

UNITED STATES DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

NTL No. 96-7N

Effective Date: December 10, 1996

NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL, GAS, AND SULPHUR
LEASES IN THE OUTER CONTINENTAL SHELF

Outer Continental Shelf (OCS) Civil Penalties Program

The purpose of this notice is to provide information on the OCS Civil Penalties Program. Changes have occurred both in the law governing the civil penalties program and in the Minerals Management Service (MMS) policy concerning civil penalty assessments. Please note the following items:

- 1) In August 1990, the Oil Pollution Act (the Act) was passed. This act strengthened section 24 of the OCS Lands Act (OCSLA) amendments of 1978. Subtitle B of the Act, entitled "Penalties," increased the amount of the civil penalty from a maximum of \$10,000 to a maximum of \$20,000 for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes 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; the Act provided the Secretary of the Interior with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

The MMS promulgated a final rule, published May 13, 1991, in the Federal Register, Volume 56, Number 92, Page No. 21953, incorporating the Act's language into subpart N, at 30 CFR 250.200. The MMS is in the process of rewriting subpart N. The new regulations, written in "plain English," will make it easier to understand the assessment process.

- 2) In January 1996, MMS further defined its policy related to the assessment of civil penalties. Violations that cause injury, death, or environmental damage, or pose a threat to human life or the environment, will trigger a civil penalty review. Examples of such violations include:
 - Unsafe and unworkmanlike operations involving pollution or injury to humans.
 - Safety devices; e.g., surface and subsurface safety valves, emergency shut-down systems, etc., that are:
 - (a) Bypassed or removed without (1) a valid reason, (2) prior approval, or (3) lockout-tagout, flagging or monitoring, or
 - (b) Inoperable; i.e., failures but are left in service without repair.

In addition to clarifying the types of violations that may be reviewed for civil penalties, MMS developed a new generalized matrix for determining civil penalty amounts. The categories shown below relate to the severity of the violation and the compliance history of the violator.

Penalties will generally be assessed within the ranges shown below; however, MMS reserves the right to assess additional amounts when circumstances warrant.

**GENERALIZED MATRIX FOR CIVIL PENALTY
ASSESSMENTS IN \$/DAY/VIOLATION**

Enforcement Code*	Category I	Category II	Category III
W	\$1,000 - 10,000	\$3,000 - 15,000	\$5,000 - 20,000
C	\$3,000 - 10,000	\$5,000 - 15,000	\$10,000 - 20,000
S	\$5,000 - 10,000	\$10,000 - 15,000	\$15,000 - 20,000

*W=Warning, C=Component Shut-in, and S=Facility Shut-in

<u>Category I</u>	<u>Category II</u>	<u>Category III</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 of pollution involving potential liquid hydrocarbon spillage of under 200 BBL over a period of 30 days. Threat, no damage to any mineral deposit. First time offense <u>or</u> second offense with lengthy interval since first offense. Excellent/above average record of compliance.	Threat of significant injury to humans, or actual injury involving incapacitation of less than 72 hours. Injury threat involved the potential for substantial impairment of a bodily function or unit; i.e., lost time accident. Threat to aquatic life involving numerous individuals or endangered/threatened species. Actual pollution under 200 BBL, <u>or</u> threat of pollution involving a potential liquid hydrocarbon spillage of over 200 BBL over a period of 30 days. Minor damage to any mineral deposit. Second/third offense for same violation. Average record of compliance.	Serious injury to humans or loss of human life. Injury caused substantial impairment of a bodily function or incapacitation over 72 hours; i.e., lost time accident. 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 endangered/threatened species. <u>Or</u> pollution caused liquid hydrocarbon spillage of over 200 BBL during a period of 30 days. Damage to any mineral deposit. Substantial decrease in ultimate recovery. Multiple offender; multiple violations. Poor record of compliance.

- 3) There is a 5-year statute of limitations for civil penalties under 28 U.S.C. 2462. Violations of the OCSLA may be reviewed for civil penalties up to 5 years after the date of violation. Companies should take this into consideration when establishing their record retention policies.
- 4) An organizational unit has been established with MMS headquarters and regional representatives, personnel have been designated and trained as Reviewing Officers for each Region, and the MMS's civil penalties program is active.

Additional information about this program can be found on the MMS worldwide web home page,

<http://www.mms.gov>, or by calling the:

OCS Civil/Criminal Penalties Program Coordinator at (703) 787-1616,
Chief, Civil Penalties Unit, Gulf of Mexico Region at (504) 736-2923,
Pacific Region Civil Penalties Program Coordinator at (805) 389-7583, or
Alaska Region Civil Penalties Program Coordinator at (907) 271-6514

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Robert E. Brown
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for Offshore Minerals Management