLA before BSEE issues a proposed civil penalty assessment. Accordingly, whether an INC may be appealed should not be among a District or Program office’s considerations when deciding whether to refer an INC for civil penalty.

## **II. Regional Office Procedures**

### **A. Regional Coordinator Responsibilities**

When the Regional OCS Civil Penalty Coordinator (Regional Coordinator) receives the referral from the District or Program Manager, he or she reviews the case file and the District or Program's recommendations. The Regional Coordinator may also receive referrals and recommendations from BOEM or the USCG.

Within 14 calendar days of receipt of a referral, the Regional Coordinator should do the following:

- make a determination whether the information provided in the case file is complete. The Regional Coordinator may determine that the information submitted is incomplete and may request additional information from the originating agency, District or Program Manager, or other BSEE Offices.
- as appropriate, advise/consult with regional management on the pending case.
- after the case file is deemed complete, send the party that received the violation letter or INC a letter advising the party that a civil penalty review has been initiated (see sample advisement letter in Appendix B).
- prepare a log of the items included in the case file and attach it to the front of the file (see Appendix C).
- assign the case to a Reviewing Officer.
- forward the case file to the Reviewing Officer.

### **B. Reviewing Officer Responsibilities**

Once the case is assigned, the Reviewing Officer will maintain custody of the official case file until the case is closed. (In appealed cases or cases referred for civil or criminal judicial enforcement, the Reviewing Officer will keep a copy of the case file and send the original to the Solicitor's Office.) The case file will contain all evidence developed during the investigation except physical evidence, which will be retained by the District or Program Office conducting the investigation or by the IRU, or another federal agency investigating the violation. Upon request, the office holding the physical evidence must deliver it to the Reviewing Officer.

The Reviewing Officer is encouraged to work closely with the case initiators to ensure a complete case file. The Reviewing Officer may gather additional information from the operator or the District or Program Office if needed to make an initial decision on whether to continue with the civil penalty case. The Reviewing Officer may also work with the Solicitor's Office to issue subpoenas for evidence that the operator or other involved party has not voluntarily provided. The Reviewing Officer will discuss non-routine or precedent-setting cases with other Reviewing Officers.

The decision to continue on with a civil penalty case will be based on whether the violation—

- was not corrected within the period BSEE granted; or

- may have constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish, seabirds, mammals, and other aquatic life that may or may not involve an endangered/threatened species); property; any mineral deposit; or the marine, coastal, or human environment; or
- caused serious, irreparable, or immediate harm or damage to life (including fish, seabirds, mammals, and other aquatic life that may or may not involve an endangered/ threatened species); property; any mineral deposit; or the marine, coastal, or human environment.

#### **i. Notice of Proposed Civil Penalty**

Upon determining that there is sufficient evidence that one of the aforementioned conditions has been met, the Reviewing Officer will calculate a proposed penalty and then notify the party who committed the violation. This Notice of Proposed Civil Penalty (see sample proposed notice letter in Appendix B) will normally be sent within 90 calendar days of receipt of the case file. Any delay in sending the letter will be explained in the case file. The letter will be sent by certified mail, return receipt requested, and will notify the party of the following:

- The violation, citing the applicable provision of OCSLA, or the applicable term of a lease or permit issued pursuant to OCSLA, or the applicable provision of a regulation or order issued under OCSLA;
- The amount of the penalty that appears to be appropriate based upon the material then available to the Reviewing Officer;
- The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant;
- The party's right, in accordance with 30 CFR 250.1406(c), to meet with the Reviewing Officer before a final decision is made on the proposed penalty;
- The party's right, in accordance with 30 CFR 250.1406(c), to provide written evidence and arguments in addition to or in lieu of a meeting with the Reviewing Officer before a final decision is made on the proposed penalty;
- The applicable time constraint—the party must request a meeting and/or provide information within 30 calendar days of receipt of the notice, in accordance with 30 CFR 250.1407.

If the Reviewing Officer decides not to issue a Proposed Civil Penalty—because, for example, the violation does not meet the criteria for civil penalty—he or she will notify the District or Program Office. The Reviewing Officer will also notify the party by letter. Note that it is not necessary to include in the letter a rationale for not pursuing a Proposed Civil Penalty; however, when the Reviewing Officer decides, after issuing a Proposed Civil Penalty, not to issue a penalty or to reduce a penalty, the change of position requires the Reviewing Officer to provide to the party the rationale for the decision.

The Reviewing Officer enters the date of the notification letter into TIMS. A “bcc” of the letter is sent to the appropriate Regional Coordinator, District Manager/Program Manager, Regional Supervisor, Regional Director, National OCS Civil Penalty Program Coordinator, Office of the Solicitor, and the Office of Natural Resource Revenue (ONRR). See Chapter 3 for more information on payment and

collection of the penalty; see Appendix B for examples of letters from the Reviewing Officer. The Reviewing Officer does not need to notify ONRR of a decision not to pursue a civil penalty.

## **ii. Factors to Consider in Selecting Penalty Amount**

When deciding on a penalty amount, the Reviewing Officer should consider that the amount of the civil penalty can accumulate (1) from the day after the expiration of the time for correction identified in the notice of violation or (2) from the day the violation occurred if the violation caused or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish, seabirds, mammals, and other aquatic life that may or may not involve an endangered/threatened species), property, any mineral deposit, or the marine, coastal, or human environment. In selecting the dollar amount, the Reviewing Officer may consider any reasonable factor. The following are some initial factors to consider:

- Whether persons were injured or killed because of the violation;
- The extent to which the environment was harmed because of the violation;
- The extent to which persons or the environment were exposed to increased risk of harm because of the violation;
- The extent to which any mineral deposit or any property was damaged because of the violation;
- Whether the party has committed similar violations in any OCS Region; and
- The party's general record of compliance with OCS requirements.

The Reviewing Officer may not consider actions taken after the violation as mitigating factors. Example: an open hole is discovered during an inspection and the violation is corrected. However, the threat existed before the violation was corrected, so fixing the violation does not mitigate the threat, therefore, a penalty may be assessed.

In addition, the Reviewing Officer should use the appropriate table provided in Appendix F as a guide to selecting the initial penalty amount. The rationale for determining the penalty amount must be included in the civil penalty case file.

## **iii. Meeting with Reviewing Officer**

Pursuant to 30 CFR § 250.1407, the party has 30 calendar days after receipt of the Notice of Proposed Civil Penalty Assessment from the Reviewing Officer to do the following:

- Request, in writing, a meeting with the Reviewing Officer and specify the issues of concern;
- Submit evidence and arguments in lieu of a meeting; or
- Pay the amount specified in the notice.

If requested, the Reviewing Officer may grant the party additional time to accomplish the above.

When the Reviewing Officer receives a meeting request pursuant to 30 CFR § 250.1407, the Reviewing Officer should schedule the meeting for the earliest practicable date after the request is received. The meeting may be held at the Reviewing Officer's office or such other location as the Reviewing Officer may designate. The Reviewing Officer may grant additional time extensions that he or she determines necessary or desirable in the interest of obtaining a fair resolution of the case.

If a meeting is held or at the request of the party, the Reviewing Officer may present to the party material in the case file that is pertinent to the issues, and the party may respond to or rebut this material. Sharing portions of the case file may facilitate discussion about an appropriate penalty amount, but the Reviewing

Officer should be mindful to withhold information that would reveal the identity of a whistleblower. In addition, confidential treatment shall be accorded to all or a portion of any document as follows:

- Confidential financial information, trade secrets, or other material exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552);
- Information required to be held in confidence by BSEE regulations; or
- Information that is otherwise exempt by law from disclosure.

The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other items that bear on the issues or that may be relevant to the amount of the penalty to be assessed. The Reviewing Officer may require the authentication of any written exhibit or statement.

In evaluating the additional evidence presented, the Reviewing Officer should consider the reliability and relevance of each item but is not bound by strict rules of evidence. The Reviewing Officer should prepare notes on the material and points raised by the party in sufficient detail to permit full and fair review and resolution of the case should it be appealed. A verbatim transcript of meetings with a Reviewing Officer need not be prepared, but the Reviewing Officer or a party, at its own expense, may cause a verbatim transcript to be made. If one is prepared, the transcript should be made part of the case file.

The Reviewing Officer must conduct each meeting in a fair and consistent manner. If the Reviewing Officer is notified that the party or witnesses are represented by legal/management advisors or counsel, all further communications should be directed to the advisors or counsel.

