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New Orleans, LA

**LOOKING INTO THE NTL CRYSTAL BALL ON  
FINANCIAL ASSURANCE AND THIRD PARTY  
GUARANTEE ISSUES**

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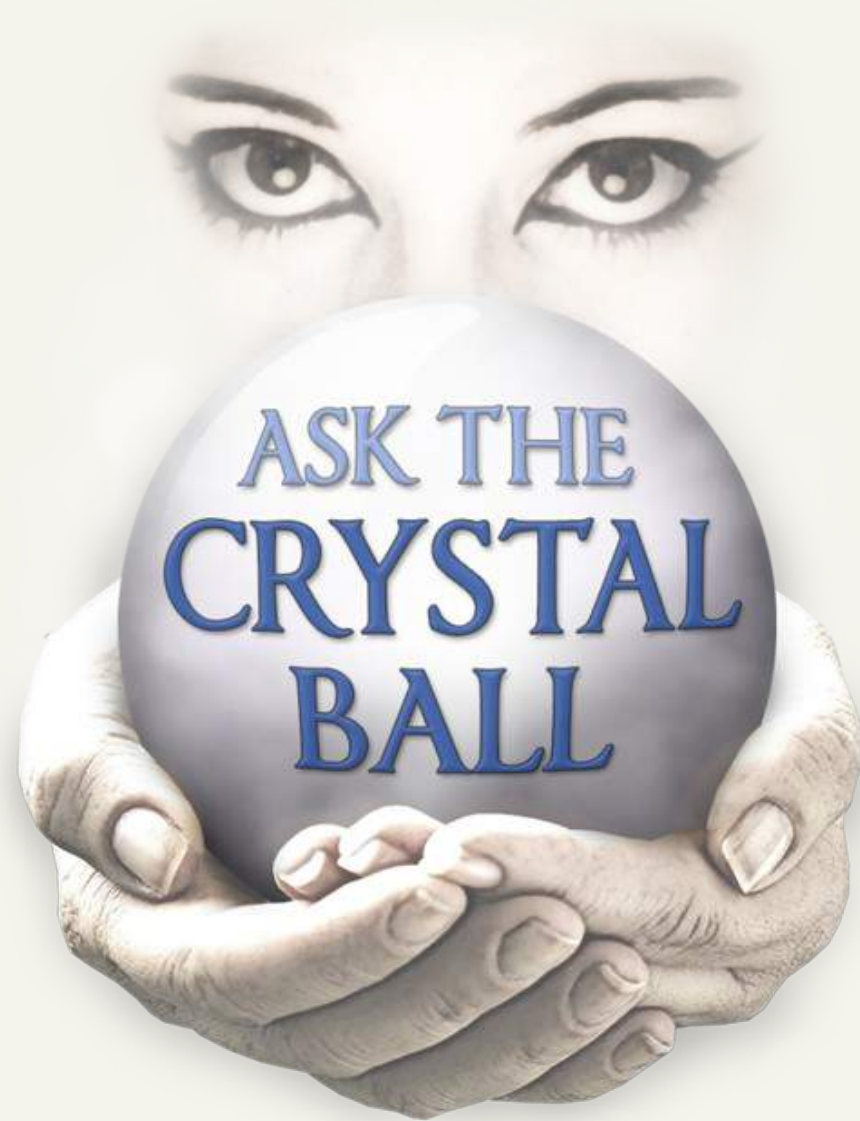
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# NTL 2016-N01

Status of NTL 2016-N01 dated July 14, 2016 and made effective September 12, 2016 For Financial Assurance (the “NTL”):

The NTL introduced a very aggressive NTL Implementation Timeline.

It became apparent that the target dates under the timeline were slipping and could not be met. As a result, the NTL was put on an indefinite “pause”.

# NTL PAUSE

On January 6, 2017, BOEM announced a “6 month” extension of the NTL Implementation Timeline for “Non-Sole Liability” Properties.

Thereafter, BOEM Orders dealing with “Sole Liability” Properties that were sent out to operators in December 2016 were rescinded in February 2017.

Almost a year and half later, the “pause” continues. based on several presentations by Mike Celata, GOM Regional Director of BOEM to industry since January 6, 2016, the “pause’ will remain in place until new regulations are promulgated.

It is the proposed regulations are anticipated to be published in the Federal Register some time at the end of the year. Industry will have an opportunity to comment on the proposed regulations.

# INDUSTRY PROPOSALS

During the “pause” two industry proposals were presented BOEM for considerations to revise the financial assurance regime under the NTL and to be adopted in a new regulation.

