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BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT  
Alaska OCS Region  
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Anchorage, Alaska 99503-5823

Mr. Bill Schoellhorn  
Exploration Director Alaska  
Statoil  
3800 Centerpoint Drive, Suite 920  
Anchorage, Alaska 99503

OCT 16 2015

Dear Mr. Schoellhorn:

The Bureau of Safety and Environmental Enforcement - Alaska Region (BSEE) received the Suspension of Operations (SOO) request submitted by Statoil on July 14, 2014. In that request, you asked BSEE to act pursuant to its authority under 30 C.F.R. § 250.168 et seq., to grant SOOs for all leases held by Statoil in the Chukchi Sea. Specifically, you requested seasonal SOOs “for Statoil leases for the time period outside of the drilling window established...each year.” You subsequently broadened your request in a supplemental submittal received by BSEE on September 4, 2015. The supplemental submittal provided additional reasoning to support the original request, while expanding that request to also include the possibility of a blanket 5-year suspension to “ensure that Statoil would have time to implement the new requirements for exploratory drilling, once those requirements are finalized.” After a thorough review of the subject request and its supplement, including the cited justifications and applicable laws and regulations, BSEE finds that Statoil has not demonstrated that granting the SOO is justified under the applicable regulatory standards. The request is hereby denied.

To date, Statoil has not provided a schedule or plan for commencing leaseholding operations on any of its Chukchi Sea leases. As such, BSEE finds that Statoil has failed to satisfy the requirements of 30 C.F.R. § 250.171(b). Specifically, Statoil has failed to submit “a reasonable schedule of work leading to the commencement or restoration of the suspended activity.” BSEE further finds that Statoil’s application fails to make a sufficient showing under 30 C.F.R. § 250.172 or § 250.175(a) to justify the discretionary approval of a suspension by BSEE. See attached Decision Memo from Mark Fesmire, BSEE Regional Director for Alaska to Brian Salerno, BSEE Director.

Nothing in this letter precludes Statoil from submitting future SOO requests prior to expiration of its leases, if facts and circumstances relevant to the regulatory grounds for suspensions change.

If you have any questions, please contact me at (907) 334-5300, or via e-mail at [kevin.pendergast@bsee.gov](mailto:kevin.pendergast@bsee.gov).

Sincerely,

  
Kevin J. Pendergast, PE CPG  
Regional Supervisor, Field Operations

Enclosures:

1. Decision Memorandum

## DECISION MEMORANDUM

From: Mark Fesmire, Regional Director for Alaska, Bureau of Safety and Environmental Enforcement (BSEE) *MEF*  
To: Brian Salerno, BSEE Director  
Date: October 16, 2015  
Subject: Denial of Statoil's Request for a Suspension of Operations on Chukchi Sea Leases

### I. Introduction

This memorandum provides the reasoning and analysis that has led the BSEE Alaska Region to conclude that Statoil's request for a Suspension of Operations (SOO) should be denied for leases it currently holds in the Chukchi Sea.

### II. Background

#### A. Statoil's Request

On July 3, 2014, Statoil made its initial request for an SOO on each of the 16 leases it holds in the Chukchi Sea, and then submitted a "Supplement" to that request on September 2, 2015. Statoil sought "suspensions for Statoil leases for the time period outside of the drilling window established by BSEE each year, which allows for only limited operations on the leases." Statoil claimed that the SOOs were warranted "to help ensure that Statoil and other leaseholders have sufficient time to develop these important energy resources in a safe, timely, and cost effective manner."

In support of its request, Statoil cited recurring ice conditions and a host of other issues that it claims are beyond its control, including various regulatory requirements and restrictions.

Statoil's initial request appeared to seek discretionary SOOs under the applicable authorities, and noted that it was in the national interest for BSEE to grant the SOOs. Its supplemental submission made clear that it was inviting BSEE, pursuant to 30 C.F.R. § 250.173(b), to direct a suspension on the leases because doing so would be "in the interest of National security or defense."

Between April and June, 2015, BSEE and Statoil had a number of meetings and telephone conferences to discuss further Statoil's request. In discussions held on April 9 and April 22, Statoil and BSEE discussed a number of issues, including how BSEE might exercise its suspension authority and a number of conceptual and practical issues associated with the grant of

any suspensions. In addition, BSEE indicated that Statoil needed to submit a reasonable schedule of work to support its suspension requests. Following up on those meetings, BSEE and Statoil exchanged e-mails in May/June regarding the reasonable schedule of work requirement.