If the Reviewing Officer expects that the party will raise legal issues during the meeting, the Reviewing Officer may call the Solicitor's Office to discuss those issues. The Reviewing Officer may ask that an attorney from the Solicitor's Office participate in the meeting.

#### **iv. Reviewing Officer's Decision**

Per 30 CFR § 250.1408, "At the end of the 30 calendar days or after the meeting and submittal of additional information, the Reviewing Officer will review the case file, including all information [the party] submitted, and send [the party] a decision. The decision will include the amount of any final civil penalty, the basis for the civil penalty, and instructions for paying or appealing the civil penalty."

The Reviewing Officer's decision must be in writing and include an explanation of the penalty amount and the basis for any conclusions that were made in determining that amount (see Appendix C for sample final decision). The decision must be based upon evidence in the record. The rationale for determining the final penalty amount must be included in the case file. The Reviewing Officer's decision should be sent to the party by certified mail, return receipt requested, no later than 30 calendar days after the date of the meeting or submission of additional information. If the party does not request a meeting or provide additional information within the 30 days allowed, the Reviewing Officer should send, by overnight mail no later than 14 calendar days after the expiration of the 30-day period, the final decision letter.

After mailing the decision letter to the affected party, the Reviewing Officer should notify the appropriate Regional Coordinator, District Manager/Program Manager, Regional Supervisor, and Regional Director and enter the date of the letter into TIMS.

The Reviewing Officer should provide a "bcc" of the decision letter to: National OCS Civil Penalty Coordinator; Financial Management, Financial Services (MS 6322OB), ONRR (see Chapter 3 for more information on payment and collection of the penalty); and Office of the Solicitor.

If the Reviewing Officer determines that a civil penalty assessment is not warranted, he or she will dismiss the case and send a copy of the decision letter to the appropriate Regional Coordinator and District Manager/Program Manager, and National OCS Civil Penalty Program Coordinator, including the rationale (to be input into TIMS). The Reviewing Officer should also send a letter to ONRR notifying it of the dismissal. A civil penalty assessment may not be warranted if the Reviewing Officer finds that:

- for a violation under paragraph 250.1404(a), either the required notice of the violation was not provided or the violation did not continue after the termination of any period provided for corrective action; or
- for a violation under paragraph 250.1404(b) or (c), there is not sufficient information in the case file that the violation constitutes or constituted a threat of or caused serious, irreparable, or immediate harm or damage to life (including fish, seabirds, mammals, and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment.

#### **v. Appeal of Reviewing Officer's Decision**

A party who receives a final decision imposing a civil penalty has 60 days from the date of receiving the final decision to appeal the assessment to the IBLA. During the 60-day appeal period from the party's receipt of the final decision until the party files a written Notice of Appeal with the IBLA, the party may seek informal resolution of the assessment with the Regional Coordinator. If a party chooses to seek informal resolution within the 60-day appeal period, the Reviewing Officer or Regional Coordinator should send the party a written acknowledgment of receipt of the request with an explanation that the 60-day appeal period is not extended by the request for informal resolution and continues to run. The office's written acknowledgement should expressly state that the party will not be able to file an appeal to the IBLA after 60 days from the date of receipt of the final civil penalty assessment. If the Regional Coordinator sends any correspondence to the party during the informal resolution period, that correspondence must not contain new appeal rights.

Any appeal of a Reviewing Officer's decision shall be processed under 30 CFR Part 290. The Reviewing Officer will prepare a field report responding to any issues raised by the appellant. A copy of the field report and three copies of the administrative record should be forwarded to the Office of the Solicitor, Department of the Interior, Washington D.C., no later than 10 calendar days of the date the notice of appeal is received. The administrative record may encompass most of the Reviewing Officer's case file, but not necessarily all of it. The administrative record should only contain those documents the Reviewing Officer considered in reaching his or her decision on the amount of the civil penalty, and any proprietary information must be flagged. See Appendix D for a sample index of an administrative record for a civil penalty appeal. Reviewing Officers may contact the BSEE administrative records coordinator or the Office of the Solicitor with any questions about compiling the administrative record.

#### **vi. Assessment to Support Judicial Case**

In the event that BSEE refers the case to the U.S. Department of Justice (DOJ) for consideration of civil judicial enforcement, the Reviewing Officer may be requested to estimate civil penalties for the INCs to be included with the referral. While civil penalties are assessed through the administrative process under OCSLA and BSEE regulations, the estimated assessment will help inform DOJ as to the potential penalties that may be at issue in the case.

### **III. Records Retention**

Files associated with cases in which civil penalty proceedings are not initiated will be maintained in the office in which the civil penalty recommendation originated. All INC/violation letters, investigation reports, and any other records collected to prepare the civil penalty recommendation will be kept. The office should provide, when appropriate, information in accordance with 43 CFR Part 2 (implementing the Freedom of Information Act and Privacy Act and requirements for handling requests for evidence and testimony for litigation).

After a civil penalty case is closed, the Regional Coordinator will maintain all case files, transcripts, written statements, physical evidence, and other records and should provide, when appropriate, information in accordance with 43 CFR Part 2. If the Reviewing Officer is from another Region or Headquarters, the Reviewing Officer, after the case has been completed, will send the original case file to the Regional Coordinator of the Region initiating the civil penalty case.

For each case that is appealed, the Regional Coordinator should maintain a copy of the case file, which includes background information, evidence, transcripts, and the Reviewing Officer's decision, for the period specified in BSEE Manual 380.2-H.

### **IV. Concurrent Civil and Criminal Penalty Cases**

BSEE Reviewing Officers should immediately notify the National Civil Penalty Coordinator if there is any indication of potential criminal intent or action. The National Civil Penalty Coordinator will coordinate with appropriate offices for further action.

## Chapter 3 – Payment and Collection Procedures

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The Director for the Office of Natural Resources Revenue (ONRR) is responsible for collecting penalties assessed by the Reviewing Officer. The procedures are as follows:

1. The Reviewing Officer should forward to ONRR, Financial Management, Financial Services (MS63220B), a copy of the letter notifying the party of the proposed civil penalty assessment. The notification of proposed assessment includes an attachment on Meeting and Payment Information, provided in Appendix B. Under “Payment Procedures” in the attachment, the payor is directed to pay the remittance as a wire transfer, identifying it as a civil penalty, with the case number. The payor is also instructed to include the company’s Financial System payor code, and lease number. This information will allow for proper identification, accounting, and disbursement of the civil penalty revenue. Payment should be remitted following the ONRR wire instructions for Federal Invoices. The General Ledger Supervisor at (303) 231-3085 should be contacted if assistance is needed.
2. ONRR will generate an invoice (OTH, Manual Bill for Collection) and assign a bill number if the proposed civil penalty assessment is not paid and the Reviewing Officer issues a Final Decision letter assessing a civil penalty. The bill is generated after the Reviewing Officer’s Final Decision is received by ONRR. Due date for the bill will be 60 days after issuance, the same as the Final Decision letter.
3. The Reviewing Officer’s final decision will transmit instructions on payments (see Payment and Appeal Information in Appendix B). These instructions are the same as provided with the Notice of Proposed Civil Penalty Assessment.
4. The Reviewing Officer will notify Financial Management, Financial Services (MS63220B) within 5 days if an appeal is filed on a civil penalty assessment so ONRR will not expect payment. ONRR, Financial Management, Financial Services, Debt Collection performs follow-up for bills not appealed and not paid by the due date.
5. ONRR, Financial Management, Financial Services (MS63220B) will advise the Reviewing Officer within 5 days of the receipt of any payment. The notification will be a copy of the payment screen sent by electronic mail to the Reviewing Officer. This can be added to the official file as proof of payment.
6. ONRR issues an annual status report on OCS penalties to the Office of Financial Management. This report will also be sent to the National and Regional Coordinators.
7. Requests for installment agreements must be submitted to Financial Services, Debt Collection Section. The Debt Collection Section will review the request and, if necessary, develop a payment schedule. If it is determined that the operator is unable to pay the penalty, ONRR will notify the National Coordinator to discuss collection options.

## **Chapter 4 – National OCS Civil Penalty Program Office Procedures**

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### **I. Program Management and Calculation of Civil Penalty Limits**

The National OCS Civil Penalty Program Coordinator (National Coordinator) should develop, for BSEE upper management approval, policies and procedures related to OCS civil penalty reviews. These policies and procedures should ensure that all OCS civil penalties cases are conducted in a fair, consistent, and timely manner and in accordance with BSEE policies, procedures, and directives.