The two industry proposals came from the Offshore Operators Committee (which is the proposal advocated by the majors) and the Gulf Energy Alliance (which is a group of independents).

While both proposals are similar in nature, the Majors are seeking that financial assurance be required for all OCS properties not just “Sole Liability Properties” and that there be a clear priority in the chain of title when making demands on predecessors in title.

The GEA proposal recommends that no financial security be required for “Non-Sole Liability Properties”.

And further that no financial assurance be provided until the P&A liability is actually accrued. It is not clear what parts of the two proposals will be absorbed into the proposed regulations.

# CURRENT REGULATIONS AND CRITERIA TO DEMONSTRATE FINANCIAL ABILITY

30 CFR 556.901(d) requires that a determination be made for financial assurance be based on an evaluation of a company's ability to perform present and future lease obligations as demonstrated by these factors:

- i. Financial Capacity – net worth to decommissioning ratio or credit rating;
- ii. Financial Strength – reserve valuation to decommissioning liability or credit rating;
- iii. Business Stability – 5 years continuous operations;
- iv. Reliability – credit rating or trade references/proxy credit rating; and
- v. Record of Compliance – BSEE rating, INCs, suspensions or debarment.





# FINANCIAL EVALUATION OF COMPANIES

The BOEM has proposed a three tier method for financial evaluation of companies.

- i. **Tier I** [Three ways to Qualify] – Tangible net worth greater than \$10B AND tangible net worth to decommissioning liability ratio of 10:1; OR Investment Grade; OR Investment Grade Proxy Grade Credit Rating AND tangible net worth to decommissioning liability ratio of 10:1 AND trade references;
- ii. **Tier II** [Two ways to Qualify] – S&P BB+, BB, BB-, or equivalent Moody's rating OR equivalent proxy credit rating;
- iii. **Tier III** – All other entities.

# KEY INDUSTRY ISSUES

- EVALUATION OF PROPERTIES
- CO-LESSEE AND PREDECESSOR LIABILITY
- DECOMMISSIONING ESTIMATES
- CHAIN OF TITLE
- REDUNDANT BONDING

# KEY INDUSTRY ISSUES

## EVALUATION OF PROPERTIES

Proposed valuation system for individual offshore properties designed to predict whether properties have a realizable market value.

# KEY INDUSTRY ISSUES

## CO-LESSEE AND PREDECESSOR LIABILITY

- i. Current co-lessees are responsible for decommissioning;  
and
- ii. Based on proposed co-lessees Tier evaluation, property  
may be subject to additional financial assurance.

# KEY INDUSTRY ISSUES

## DECOMMISSIONING ESTIMATES

- i. BSEE Decommissioning costs;
- ii. Asset Retirement Obligations;
- iii. 3<sup>rd</sup> Party Estimates.

# KEY INDUSTRY ISSUES

## CHAIN OF TITLE

Potential process of requiring financial assurance/performance in chronological order.

# KEY INDUSTRY ISSUES

## REDUNDANT BONDING

BOEM will work with lessees on solutions to reduce redundant bonding through using mechanisms such as “Multi-Party” or “Dual-Obligee” bonds.

## 30 C.F.R. § 556.905

### Using a third-party guarantee instead of a bond.

(a) When the Regional Director may accept a third-party guarantee. The Regional Director may accept a third-party guarantee instead of an additional bond under § 556.901(d) if:

(1) The guarantee meets the criteria in paragraph (c) of this section;



## 30 C.F.R. § 556.905

### Using a third-party guarantee instead of a bond.

(b) What to do if your guarantor becomes unqualified. If, during the life of your third-party guarantee, your guarantor no longer meets the criteria of paragraphs (a)(3) and (c)(3) of this section.

AUTHORITY: 30 U.S.C. 1701 note, 30 U.S.C. 1711, 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1331 note, 43 U.S.C. 1334, 43 U.S.C. 1801–1802.

Current through September 6, 2018; 83 FR 45202.

In requesting a cancellation of a Third-Party Indemnity Agreement, for which the indemnified company has a lease interest and the period of liability was terminated the BOEM is unable to cancel the Guarantee as requested.

Any request to cancel made “pursuant to the regulations of Title 30 of the Code of Federal Regulations, Subpart I” does not contain a grant of authority to BOEM to cancel the Guarantee.

Assuming, arguendo, that such a request for cancellation of the Guarantee is pursuant to the regulatory authority found in Title 30 Part 556, Subpart I and specifically within 30 C.F.R. 556.905 of that subpart, BOEM also lacks authority to cancel your Guarantee as requested.





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