### *B. Legal Authority to Grant SOOs*

There are two kinds of suspensions allowed under BSEE's regulations: a suspension of operations and a suspension of production.<sup>1</sup> (These are commonly referred to as SOOs and SOPs.) Generally, an SOO is reserved for activities leading up to leaseholding operations, such as drilling, while an SOP is reserved for situations when exploration has occurred and there has been a firm commitment to produce oil and/or gas from the lease. Either type of suspension may, under conditions identified by governing regulations, be granted by BSEE at the request of the lessee or directed by BSEE on its own volition. Briefly discussed here are the legal bases for granting an SOO of the kind requested by Statoil.

OCSLA provides that the Secretary shall prescribe regulations that allow for suspensions under certain limited circumstances. 43 U.S.C. § 1334(a). Those suspension regulations are found at 30 C.F.R. §§ 250.168-177. Suspensions may only be granted for up to five years at a time, but BSEE may grant consecutive suspensions. 30 C.F.R. § 250.170(a). The decision by BSEE whether to grant or direct a suspension is discretionary.

A request for an SOO must include a reasonable schedule of work leading to the commencement or restoration of the suspended activity. 30 C.F.R. § 250.171(b). Further, the request must show that an SOO is necessary for at least one of the following reasons:

- To comply with judicial decrees prohibiting any activities or the permitting of those activities. 30 C.F.R. § 250.172(a).
- When activities pose 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. 30 C.F.R. § 250.172(b).
- To allow for the installation of safety or environmental protection equipment. 30 C.F.R. § 250.172(c).
- To carry out the requirements of the National Environmental Policy Act (NEPA) or to conduct an environmental analysis. 30 C.F.R. § 250.172(d).
- To allow for inordinate delays encountered in obtaining required permits or consents, including administrative or judicial challenges or appeals. 30 C.F.R. § 250.172(e).

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<sup>1</sup> Under the regulations, a suspension is defined as “a granted or directed deferral of the requirement to produce (Suspension of Production (SOP)) or to conduct leaseholding operations (Suspension of Operations (SOO)).” 30 C.F.R. § 250.105.

- To allow time to begin drilling or other operations when the lessee is prevented by reasons beyond its control, such as unexpected weather, unavoidable accidents, or drilling rig delays. 30 C.F.R. § 250.175(a).<sup>2</sup>

### **III. Analysis**

While Statoil did submit a timely suspension request, as explained below, that request does not meet the regulatory requirements for granting a suspension. In sum, Statoil failed to provide BSEE with a reasonable schedule of work and did not provide a factual basis sufficient to support an SOO under the applicable regulations.

#### *A. No Reasonable Schedule of Work*

Neither Statoil's initial submission nor its supplemental submission included a reasonable schedule of work leading to the commencement or restoration of leaseholding operations. These submissions did not contain any tangible details about how Statoil might commence leaseholding operations on the leases in the future. During discussions between Statoil and BSEE about the pending SOO request, BSEE stated numerous times that a reasonable schedule of work was required by applicable regulations; Statoil declined to provide any details about or schedule of planned future operations on any of its leases.

I find that Statoil has failed to comply with the requirements of 30 C.F.R. § 250.171(b). Specifically, Statoil has failed to submit "a reasonable schedule of work leading to the commencement or restoration of the suspended activity."

#### *B. No Basis for Discretionary SOOs*

Statoil's request includes reference to 30 C.F.R. §§ 250.172(a)-(e) and 30 C.F.R. § 250.175 as support for BSEE's issuance of SOOs. As noted above, BSEE cannot issue SOOs under those regulations without a reasonable schedule of work. Moreover, Statoil does not offer any legally sufficient basis for BSEE to issue SOOs under the cited authorities.

The provisions of 30 C.F.R. § 250.172 are inapplicable on their face. There is no judicial decree preventing Statoil from conducting operations, or the permitting of those operations, for purposes of section 172(a), outside of the litigation challenging Lease Sale 193 – pursuant to which Statoil has already received two directed suspensions (from July 21, 2010 to October 26, 2011; and from January 22, 2014 to March 31, 2015) totaling nearly two and a half years, and corresponding extensions to the lease terms. Likewise, Statoil does not assert that its proposed activities should be suspended because they pose a threat of serious, irreparable, or immediate

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<sup>2</sup> 30 C.F.R. §§ 250.175(b) and (c) identify two additional situations in which BSEE may grant an SOO, however the relevant factual predicates are inapplicable to Statoil's Chukchi Sea leases. *See* 30 C.F.R. § 250.175(b) (5- or 8-year leases with subsalt hydrocarbon prospects); 30 C.F.R. § 250.175(c) (5- or 8-year leases with ultradeep prospects).

harm or damage to life, property, or the environment for purposes of section 172(b). Similarly, Statoil is not seeking time to install safety or environmental protection equipment (172(c)) or to comply with NEPA or conduct an environmental analysis (172(d)). Finally, Statoil is not in a position to assert that it has confronted “inordinate delays encountered in obtaining required permits or consents” (172(e)), as it has not sought any permits or consents to conduct operations on its Chukchi Sea leases, much less been inordinately delayed in obtaining them.