The National Coordinator determines if changes should be made to the OCS Civil Penalty Program and prepares detailed recommendations for those changes. The National Coordinator then submits these recommendations for BSEE management approval.

The National Coordinator should prepare a report, at least once every 3 years, that recommends adjustment of the civil penalty monetary limits, specified in section 24(b)(1) of OCSLA, to reflect any increases in the Consumer Price Index (CPI) (all items, United States city average) as prepared by the Bureau of Labor Statistics, Department of Labor. The adjustment of the maximum civil penalty amount is intended to maintain the deterrent effect of such penalties and promote compliance with the law. The current maximum civil penalty amount of \$40,000 per violation of OCSLA per day was published in the Federal Register and became effective on July 30, 2011.

The report should include the following information:

- Reference to the law requiring periodic adjustment to the civil penalty monetary limits.
- The U.S. Code citation under which the penalty is authorized (i.e., OCSLA, 43 U.S.C. § 1350(b)).
- A listing of violations and associated civil penalties imposed since the last periodic adjustment to the monetary limits.
- The current monetary limits for civil penalties.
- The year and month that the monetary limits, maximum and minimum, were last set for civil penalties.
- The CPI at the time that the monetary limits for civil penalties were last set.
- The CPI for the year and month of the proposal for new monetary limits for civil penalties.
- The proposed new monetary limits for civil penalties.

BSEE is also authorized to impose civil penalties for failure to comply with financial responsibility regulations that implement the Oil Pollution Act of 1990 (OPA 90). OPA 90 set the maximum civil penalty amount per day per violation at \$25,000. The adjustment of OPA 90 penalties is done pursuant to the Federal Civil Penalties Inflation Adjustment Act. (The U.S. Code citation for the OPA 90 financial responsibility penalties is 33 U.S.C. § 2716a(a).) The National Coordinator should make a report for OPA 90 penalty adjustments similar to the one for OCSLA penalties.

### **II. Public Report of Activities**

The National Coordinator is responsible for updating the BSEE website regarding the OCS Civil Penalty Program. Information on the website includes:

- Civil penalty statistics;
- Chronological history of the OCS Civil Penalty Program with links to all Federal Register Notices that have been published about the Program.

- Tables summarizing civil penalty cases closed and paid each year. The tables show:
  - The identity of the parties who paid civil penalties;
  - A brief summary of each of the violations resulting in penalties;
  - The amount of penalties paid;
  - The date the penalties were paid; and
  - The regulation(s) violated as well as the date(s) of the violation.

### **III. Training**

The National Coordinator will work with the National Offshore Training Branch, which oversees the National Offshore Training and Learning Center (NOTLC), to develop training modules for Reviewing Officers, Inspectors, Management, and any additional personnel designated by Management.

### **IV. Annual Review**

The National Coordinator will direct an informal annual review of the Program. The review should involve discussions among the Regional Coordinators and the National Coordinator regarding issues related to ensuring that the Program is being implemented in a fair and consistent manner across BSEE. Issues to be discussed will include, but are not limited to, the following:

- Consistent use of penalties for similar violations among Districts and Regions;
- Length of time to process a case;
- Consistent penalty amounts;
- Handling of cases referred to BSEE from BOEM and USCG;
- Any new civil penalty authority provided to the Secretary of the Interior, and delegated to BSEE as a result of laws other than OCSLA.

### **V. Other Program Management Actions**

The National Coordinator will be responsible for periodic updates/edits to this Guidebook and will forward those updates/edits to the appropriate offices for review and approval.

The National Coordinator will conduct analysis and reviews of all aspects of the civil penalty process and provide support to the Regional OCS Civil Penalty Program Coordinators, Reviewing Officers and Districts if there are issues that need to be resolved about the processes.

The National Coordinator will provide status reports of all OCS civil penalty cases to upper management on a periodic basis.

## Appendix A – OCS Civil Penalty Case Development Timeline

This timeline is provided as guidance to Reviewing Officers. Unless a time period is established by a statute or regulation, it may be adjusted on a case-by-case basis as necessary and in accordance with the requirements set forth in this Guidebook.

Responsible Party	Task Explanation	Prescribed Days to Complete (Calendar Days)	Authority
District / Program Office	After INC is issued, Operator may appeal INC within . . .	60	30 CFR 290.3
	After INC is issued, regardless of whether INC is appealed, District/Program office will build and forward case to Regional Coordinator within . . .	60	BSEE policy
Regional Coordinator (RC)	RC will assign case to Reviewing Officer and send out advisement letter to Operator within . . .	14	BSEE policy
Reviewing Officer (RO)	After RO receives case, RO will send out a notice of proposed civil penalty to Operator within . . .	90	BSEE policy
	Upon receipt of notice of proposed civil penalty, Operator may 1.) Request a meeting with RO; or 2.) Provide any written evidence & arguments in lieu of meeting; or 3.) Pay the amount specified in the notice within . . .	30	30 CFR 250.1407
	If Operator requests meeting, RO should schedule meeting for . . .	EPD*	BSEE policy
	If Operator doesn't request meeting or provide additional information, RO will send out final decision letter within . . .	14	BSEE policy
	Operator chooses to meet and meeting has occurred or additional information has been submitted. After date of meeting or receipt of information, RO will send out final decision letter within . . .	30	30 CFR 250.1408; BSEE policy
	After receipt of final decision letter, Operator must pay assessment, request informal appeal with Regional Office, or file formal appeal with IBLA within . . .	60	30 CFR 290.3; BSEE policy
	After review of notice of appeal, RO will forward field report and administrative record to the Office of the Solicitor within . . .	14	BSEE policy

\*EPD = earliest practicable date

## Appendix B – Sample Letters

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### I. Sample Advisement Letter

In Reply Refer To: MS GE 1073E

March 15, 2013

Re: Civil Penalty Case: G-2013-100  
Lease No.: OCS-G 12345  
Lease Operator: XYZ Oil Company  
Area: High Island Area  
Block: 111  
Facility: Platform C Prince TLP  
INC No.(s): P-103  
Issue Date: January 10, 2013

Federal Express No.: 1234 5678 9123

Mr. John Smith  
XYZ Oil Company  
123 Southwest Freeway  
Houston, Texas 77123

Dear Mr. Smith:

The Bureau of Safety and Environmental Enforcement (BSEE) advises operators when an Incident of Noncompliance (INC) is referred for a civil penalty review. This office has been asked to review the subject INC(s) involving your operations at the above location(s).

The file has been assigned the number noted in the subject line of this letter. Within 90 days, the BSEE Civil Penalty Reviewing Officer assigned to this matter will provide you with information related to our review. If you have any questions or would like to request additional information, please contact me.

Sincerely,

Sue Jones  
Regional Penalty Coordinator  
123-456-7891  
sue.jones@bsee.gov

cc: District Manager, Lake Jackson District (MS LJE 200)  
bcc: Case File G-2013-100 (MS GE 1073E)  
Lease File OCS-G 12345 (MS GE 3456)

## II. Sample Notice of Proposed Civil Penalty Assessment

### NOTICE OF PROPOSED CIVIL PENALTY ASSESSMENT

In Reply Refer To: MS GE 1073E

June 1, 2013

Re: Civil Penalty Case: G-2013-100  
Lease No.: OCS-G 12345  
Lease Operator: XYZ Oil Company  
Area: High Island Area  
Block: 111  
Facility: Platform C Prince TLP

Federal Express No.: 1234 5678 9123

Mr. John Smith  
XYZ Oil Company  
123 Southwest Freeway  
Houston, Texas 77123

Dear Mr. Smith:

During an onsite inspection by the Bureau of Safety and Environmental Enforcement (BSEE) on January 1, 2013, on your Lease OCS-G 12345, High Island Area, Block 111, Platform C Prince TLP, a BSEE inspector issued an Incident of Noncompliance (INC) to XYZ Oil Company (XYZ Oil). This office then notified XYZ Oil by a letter dated March 15, 2013, that the INC had been referred for civil penalty review. In accordance with the provisions of 43 U.S.C. § 1350(b) and the implementing regulations at 30 CFR 250.1400-.1409, this letter provides you with BSEE's proposed civil penalty assessment and offers you the opportunity for a meeting on the matter.

#### Rationale

The BSEE inspector issued the INC for a violation of 30 CFR 250.803(c)(1), which states in part as follows:

Surface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety device which is temporarily out of service shall be flagged.

