RLI®

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September 21, 2009

Department of the Interior
Minerals Management Service
Attention: Regulations and Standards Branch (RSB)
381 Elden Street, MS-4024
Herndon, VA 20170-4817

Re: Leasing of Sulpher or Oil and Gas Bonding Requirements in the Outer Continental Shelf, RIN 1010-ADOG

Dear Sirs or Madams:

This letter is to provide comments on the above referenced area of federal statutes and the proposed rulemaking thereon. RLI Insurance Company is a long term provider of bonds for companies operating on the Outer Continental Shelf and subject to the regulations of Minerals Management Service (MMS). As such, we believe we are familiar with some of the issues and/or needs that are being addressed in the proposed rulemaking. We believe there are certain areas in the proposed rules that need changes to improve clarity and enable more efficient operations regarding the administration of bonding by the MMS.

The first comment relates to the information shown in §256.510 regarding supplemental bonding, specifically dealing with the §256.510(b) regarding the Regional Director's assessment of the operators' ability to carry out present and future obligations (i.e. granting an operator an exemption from supplemental bonding).

Currently, MMS uses the guidelines detailed in NTL NO. 2008-NO7 for assessing whether an operator can be eligible for an exemption from supplemental bonding. This NTL is very detailed and gives the MMS latitude to measure various criteria in determining whether an operator will qualify. Proposed Rule §256.510(b)(3) requires business stability based on five (5) years of continuous operation and production. The NTL simply indicates "a number of years". Each operator is unique, and some operators with less than five years of experience are stable and solid (and thus do not need to be subject to supplemental bonding) while some seasoned operators may, in fact, need to be subject to supplemental bonding based upon their circumstances. Thus, we believe it is important for the MMS to retain this flexibility when assessing the entire package of factors for each operator. We believe the flexibility in the NTL is appropriate and that the proposed rule should reflect the language of the NTL and not a fixed number of years.

Our second comment regards clarification of the procedures whereby a surety may have a supplemental bond cancelled, as opposed to terminated. In proposed §256.523(a)(2)(ii), it says that the replacement bond (in the event a new surety replaces an existing surety) must agree to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under §256.500 and 256.501 which relate to the general or operators bond. This language is not clear and does not establish a bright line whereby an existing bond may be cancelled (when replaced by a new bond equal to or larger than the existing bond) short of the new surety <u>always</u> assuming <u>all</u> prior liability, which is current practice, even though we do not believe this is required by the current regulations. This is also at odds with the intent of the proposed regulations. Under the proposed regulations, it would be necessary for the MMS to inform the new surety, contemporaneously with issuance of a new bond, whether there were outstanding liabilities under the general or base bond that exceeded the coverage of the base bonds for there to be a reasonable chance of such intent to be accomplished. Only such a timely response would enable the existing surety to make timely decisions as to future pricing and the release of any collateral or indemnities. Additionally, even this treatment, under the proposed regulations, differs from the cancellation procedure that arises pursuant to the "exemption" process. Once a company becomes exempt, the supplemental bonds are cancelled without regard to coverage under a general or base bond. As long as any new supplemental bonding on existing properties is greater than or equal to the existing bonds, we believe the existing supplemental bonds should be automatically cancelled, as the MMS is not adversely affected in terms of the total dollars available under bonds posted to it. If the proposed regulations prescribed this outcome, the treatment would align with the current cancellation process of supplemental bonds in the exemption process and provide sureties with certainty as to pricing and security decisions. At a minimum, any decisions by the MMS as to the adequacy of the base bonds (in the cancellation process for supplemental bonds) should be required to be communicated to the operators and the sureties within a short time (7 to 14 days) from receipt of the new bonds by the MMS. No response from the MMS within that period should be deemed to mean that the base bond is adequate and the new supplemental bond need not contain prior liability language in order for the existing supplemental bond to be cancelled. We believe this comports with the original intent of regulations now in place and provides the surety with the clear ability to make decisions regarding pricing and security in a timely manner. Failure to clarify this issue will increase costs to the operator in the OCS and potentially decrease the availability of surety. This could cause the potential for confusion in the surety marketplace, potential for pricing errors which could lead to diminished capacity (in an already tight surety market) and the potential for price increases to operators based upon uncertainty. Additionally, this could adversely impact revenues to the government through less exploration and production in the OCS due to increased costs. We would propose the following language be appended to the last sentence in proposed §256.523(a)(2)(ii):

> MMS will notify the sureties of the replacement bond and the existing bond within fourteen (14) days of receipt of the replacement bond, whether there are any outstanding liabilities that exceed the coverage of the bond prescribed under §256.500 and 256.501, and will detail such liabilities, if any, to both sureties. If replacement surety and the existing surety are not notified by the MMS within the requisite period, then the existing bond will be deemed to be cancelled by receipt of the replacement bond pursuant to the requirements of §256.523(a)(2).

We respectfully submit these comments and request due consideration be given to them based upon the potential costs and ramifications thereto.

Yours truly,

Roy C. Die
Vice President