Statoil suggests that many regulatory requirements applicable to Arctic operations are “beyond [their] control” within the meaning of 30 C.F.R. § 250.175(a) – but that is not a legitimate reading of that regulation. Statoil, or any other holder of leases in the Alaskan Arctic, should have anticipated at the time of lease acquisition that a number of regulatory requirements would have to be met prior to the conduct of any exploratory drilling operations. All applicable regulations existing at lease acquisition, as well as all future regulations promulgated pursuant to the Outer Continental Shelf Lands Act, are expressly incorporated into the terms of the leases. The applicable regulation, 30 C.F.R. § 250.175(a), is narrowly tailored to address specific events (e.g., unexpected weather, unavoidable accidents, drilling rig delays) “to allow [a lessee] time to begin drilling or other operations” when “prevented by reasons beyond their control” – i.e., when the lessee is otherwise ready and able to drill but prevented by external events from doing so; not when the lessee is unable or unwilling to comply with applicable regulatory requirements. Statoil also suggests that the limited Arctic drilling season justifies SOOs pursuant to section 250.175(a). However, Statoil has not undertaken any tangible efforts to accomplish the necessary preparations or obtain the necessary approvals to actually conduct drilling operations on its Chukchi Sea leases. Accordingly, it is not legitimate to assert that the limited drilling season is what is preventing Statoil from drilling at this time – there are numerous steps fully within the company’s control that are currently standing between it and drilling, in any season.

### *C. “New Developments” Do Not Support SOO Request*

In its supplemental submission, Statoil argues that two new developments provide support for its request for SOOs. Neither “development” provides BSEE with a basis to issue the requested SOOs.

#### 1. Proposed Arctic Regulations

Statoil claims that the Department of the Interior’s (DOI’s) issuance of proposed regulations applicable to Arctic exploratory drilling has “made it impossible for Statoil to explore and begin production on its leases in the term remaining on its primary lease terms.” Statoil claims that “it is not reasonable for Statoil to develop [exploration plans (EPs)] under the current regulations, which have been judged deficient by DOI.” Statoil asserts that DOI’s issuance of proposed Arctic regulations “has, in effect, placed a moratorium on the approval of EPs that are based upon the current regulations.”

Statoil apparently chooses to ignore the fact that another holder of leases in the Chukchi Sea, Shell, was able to conduct operations this year under an EP that was approved by the Bureau of Ocean Energy Management (BOEM) “under the current regulations.” There is no “effective moratorium,” and the existence of proposed Arctic regulations should not stand in the way of Statoil seeking an EP to conduct drilling operations in the Chukchi Sea.

Moreover, DOI’s issuance of proposed Arctic regulations in no way indicates that it has concluded that its current regulations are “deficient.” DOI has simply decided that Arctic-specific regulations are needed to both codify DOI’s existing policies and expectations under current regulatory requirements and to enhance certain other requirements. As noted above, the new regulatory requirements, once promulgated, would be expressly incorporated into the terms of the leases agreed to by Statoil.

## 2. “Broad Consensus” on Inadequacy of 10-Year Leases

In its supplemental submission, Statoil draws our attention to a study conducted by the National Petroleum Council that takes the position that “the current 10-year lease term is inadequate to support developing Alaska’s OCS.” Statoil claims that this conclusion provides support for its SOO request.

Congress has not authorized BOEM to issue leases with a term longer than 10 years. And BSEE does not have the unfettered authority to extend current leases. BSEE is bound to follow its own regulations, which require “a reasonable schedule of work leading to the commencement or restoration of the suspended activity,” among other prerequisites, to support the issuance of an SOO.

### *D. No Support for Directed Suspension*

Statoil’s supplemental submission included an invitation for BSEE to exercise its discretionary authority under 30 C.F.R. § 250.173(b) to issue directed SOOs in the interest of National security or defense. Statoil stated that the production of Arctic oil and gas resources could have a substantial positive impact on U.S. energy independence and energy security. Statoil added that, conversely, “any delay in the production of those resources could have a substantial negative impact on national security.”

Statoil has not provided any information upon which BSEE can conclude that it has concrete plans to develop its Chukchi leases, which makes it impossible to evaluate the extent to which suspending – and thereby extending – Statoil’s leaseholdings would be in the interest of National security or defense. Without any connection between planned future operations and the interests that 30 C.F.R. § 250.173(b) seeks to protect, BSEE is not in a position to issue a directed suspension under this authority.

#### **IV. Decision**

In summary, based upon the information contained both in this memorandum and in the administrative record, Statoil's request for an SOO on its Chukchi Sea Leases is denied.