XYZ Oil failed to comply with the requirements of 30 CFR 250.803(c)(1). On January 10, 2013, while BSEE Inspectors were conducting an onsite inspection of the High Island Area Block 111 Platform C Prince TLP, it was discovered that the pressure safety valve (PSV) for the heater treater (NBK-8300) was found isolated by a closed block valve, placing the safety device in bypassed mode. The bypass was not due to startup, testing or maintenance; nor was the PSV flagged or monitored by personnel.

Bypass of the PSV on the NBK-8300 created a threat to personnel, equipment, and the environment. The purpose of the PSV on the NBK-8300 is to provide the required secondary protection from an overpressure event if the primary protection pressure safety high (PSH) would fail. Failure of the PSH

while the PSV is bypassed could result in damage to the process vessel, and uncontrolled release of excess gas and liquid hydrocarbons to the atmosphere and fire. Bypass of the PSV constituted a threat of serious, irreparable, or immediate harm or damage to life, property, and the environment, under the provisions of 43 U.S.C. § 1350(b) and 30 CFR 250.1404(b).

#### Proposed Civil Penalty Assessment

Based on my examination of the information presently before me, I have determined that XYZ Oil violated 30 CFR 250.803(c)(1) by bypassing the pressure safety valve for the heater treater (NBK-8300) for one day, when the bypass was not due to startup, testing or maintenance, and the bypass was not flagged or monitored by personnel. In addition, I find that the bypass constituted a serious threat of harm to personnel, equipment and the environment. Accordingly, I propose the assessment of a civil penalty in the amount of \$25,000. The proposed assessment equates to \$25,000 per day for a single-day violation of 30 CFR 250.803(c)(1). The rationale used in arriving at this proposed amount can be found on the enclosed Civil Penalty Worksheet.

Enclosed for your review is a copy of relevant materials contained in the file for Civil Penalty Case G-2013-100.

#### Rights and Responsibilities

In accordance with 30 CFR 250.1407, you have 30 calendar days after you receive this letter to request, in writing, a meeting with me to discuss this matter, submit additional information, or pay the proposed civil penalty amount. Should you choose to take no action, at the end of the 30 calendar days, I will send you a final decision. The decision will include the amount of any final civil penalty, the basis for the civil penalty, and instructions for paying or appealing the civil penalty.

Additional information regarding your rights, procedures for requesting a meeting, and payment of the civil penalty assessment are enclosed.

Your comments are important. The Small Business Administration's Office of the National Ombudsman and ten Regional Regulatory Enforcement Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. You may comment to the Small Business Administration without fear of retaliation. If you wish to comment on the actions of BSEE call 1-888-REG-FAIR (1-888-734-3247).

If you have any questions concerning this matter, please contact me.

Sincerely,

Bill Smith  
Reviewing Officer  
123-456-7891  
bill.smith@bsee.gov

#### Enclosures:

Material from Case File G-2013-100  
Meeting and Payment Information

bcc:

Case File G-2013-100 (GE 1073E)

Office of Natural Resources Revenue, Financial Services (MS 61212B), Attention: Mr. James E. Caldwell, P.O. Box 25627, Denver, CO 80225-0627

BSEE National Civil Penalties Coordinator (HE 3314) (Sent via email)

Regional Director, Gulf of Mexico Region (GE 432A)

District Manager, Lake Jackson District (LJE 200)

District Manager, New Orleans District (NOE 100)

District Manager, Houma District (HDE 120)

District Manager, Lafayette District (LFE 410)

District Manager, Lake Charles District (LCE 200)

### **III. Sample Final Decision Letter—No Meeting Requested, No Additional Information Provided**

#### **REVIEWING OFFICER’S FINAL DECISION**

In Reply Refer To: MS GE 1073E

June 1, 2013

Re: Civil Penalty Case: G-2013-101  
Lease No.: OCS-G 23456  
Lease Operator: Generic Oil, LLC  
Area: East Cameron Area  
Block: 129  
Facility: Platform D

Federal Express No.: 1234 5678 9123

Mr. James Doe  
Generic Oil, LLC  
123 Park Boulevard  
Houston, Texas 77084

Dear Mr. Doe:

My letter dated April 27, 2013, notified Generic Oil, LLC (Generic Oil) of the proposed administrative civil penalty of \$15,000 for Civil Penalty Case G-2013-101. Civil Penalty Case G-2013-101 involves an Incident of Noncompliance (INC) that was issued as a result of the Bureau of Safety and Environmental Enforcement (BSEE) onsite inspection January 15, 2013, on your Lease OCS-G 23456, East Cameron Area, Block 129, Platform D.

In my letter, I also informed Generic Oil of its right to provide additional information or request a meeting within 30 days. Thirty days have passed since your receipt of my letter and I have not received from you additional information or a request for a meeting. As a result, the time to provide additional information and/or request a meeting has expired. This letter informs you of my final decision in this case.

#### Rationale

The INC was issued for a violation of 30 CFR 250.803(c)(1), which states in part as follows:

Surface or subsurface safety devices shall not be bypassed or blocked out of service unless they are temporarily out of service for startup, maintenance, or testing procedures. Only the minimum number of safety devices shall be taken out of service. Personnel shall monitor the bypassed or blocked-out functions until the safety devices are placed back in service. Any surface or subsurface safety devices which are temporarily out of service shall be flagged.

Generic Oil failed to comply with the requirements of 30 CFR 250.803(c)(1). During the BSEE inspection on January 15, 2013, a pressure safety high low (PSHL) installed on Well E-002 was found pinned open and blocked, rendering the device inoperable. The facility was operating under normal conditions and the blocked PSHL was not being monitored by personnel, nor was it flagged. According to the operator, this safety device was bypassed that morning while they were experiencing some well flowing issues and it was inadvertently left isolated.

Bypass of the PSHL created a threat to personnel, equipment, and the environment. Because the PSHL was not properly put back in service, the PSHL would not have functioned in the event of an emergency shutdown (ESD) or if the fire detection shut-in system (Fire Loop System) was activated. The PSHL is critical in maintaining a safe and pollution-free operation in addition to being a primary defense against catastrophic events. Failure to put the PSHL back in operation constituted a threat of serious, irreparable, or immediate harm or damage to life, property, and the environment, under the provisions of 43 U.S.C. § 1350(b) and 30 CFR 250.1404(b).

#### Final Assessment

Based on a complete review of the material in this case, I have determined that Generic Oil violated 30 CFR 250.803(c)(1) by bypassing the PSHL for one day, when the bypass was not due to startup, testing or maintenance, and the bypass was not flagged or monitored by personnel. In addition, I find that the bypass constituted a serious threat of harm to personnel, equipment, and the environment. Accordingly, I am assessing a penalty in the amount of \$15,000. The assessment is for \$15,000 per day for a one day violation of 30 CFR 250.803(c)(1).

#### Rights and Responsibilities

Additional information regarding your rights, appeal procedures, and payment of the civil penalty assessment are enclosed.

Your comments are important. The Small Business Administration's Office of the National Ombudsman and ten Regional Regulatory Enforcement Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. You may comment to the Small Business Administration without fear of retaliation. If you wish to comment on the actions of BSEE call 1-888-REG-FAIR (1-888-734-3247).

If you have any questions concerning this matter, please contact me.

Sincerely,

Bill Smith  
Reviewing Officer  
123-456-7891  
bill.smith@bsee.gov

#### Enclosures

ONRR Invoice  
Payment and Appeal Information

bcc:

Case File G-2013-101 (GE 1073E)  
Office of the Solicitor (MS 5358), Attention: Ms. Silvia Riechel, 1849 C Street NW, Washington, D.C. 20240  
Office of Natural Resources Revenue, Financial Services (MS 61212B), Attention: Mr. James E. Caldwell, P.O. Box 25627, Denver, CO 80225-0627

BSEE National Civil Penalties Coordinator (HE 3314) (Sent via email)  
Regional Director, Gulf of Mexico Region (GE 432A)  
District Manager, Lake Jackson District (LJE 200)  
District Manager, New Orleans District (NOE 100)  
District Manager, Houma District (HDE 120)  
District Manager, Lafayette District (LFE 410)  
District Manager, Lake Charles District (LCE 200)

#### **IV. Sample Final Decision Letter—Meeting Held and/or Additional Information Provided**

##### **REVIEWING OFFICER’S FINAL DECISION**

In Reply Refer To: MS GE 1073E

July 15, 2013

Re:	Civil Penalty Case:	G-2013-102
	Lease No.:	OCS-G 34567
	Lease Operator:	Generic Petroleum Co.
	Area:	High Island Area
	Block:	A 571
	Facility:	Well B-3

Federal Express No.: 1234 5678 9123

Ms. Jane Jacobs  
Generic Oil, LLC  
123 Main St.  
Houston, TX 77079

Dear Ms. Jacobs:

My letter dated April 15, 2013, notified Generic Petroleum Co. (GPC) of the proposed administrative civil penalty of \$20, 000 for Civil Penalty Case G-2013-102. This case involves an Incident of Noncompliance (INC) that was issued on January 10, 2013, following a Bureau of Safety and Environmental Enforcement (BSEE) onsite inspection on your Lease OCS-G 34567, High Island Area, Block A 571, Well B-3.

