

**Bureau of Safety and Environmental Enforcement
Interim Policy Document**

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Series: 650 - Inspection and Enforcement

Title: Issuance of an Incident of Non Compliance (INC) to Contractors

Originating Office: Office of Offshore Regulatory Programs

1. **Purpose:** The policy provides for consistency in the application of the Bureau of Safety and Environmental Enforcement's (BSEE) enforcement authority by establishing the parameters by which the bureau will consider the issuance of INCs to contractors in addition to the operators conducting offshore exploration, development and production activities.
2. **Authority:** The Secretary of the Interior ("the Secretary") has regulatory jurisdiction over all entities that perform activities under provisions related to leasing of the Outer Continental Shelf (OCS) under the Outer Continental Shelf Lands Act (OCSLA) (43 USC §§ 1334 (a) and 13509b)) Under Secretarial Order 3299, the Secretary has delegated to BSEE responsibility for safety and environmental enforcement functions including, but not limited to, the authority to permit activities, inspect, investigate, summon witnesses and produce evidence; levy penalties; cancel or suspend activities; and oversee safety, response and removal preparedness. Starting in 2011, BSEE has exercised its authority over contractors by issuing INCs to Transocean and Halliburton following the *Deepwater Horizon* tragedy for violations found to have contributed to the loss of well control.
3. **Policy/Action:** Any person performing an activity under a lease issued or maintained under the Outer Continental Shelf Lands Act (OCSLA) has responsibility for compliance with regulations applicable to that activity, is obligated to take corrective action, and is subject to civil penalties for a failure to comply. As a general matter, because all operations on a lease must be performed in a safe and workmanlike manner and work areas maintained in a safe condition (30 CFR §§ 250.107(a) (1) and (a) (2)), contractors performing regulated activities can be held responsible for a wide range of conduct.

Guidance on issuance of Incidents of Noncompliance

BSEE will hold lessees and operators directly and fully responsible for all activity conducted under a lease issued or maintained under OCSLA without limiting its ability to pursue enforcement actions against contractors.

While the primary focus of BSEE's enforcement actions will continue to be on lessees and operators, BSEE will, in appropriate circumstances, issue incidents of noncompliance ("INC") to contractors for serious violations of BSEE regulations. The issuance of an INC to a contractor does not relieve the lessees from liability. In fact, in instances in which INCs are issued to a contractor, INCs will also be issued to the lessee or operator.

BSEE will consider the following four factors in determining whether to issue INCs to contractors:

1. The type of the violation,
 - Did the act or failure to act violate health, safety, or environmental requirements?

2. The harm (or threat of harm) resulting from the violation,
 - Did the violation directly result in, or could the violation have directly resulted in, serious injury or environmental damage?
3. Foreseeability of harm (or threat of harm),
 - Was it reasonably foreseeable that the violation could directly result in serious injury or environmental damage?
4. The extent of the contractor's involvement in the violation(s),
 - Did the contractor have control over the activity that resulted in the violation?
 - Did the contractor's act or failure to act play a significant role in the violation?
 - Did the contractor know or should the contractor have known that the activity may result in a violation?

The list above is intended to provide general guidelines for enforcement actions against contractors who are determined after a complete review of the facts to have engaged in egregious conduct. If an inspector believes that an INC should be issued to a contractor, the facts and circumstances related to the activity should be forwarded to the District Supervisor for consideration. The District Supervisor will review and validate the facts related to the activity before applying the four factors listed. The District Supervisor will document all facts related to the decision to issue any INCs. This policy statement is intended for internal agency guidance only. It is not intended to create any rights in or impose any duties on any person performing an activity under the OCSLA, or to establish any cause of action against BSEE or its employees.

4. **Expiration:** This IPD remains valid until superseded.
5. **Contact:** Doug Morris, Chief, Offshore Regulatory Programs, 202-208-3500.



James A. Watson, Director

AUG 15 2012

Date