Leasing of Sulphur or Oil and Gs and Bonding Requirements in the Outer Continental Shelf, 1010-AD06

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Comments:

Section 256.510

For the sake of clarity and to insure that the rules promulgated by the MMS reflect the intent of the Outer Continental Shelf Lands Act, this regulation should be amended to clarify:

- The amount of supplemental bonding required
- The data required to calculate a leaseholders net worth

Currently, these topics are addressed in NTL No. 2008-N07, which grossly overestimates the amount of supplemental bonding required and requires the MMS staff to recalculate a leaseholder's PDP reserve values rather than using third party SEC reserve reports.

Calculating Supplemental Bonding Level

The stated purpose of Supplemental Bonds is ***"To ensure coverage of potential lease, ROW, or RUE decommissioning liabilities and/or other obligations, MMS may determine that you need to provide a supplemental bond as secutiry.."*** Thus, the supplemental bonds should supplement the leaseholders net worth not substitute for the leaseholders net worth. Currently NTL No. 2008-N07 states that if the leaseholders net worth is less than $65 mm or is less then two times the MMS estimate decommissioning liabilities, then the leaseholder must post supplemental bonds equal to the total MMS estimated decommissioning liabilities, rather than setting supplemental bonding amounts equal to the difference between the MMS estimated decommissioning liabilities and the leaseholders net worth. This procedure essentially puts the leaseholders net worth to zero, which is not the stated purpose of this regulation. Also, the NTL sets and arbitrary level of net worth ($65 mm) to obtain a supplemental bond. For example, if a producer has MMS estimated decommissioning liabilities of $5 mm, why should they be required to show a net worth of $65 mm which is 13 times the MMS estimated decommissioning liabilities. The table below gives several examples of the amount of supplemental bonding required by NTL No. 2008-N07 and the amount of supplemental bonding that would be required by requiring supplemental bonds to be supplemental to a leaseholders net worth:

	Company A	Company B	Company C
MMS estimated Decommissioning Liability	$10 mm	$50 mm	$100 mm
MMS estimated Net Worth	$60 mm	$90 mm	$195 mm
Supplemental Bonding Required per NTL No. 2008-N07 (1)	$10 mm	$50 mm	$100 mm
Supplemental Bonding Required to Supplement Leaseholders Net Worth (2)	$0	$10 mm	$5 mm
Additional Supplemental Bonding Cost per Year (3)	$200,000	$800,000	$1,900,000
Cash Deposit to Secure Additional Supplemental Bonds (4)	$10 mm	$40 mm	$95 mm

Notes:

1. Supplemental bonding required per NTL No. 2008-N07 is 100% of the MMS estimated decommissioning liabilities if the leaseholders net worth is less than two times the MMS estimated decommissioning liabilities or the leaseholder net worth is less than $65 mm.
2. Supplemental bonding required to supplement a lease holders net worth is: (MMS estimated decommissioning liabilities)*(2) – Leaseholders Net Worth as determined by the MMS.
3. Supplemental bonding premiums are 2.0% of the supplemental bond face value.
4. Currently a trend among surety companies writing supplemental bonds is to require an escrow account be funded to the face value of the supplemental bonds written, before the surety will issue the bonds.

Data Required by MMS to Calculate Net Worth

Currently the MMS staff spend considerable time and effort to estimate the value of a leaseholders proved developed producing (PDP) reserves which are used to evaluate a leaseholders net worth, rather than use third party SEC reserve reports. This makes no sense, as the third party reserve reports are used by the SEC to evaluate a companies' value. Further, since the SEC's role is to regulate public company financials, they are in a much better position to determine the requirements and process to evaluate a firms value than is the MMS.