On May 30, 2013, GPC met with representatives of the BSEE Gulf of Mexico Region (GOMR) Lake Jackson District. At this meeting and through a letter date June 1, 2013, GPC provided additional information regarding this matter. This letter restates information from the Notice of Proposed Civil Penalty Assessment (NPC), summarizes the information provided by GPC in response to the NCP and BSEE’s analysis of that information, and explains my final decision.

##### BSEE Information from NPC

At the time of the inspection, on January 9, 2013, the BSEE inspector witnessed two violations of BSEE regulations during the performance of ROV functions for stump testing on the BOP. First, the inspector observed that the operator failed to provide a proper barricade around the upper level of the BOP stack. The ROV stab-in panel was located on the upper level of the BOP stack approximately 50 feet off the Main Deck. The section of handrails around where the ROV stab-in panel was to be located had been removed to accommodate the ROV stab-in panel. The handrails were replaced by a single piece of 1-inch rope attached to both sides of the ROV stab-in panel. Second, the inspector observed that an employee working on the ROV stab-in panel was not equipped with fall protection. The inspector witnessed the employee leaning over the 1-inch rope to position hot stabs on the ROV stab-in panel. This employee was not equipped with fall protection.

The following day, the inspector issued an INC for two violations of 30 CFR 250.107(a). This regulation states in part, “You must protect health, safety, property, and the environment by: (1) Performing all operations in a safe and workmanlike manner; and (2) Maintaining all equipment in a safe condition.”

### Analysis of Additional Information Provided by GPC in Response to NPC

During the meeting on May 30, 2013, E&P Oil provided the following additional information regarding the events at issue:

- It is noted that GPC found that the individual involved at the time of the observation surveyed the area and decided to tie off to the pod supply line. In addition, it is also noted that GPC stated that this tie off point was inadequate and did not meet the required ratings for fall protection.

BSEE's Response: BSEE agrees with GPC that proper fall protection was not used.

- It is noted that when the inspectors identified the lack of a proper barricade around the upper level of the BOP stack GPC immediately installed sections of scaffold poles to close the gaps in the handrail and later installed a working platform for use on subsequent stack pulls.

BSEE's Response: Actions taken after the violations occurred are not mitigating factors and will not result in a reduction of a civil penalty.

- Subsequently, GPC developed additional training programs for non-core crew members working on BOP maintenance and testing activities and refresher fall protection awareness training.

BSEE's Response: Actions taken after the violations occurred are not mitigating factors and will not result in a reduction of a civil penalty.

### Final Assessment

I find that GPC failed to protect health, safety, property, and the environment by not performing ROV functions for stump testing on the BOP in a safe and workmanlike manner as required by 30 CFR 250.107(a). GPC violated 30 CFR 250.107(a) by (1) failing to provide a proper barricade around the upper level of the BOP stack; and (2) failing to ensure that an employee working on the ROV stab-in panel was equipped with proper fall protection. I find that these violations constituted a threat of serious, irreparable, or immediate harm or damage to life, property, and the environment, under the provisions of 43 U.S.C. § 1350(b) and 30 CFR 250.1404(b), and that a civil penalty is warranted.

On April 15, 2013, I notified GPC of the proposed administrative civil penalty of \$20,000 for this case. The assessment was for \$20,000 per day for a one-day violation of 30 CFR 250.107(a). Based on a complete review of the material in this case including the additional information provided by GPC, I have determined that the proposed assessment was proper and it now constitutes my final decision.

### Rights and Responsibilities

Additional information regarding your rights, appeal procedures, and payment of the civil penalty assessment are enclosed.

Your comments are important. The Small Business Administration's Office of the National Ombudsman and ten Regional Regulatory Enforcement Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. You may comment to the Small Business Administration without fear of retaliation. If you wish to comment on the actions of BSEE call 1-888-REG-FAIR (1-888-734-3247).

If you have any questions concerning this matter, please contact me.

Sincerely,

Bill Smith  
Reviewing Officer  
123-456-7891  
bill.smith@bsee.gov

Enclosures:

ONRR Invoice  
Payment and Appeal Information

bcc: Case File G-2013-102 (GE 1073E)  
Office of the Solicitor (MS 5358), Attention: Ms. Silvia Riechel, 1849 C Street NW, Washington,  
D.C. 20240  
Office of Natural Resources Revenue, Financial Services (MS 6322OB), Attention: Mr. James E.  
Caldwell, P.O. Box 25672, Denver, CO 80225-0627  
Joanne McCammon, National OCS Civil Penalty Coordinator (MS HE 3314) (sent via email)  
Regional Director, Gulf of Mexico Region (GE 432A)  
District Manager, Lake Charles District (LCE 200)  
District Manager, New Orleans District (NOE 100)  
District Manager, Houma District (HDE 120)  
District Manager, Lafayette District (LFE 410)  
District Manager, Lake Jackson District (LJE 200)

## V. Enclosures

This section includes the “Meeting and Payment Information” and “Payment and Appeal Information.” Note that the Reviewing Officer should enclose the former with the Notice of Proposed Civil Penalty, and the latter with the Final Decision Letter.

### Meeting and Payment Information

*[Note to Reviewing Officer: This document should be enclosed with the Notice of Proposed Civil Penalty]*

#### I. General Provisions

Within 30 days of receipt of this letter, you must accomplish one of the following:

1. Request a meeting before the Reviewing Officer to provide evidence that you believe would mitigate the proposed civil penalty assessment;
2. Provide any written evidence and arguments in lieu of a meeting which you believe would mitigate the proposed civil penalty assessment; or
3. Pay the assessment amount indicated in the letter.

#### II. Your Rights

You have the right to:

1. Examine the case file and have a copy of all written documents except those exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552);
2. A meeting before the Reviewing Officer prior to any final penalty assessment for the violation.

#### III. Request for Meeting

If you wish to have a meeting before the Reviewing Officer to provide evidence that you believe would mitigate the proposed civil penalty assessment or contest a particular issue(s), you should submit your request in writing and include the mitigating information and specify the issues of concern to be discussed. Send your request by U.S. mail or email to:

Bill Smith, Reviewing Officer  
Bureau of Safety and Environmental Enforcement  
1201 Elmwood Park Boulevard, GE 1073E  
New Orleans, LA 70123-2394  
bob.smith@bsee.gov

Prior to a meeting, you may examine all evidence in the case file except that portion exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

#### IV. Payment Procedures

You must pay the civil penalty by wire transfer to ONRR using the FEDWIRE Deposit System. Please identify the payment (wire transfer) as an OCS civil penalty. Include the case number, lease number, invoice number, and your company's ONRR Financial System Customer Code. This will ensure that the payment is properly credited.

The Instruction Guide for Accessing FEDWIRE Deposit System can be found at [www.onrr.gov/FM/PayInfo.htm](http://www.onrr.gov/FM/PayInfo.htm). Questions on wire transfers should be directed to General Ledger Team, ONRR, at (800) 525-0309, extension 3887, or (303) 231-3887.

If neither the funds nor a response is received within 30 days after receipt of this notice, the time period for you to exercise your right to a meeting or to submit additional information will have expired and the Reviewing Officer will make a decision based on the materials on hand at that time.

#### **Example:**

Amount of Wire	\$100,000.00
Receiver ABA	021030004
Receiver Name	TREAS NYC
Business Function Code	CTR
Originator	Company Name Company Contact, Telephone Number
Beneficiary:	
ID Code	D
Identifier	14170001
Name and Address	Department of the Interior Office of Natural Resources Revenue Denver, Colorado
Originator to Beneficiary	OTH1234567890 (Invoice Number) 09999 (ONRR Assigned Company Number), FED (Indicates Federal Payment) Civil Penalty Case No. G-9999-999 Lease No. OCS-G 99999 (Lease Number)

## Payment and Appeal Information

*[Note to Reviewing Officer: This document should be enclosed with the Final Decision Letter]*

### I. General Provisions

Within 60 days after the date of receipt of this decision, you must accomplish one of the following:

1. Pay the civil penalty to the Office of Natural Resources Revenue (ONRR); or
2. Appeal to the Interior Board of Land Appeals.

### II. Your Rights

You have the right to an administrative appeal to the Interior Board of Land Appeals, pursuant to 30 CFR 290.2, within 60 days of receiving this decision (see Section I, above). During the 60 days, you may ask the Reviewing Officer's next-level supervisor to review the final decision. This review does not affect the 60-day requirement to either pay the penalty or file an appeal.

Unless you file an appeal in accordance with instructions set forth in Section V of this enclosure, this decision becomes final.

### III. Payment Procedures.

You must pay the civil penalty by wire transfer to ONRR using the FEDWIRE Deposit System. Please identify the payment (wire transfer) as an OCS civil penalty. Include the case number, lease number, invoice number, and your company's ONRR Financial System Customer Code. This will ensure that the payment is properly credited.

The Instruction Guide for Accessing FEDWIRE Deposit System can be found at [www.onrr.gov/FM/PayInfo.htm](http://www.onrr.gov/FM/PayInfo.htm). Questions on wire transfers should be directed to General Ledger Team, ONRR, at (800) 525-0309, extension 3887, or (303) 231-3887.

#### **Example:**

Amount of Wire	\$100,000.00
Receiver ABA	021030004
Receiver Name	TREAS NYC
Business Function Code	CTR
Originator	Company Name Company Contact, Telephone Number

#### Beneficiary:

ID Code	D
Identifier	14170001
Name and Address	Department of the Interior Office of Natural Resources Revenue Denver, Colorado

Originator to Beneficiary	OTH1234567890 (Invoice Number)
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09999 (ONRR Assigned Company Number), FED (Indicates  
Federal Payment)  
Civil Penalty Case No. G-9999-999  
Lease No. OCS-G 99999 (Lease Number)

#### IV. Collection Actions

The debt becomes delinquent on the 61<sup>st</sup> day after the date of receipt of the Reviewing Officer's final decision. If the debt becomes delinquent, the result will be a collection of the civil penalty, plus interest, late payment charges, and other fees as provided by law, from the date you received this decision until the date ONRR receives payment.

If your payment is not received immediately, we will take the following collection actions, as necessary, to enforce compliance: issue an additional Notice of Noncompliance and Civil Penalty (30 CFR § 250.1451; 30 CFR § 1241.51); demand payment from lease surety; report your delinquency to a credit bureau including the amount of the debt, date of delinquency, stage of collection, current balance and high balance; refer the debt to the Department of Treasury for collection; refer the debt to a private collection agency; report the debt to the Department of Justice for litigation; refer the debt for administrative offset; report the debt to the Internal Revenue Service for tax refund offset or, if written-off, report the debt as income; and request shutting-in the wells and canceling lease(s), right-of-ways, permits, or licenses.

#### V. Notice of Appeal

You have the right to appeal in accordance with the provisions of 30 CFR Part 290, 30 CFR 250.1409, and 43 CFR Part 4, Subpart E. For your appeal to be filed, the Reviewing Officer must receive all of the following within 60 days after you receive the Reviewing Officer's decision:

1. A written Notice of Appeal together with a copy of the Reviewing Officer's decision you are appealing. You cannot extend the 60-day period for the Reviewing Officer to receive your Notice of Appeal;
2. A nonrefundable processing fee of \$150. You must pay this fee through [www.pay.gov](http://www.pay.gov). Once you get into [www.pay.gov](http://www.pay.gov), use form "BSEE Fee for Appeals." You will enter a contact name, telephone number, your company name, and your BSEE-assigned 5-digit company number. Under description, identify the number of the civil penalty case you are appealing. You cannot extend the 60-day period for payment of the processing fee; and
3. Evidence you submitted a surety bond in the amount of the penalty.

The surety bond must be submitted to the Bureau of Ocean Energy Management's (BOEM's) Leasing and Responsibility Unit of the appropriate region:

AKOCSR BOEM Leasing Activities Section 949 E. 36 <sup>th</sup> Room 308 Anchorage, AK 99508-4363 907-271-6010	GOMR BOEM Leasing & Responsibility Unit 1201 Elmwood Park Blvd. MS 5422 New Orleans, LA 70123-2394 504-736-2803	POCSR BOEM Regional Supervisor Office of Strategic Resources 770 Paseo Camarillo Camarillo, CA 93010 805-389-7585
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Instructions on submitting the surety bond can be obtained from the Leasing and Responsibility Unit.

In the alternative, you may notify the Leasing and Responsibility Unit/designated office that you want your lease-specific/area-wide bond on file to be used to cover the penalty amount. The BOEM Regional Director may determine that additional security (i.e., security in excess of your lease-specific/area-wide bond) is necessary to ensure sufficient coverage during the appeal.

If additional security is required, the BOEM Regional Director will require that you post the supplemental bond in a manner consistent with the regulations established for supplemental bonding in 30 CFR §556.53(d) through (f). If the BOEM Regional Director determines the specific appeal should be covered by a lease-specific abandonment account then you must establish an account consistent with the rules and regulations established in 30 CFR §556.56.

You must file a statement of the reasons for filing the appeal within 30 days of filing the Notice of Appeal. This must be filed with the U.S. Department of the Interior, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (see 43 CFR § 4.412). Copies of your statement of reasons must be sent to the Reviewing Officer and the appropriate Office of the Solicitor identified in 43 CFR § 4.413. If you fully stated your reasons for appealing when filing your Notice of Appeal, no additional statement is necessary.

## Appendix C – Case File Log / Index of an Administrative Record for Civil Penalty Appeals

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- The Administrative Record Index template serves two purposes:
  1. Case File Log— The Regional Coordinator and Reviewing Officer should use the Administrative Record Index as the case file log.
  2. Administrative Record Index— The document also serves as the administrative record index if a case is appealed.
- A file log will be initiated whenever a violation undergoes an OCS civil penalty review. The file log will be initiated by the Regional OCS Civil Penalty Program Coordinator (or the District/Program Office, as an inventory of items included in the draft case file transmitted to the Regional Coordinator).
- The file log must be kept as the top sheet(s) or stapled to the inside front cover of the file folder. Additional sheets will be placed on top of the first sheet, as needed.
- Enter the **Case Number** assigned by TIMS.
- Enter the date of the **Item** (letter date, date of phone conversation, etc.).
- **Item Descriptions** should state if it is a memo, letter, note, etc., the “To” and “From” and the subject.
- If the item is physical evidence, include a brief description and location of the evidence in a note to the file.
- **Contact/Phone Number:** The name, title, and phone number of the person who can answer questions or provide additional information regarding the item placed in the file.

### Administrative Record Index

Page <u>1</u> of <u>2</u> OMM Appeals File Index		
BSEE Civil Penalty Case Number: <u>G-2012-060</u>		
Operator: <u>Generic Energy Corporation</u>		
OMM Appeal Number: <u>OMMG-2013-002</u>		
IBLA Docket Number (added by IBLA): _____		
Item No.	Date	Item Description
<b>G</b>	<b>Bond Information</b>	
G-1	3/07/2013	Request for existing bond(s) to be utilized for the Notice of Appeal, Received 3/07/2013
<b>F</b>	<b>Appeal-Related Correspondence</b>	
F-1	3/07/2013	Date of Notice of Appeal and date hand delivered and received by BSEE
<b>E</b>	<b>Final Decision Letter</b>	
E-1	1/11/2013- 1/16/2013	<ul style="list-style-type: none"> <li>FedEx delivery receipt for Final Decision (Corrected letter)</li> <li>Corrected Final Decision of Civil Penalty Assessment Sent</li> <li>Final Decision of Civil Penalty Assessment Sent</li> <li>ONRR Invoice</li> </ul>
<b>D</b>	<b>Post-Meeting Correspondence</b>	
	10/15/2012	Email correspondence between Mr. Bill Smith, BSEE Civil Penalty Reviewing Officer, and Mr. Steve Stephens, Generic Energy, requesting further clarification from meeting.
<b>C</b>	<b>Pre-Meeting and Meeting Correspondence</b>	
C-3	10/09/2012	Civil Penalty Meeting Notes
C-2	9/28/2012	Received Stone Energy's PowerPoint response to the Notice of Proposed Civil Penalty, pre-meeting information.
C-1	9/05/2012- 9/26/2012	<ul style="list-style-type: none"> <li>Received Formal Letter from Mr. Steve Stephens, Generic Energy Corporation Engineering Manager, requesting a meeting to present the facts of the case.</li> <li>Meeting scheduled for October 9, 2012</li> </ul>
<b>B</b>	<b>Initial Civil Penalty Review</b>	
B-7	8/08/2012- 8/07/2012	<ul style="list-style-type: none"> <li>Notice of Proposed Civil Penalty Assessment from Mr. Bill Smith, BSEE Civil Penalty Reviewing Officer, to Mr. Steve Stephens, Generic Energy.</li> <li>FedEx delivery receipt for Notice of Proposed Civil Penalty</li> </ul>
B-6	7/23/2012	Final Civil Penalty Worksheet
B-5	7/19/2012	Operator Performance Review, Operator Statistics
B-4	7/19/2012	Civil Penalty History, Operator Normalized Criteria

B-3	7/19/2012	Civil Penalty Operator INC History
B-2	7/19/2012	Civil Penalty Operator History, Case Details
B-1	4/10/2012- 4/09/2012	<ul style="list-style-type: none"> <li>• FedEx Receipt of Delivery of Civil Penalty Advisement Letter</li> <li>• Civil Penalty Advisement Letter from BSEE Regional Coordinator, Ms. Sue Jones, to Mr. Steve Stephens, Generic Energy Corporation.</li> <li>• Reviewing Officer Assigned</li> </ul>
<b>A</b>	<b>Civil Penalty Case File Forwarded by District Office</b>	
A-1	4/06/2012- 12/29/2011	<p>Civil Penalty Case Report and Case File, which includes the following:</p> <p>Attachment A: BSEE inspectors Mr. A. Adams and Mr. B. Doe issued INCs to Generic Energy. The INCs includes G-110, G-253, and E-108.</p> <p>Attachment B: Mr. John Stone, Production Inspection Unit Supervisor of the BSEE New Orleans District Office received INC response from Mr. Tom Thompson, Production Engineering Manager.</p> <p>Attachment C: Generic Energy “Item Lost Overboard Notification Form”</p> <p>Attachment D: Generic Energy Workover Report –Summary of Operations</p> <p>Attachment E: Facility Log Book</p> <p>Attachment F: Statements from operators</p> <p>Attachment G: Pictures of a wireline jarring tool</p>

## **Appendix D – USCG/MMS MOA: OCS-02 Civil Penalties**

This document was signed and implemented in September 2006, when the Bureau of Safety and Environmental Enforcement, along with ONRR and BOEM, was part of the Minerals Management Service.

BSEE and the USCG have signed a new Memorandum of Understanding and will work with the USCG to update the Memorandum of Agreement regarding Civil Penalties.



**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
MINERALS MANAGEMENT SERVICE – U.S. DEPARTMENT OF THE INTERIOR  
AND THE  
U.S. COAST GUARD – U.S. DEPARTMENT OF HOMELAND SECURITY**

MMS/USCG MOA: **OCS-02**

Effective Date: **September 12, 2006**

**SUBJECT: CIVIL PENALTIES**

**A. PURPOSE**

The purpose of this Memorandum of Agreement (MOA) between the Minerals Management Service (MMS) and the U.S. Coast Guard (USCG) is to identify responsibilities and provide guidance regarding the pursuit, assessment, and collection of Civil Penalties.

This MOA replaces Section 2 (Civil Penalties) of MOA OCS-01: Agency Responsibilities, dated 30 September 2004. Implementation of this MOA will be in accordance with Section J (Memorandum of Agreements – Development and Implementation) of the Memorandum of Understanding (MOU) between the MMS and USCG dated 30 September 2004. The participating agencies will review their internal procedures and, where appropriate, revise them to accommodate the provisions of this MOA.

**B. STATUTORY AUTHORITIES**

The USCG and MMS enter this agreement under authority of 14 USC §141 – Coast Guard Cooperation with Other Agencies; 43 USC § 1347, 1348(a) - the Outer Continental Shelf Lands Act (OCSLA), as amended; 33 USC § 2712 (a)(5)(A) - the Oil Pollution Act of 1990 (OPA); and 43 USC §§ 1301-1315 - the Submerged Lands Act (SLA), as amended.

The MMS regulation is 30 CFR § 250.1400 – Subpart N, Outer Continental Shelf (OCS) Civil Penalties, issued pursuant to 43 USC § 1350.

Applicable USCG regulations are found under 33 CFR, Subchapter N -- Outer Continental Shelf Activities, Parts 140-147.

**C. JURISDICTION**

The MMS is responsible for managing the Nation's mineral resources which include oil, natural gas, and renewable energy development in a safe and environmentally safe manner. Under the OPA, the MMS is also responsible for oil spill planning and preparedness activities for all facilities located in both State and Federal offshore waters. Jurisdiction includes the area extending seaward of the coastline to the exclusive economic zone of the United States.

The USCG is responsible for protecting the marine environment and promoting the safety of life and

property on the OCS. The USCG regulates OCS facilities, mobile offshore drilling units, and vessels engaged in OCS activities through compliance inspections and enforcement of regulatory requirements related to personnel, workplace safety and health, operations, and emergency equipment and procedures.

## **D. AGENCY RESPONSIBILITIES**

The OCSLA-based regulations under 33 CFR Subchapter N are the USCG regulations that would be appropriate for MMS civil penalty assessment. If it is determined that a violation may warrant a civil penalty under the provisions of the OCSLA, the MMS (for the Secretary of the Interior) is the agency that will assess, pursue, and collect civil penalties for that violation. The USCG retains civil penalty action authority for vessel-related activities under Title 46 USC and for the OPA/MARPOL regulations incorporated in Title 33 CFR.

The regulatory authority allows both the MMS and the USCG to inspect for violations of Title 33 Subchapter N. Therefore, the MMS Civil Penalty Program may receive a USCG violation to review from either the USCG or from within the MMS, depending on which agency cited the violation. Because Subchapter N requires a period of corrective action, the MMS will not review those USCG violations that constitute or constituted a threat of serious, irreparable, or immediate harm, for civil penalty purposes, until Subchapter N, “Sanctions” reflects 43 USC § 1350 (b)(2).

### **1. USCG PROCESS**

If the violation is cited by the USCG, the USCG will investigate and document OCSLA-based violation cases according to the procedures in 33 CFR §140.40 with the following clarification: the cognizant Officer-in-Charge, Marine Inspection (OCMI) will confirm that a violation occurred and establish a reasonable time for the violator to fix the problem. The OCMI may do this in consultation with MMS, particularly on matters in which MMS has expertise or knowledge of industry practice. If the violator does not correct the problem, or does not file an appeal with the appropriate USCG official in the allotted time, the OCMI will refer the case to MMS, for civil penalty action, pursuant to 43 USC §1348 (a). The OCMI may require immediate corrective action for more serious deficiencies, including those that constitute a threat of serious, irreparable, or immediate harm; however, a violation case shall not be initiated until after the party has been notified of the deficiency and fails to comply with an order to correct the deficiency.

When referring a case to the MMS, the OCMI will forward the following information:

- a. The case file, which consists of a summary of the investigation and a USCG determination of the regulations violated. This should include the date(s) of the violation, when the violator was notified, the time period given to correct the violation, and the follow-up that confirmed the violation was not corrected during that time period.
- b. A description of the seriousness of the violation and any incidents actually associated with the violation.
- c. If requested, additional information concerning the merits of a civil penalty action. All physical evidence remains with the USCG, but will be made available to the MMS upon request.

If the violator files an appeal of a USCG enforcement action, the USCG will not forward the case to MMS until the appeal has been resolved.

Upon receipt of the violation report, the MMS OCS Regional Civil Penalties Program

Coordinator will appoint a Reviewing Officer (RO) who will process the report in accordance with the procedures outlined in the MMS OCS Criminal/Civil Penalties Program Guidebook (Attachment 1).

Notification of the MMS RO's decision regarding the civil penalty assessment, collection, compromise, or dismissal shall be provided to the OCMI originating the violation report.

Any item, collection or grouping of information about an individual, or that can be retrieved by using the name of the individual, that is obtained by the USCG pursuant to an investigation into OCSLA violations must be maintained or used in compliance with the Privacy Act (5 U.S.C § 552a) and entered into an appropriate system of records.

## **2. MMS PROCESS**

If MMS cites the violation, then the violation will follow the procedures outlined in OCS Civil Penalty Program Flow Charts located in the OCS Civil Penalties Program Guidebook (Attachment 1, Pages 26-27.) For cases involving violation of Coast Guard regulations, the MMS will copy the OCMI on the letter advising the violator of the civil penalty review. After review, the MMS will send a copy of the Notice of Proposed Civil Penalty Assessment and copy of the case file to the OCMI. The MMS will also send a copy of the RO's Final Decision, and appeal information, if applicable; and notify the OCMI when payment is made and the case is closed.

If, after receiving a copy of either the advisement letter or the Notice of Proposed Civil Penalty Assessment, the USCG would like to participate in the process (either by providing additional information or attending meetings), the OCMI will contact the MMS Reviewing Officer. The USCG will neither contact the violator nor discuss any part of the civil penalty case with the violator; the USCG will refer any civil penalty discussions to the MMS RO.

## **3. CONTACTS**

Agency staff responsible for implementation and maintenance of this MOA are:

- a. MMS           National Civil Penalties Coordinator  
                    MMS Headquarters  
                    Offshore Minerals Management  
                    Office of Offshore Regulatory Programs  
                    Safety and Enforcement Branch – MS 4023  
                    381 Elden Street  
                    Herndon, VA 20170
- b. USCG        Commandant (G-PCA-1)  
                    U.S. Coast Guard  
                    Office of Investigations and Analysis  
                    2100 2nd Street, S.W.  
                    Washington, D.C. 20593-0001

## **E. GENERAL PROVISION**

This MOA does not alter, amend, or affect in any way, the statutory authority of the MMS or the USCG. This MOA cannot be used to obligate or commit funds or as the basis for the transfer of funds. All provisions in this MOA are subject to the availability of personnel and funds. The MOA is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other

person. This MOA neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable law. It is the intent of the parties that the MOA remain in force even if a portion of it is determined to be unlawful, provided the remaining portion can be read coherently and understood.

## **F. AMENDMENTS TO THE MOA**

This MOA may be amended by mutual agreement of the participating agencies as described in Section J of the MMS/USCG MOU dated 30 September 2004.

## **G. TERMINATION**

The MOA may be terminated by either party upon a 30-day advance written notification.

---

[original signed]  
Robert P. LaBelle  
Acting Associate Director  
Offshore Minerals Management  
Minerals Management Service  
U.S. Department of the Interior



---

[original signed]  
Rear Admiral Craig E. Bone  
Assistant Commandant for Prevention  
U.S. Coast Guard  
U.S. Department of Homeland Security



## Appendix E – Assessment Tables

### Civil Penalty Assessment Table

July 30, 2011

(maximum penalty based on the October 2010 Consumer Price Index)

GENERALIZED TABLE FOR CIVIL PENALTY ASSESSMENTS IN \$/DAY/VIOLATION			
Enforcement Code	Category A	Category B	Category C
<b>W</b>	\$5,000 – 40,000 (\$15,000)*	\$10,000 – 40,000 (\$20,000)*	\$20,000 – 40,000 (\$25,000)*
<b>C</b>	\$10,000 – 40,000 (\$20,000)*	\$15,000 – 40,000 (\$25,000)*	\$30,000 – 40,000 (\$35,000)*
<b>S</b>	\$15,000 – 40,000 (\$25,000)*	\$20,000 – 40,000 (\$30,000)*	\$35,000 – 40,000 (\$37,000)*

Note: W = Warning, C = Component Shut-in, and S = Facility Shut-in;

\* = Starting Point for Assessment

<u>Category A</u>	<u>Category B</u>	<u>Category C</u>
Threat of injury to humans. Threat of harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life (threat may or may not involve endangered/threatened species). Threat of pollution. Threat of damage to any mineral deposit or property.	Injury to humans that result in 1-3 days away from work or 1-3 days on restricted work or job transfer. Minor harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life (harm to aquatic life did not involve an endangered/threatened species.) Pollution caused by liquid hydrocarbon spillage of up to 50 bbl. Minor damage to any mineral deposit. Minor property damage equal to or less than \$25,000. Additional incidents required to be reported under 30 CFR 250.188, except a(6), b(1), and b(4).	Loss of human life. Injury to humans that result in more than 3 days away from work or more than 3 days on restricted work or job transfer. Serious harm or damage to the marine or coastal environment, including mammals, fish, and other aquatic life (harm to aquatic life involved numerous individuals or involved one or more members of an endangered/threatened species.) Pollution caused by liquid hydrocarbon spillage of more than 50 bbl. Serious damage to any mineral deposit. Serious property damage greater than \$25,000.

The assessment table above applies to any violation occurring on or after July 30, 2011. When using this table, the Reviewing Officer should use the starting point for the initial assessment. He/she should then consider these additional factors within each category range:

1. Record of compliance (annual performance review data [3 years], and District Office summary).
2. Severity of the violation(s).
3. Precedents set by similar cases.
4. Civil penalty case history.

Additional factors 1 and 4 can be used to raise the penalty amount within the category. Additional factors 2 and 3 can raise or lower the penalty amount within the category.

<b>Amounts of Civil Penalties for Noncompliance with Oil Spill Financial Responsibility (OSFR) Requirements<sup>1</sup></b>			
	PERIOD OF NONCOMPLIANCE		
CATEGORY OF NONCOMPLIANCE	First week	Second and third weeks	After 3 weeks
Failure to submit OSFR evidence	\$1000	\$2,500 per week	\$1000 per day
Failure of a Responsible Party to prepare Form BOEM-1017 (Designation of Applicant)	\$1,500	\$3,000 per week	\$1000 per day
Lapse in OSFR coverage	\$3000	\$5,500 per week	\$1,500 per day
Cancellation of OSFR coverage without alternative in place	\$3,000	\$5,500 per week	\$1,500 per day
Failure to correct an erroneous or inadequate submission within 30 days of BOEM request <sup>2</sup>	\$600	\$750 per week	\$1,500 per week
Notes: 1. Penalties will be doubled each time there is an additional violation within 2 calendar years of the first violation, up to a maximum of \$30,000 per day. The penalty amounts in this table will be updated periodically as needed to ensure compliance. 2. Includes under-subscribed insurance slips, use of insurers not rated “secure” or better, errors in lease, permit, or right-of-use and easement identification and similar problems with the OSFR evidence submitted.			

<b>Amounts of Civil Penalties for Noncompliance with Bond Requirements<sup>1, 2</sup> and Failure to Correct Violations/G&amp;G Violations<sup>2</sup></b>			
	<b>PERIOD OF NONCOMPLIANCE</b>		
<b>CATEGORY OF NONCOMPLIANCE</b>	<b>First Week</b>	<b>Second and third weeks</b>	<b>After 3 weeks</b>
<b>Noncompliance with Bond Requirements</b>			
Failure to correct an erroneous or inadequate submission within 30 days of BOEM request <sup>3</sup>	\$1000	\$2,500 per week	\$1000 per day
Failure to submit required bond or to make an incremental payment required by BOEM	\$1500	\$3,000 per week	\$1000 per day
Lapse in bond coverage	\$3,000	\$5,500 per week	\$1,500 per day
Cancellation of bond without alternate coverage	\$3,000	\$5,500 per week	\$1,500 per day
<b>Failure to Correct Violations</b>			
Failure to correct an incident of noncompliance	\$750	\$1000 per week	\$1,500 per week
G&G violations	\$750	\$1000 per week	\$1,500 per week
<b>Notes:</b> 1. "Bond" means any lease, area-wide, right-of-way or supplemental bond required by BOEM, and other financial instruments and payments BOEM has indicated it will accept in lieu of these bonds. 2. Penalties will be doubled each time there is an additional violation within 2 calendar years of the first violation, up to a maximum of \$30,000 per day. The penalty amounts in this table may be updated periodically as needed to ensure compliance. 3. Includes use of insurers not rated for the required bond level, lapse in an insurer's rating for the required bond level, use of signatories not authorized by BOEM and similar problems with the bond information submitted.			

Note: These proposed amounts are the same as the OSFR values. If the OSFR values change, similar changes to these may be needed.