

Enhanced Oversight of Orphaned Oil and Gas Infrastructure May Lead to Litigation Risk

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The Governmental Accountability Office (“GAO”) recently released two critical reports on decommissioning offshore oil and gas infrastructure and onshore gathering lines on federal lands. Both reports conclude that additional enforcement initiatives are needed to ensure operators meet decommissioning deadlines and that assets are properly decommissioned. GAO observed that more than 75 percent of idle infrastructure located offshore was overdue for decommissioning – highlighting the significant offshore decommissioning challenges and risks that lie ahead. The decommissioning of onshore gathering lines, on the other hand, was flagged by GAO as more of a growing problem in need of federal oversight and action.

It remains to be seen whether, and if so how, the regulatory agencies will act on the GAO recommendations. While the Department of the Interior (“DOI”) agreed with the recommendations, it will require sustained agency efforts to enhance decommissioning enforcement and to create incentives for more timely removal of structures from the Outer Continental Shelf. Nonetheless, the GAO reports have important implications for operators that continue to own or that acquire aging oil and gas assets.

As more and more companies enter into transactions that include offshore oil and gas interests, the steep cost for decommissioning, combined with the potential for increased federal agency focus on decommissioning compliance, may lead to increased litigation risk. One likely area of dispute will be the applicability of federal policies on predecessor liability, which involves the proper allocation of substantial decommissioning costs.

The GAO Reports

Offshore Oil and Gas: Interior Needs to Improve Decommissioning Enforcement and Mitigate Related Risks

In January, the GAO released a report entitled, [*Offshore Oil and Gas: Interior Needs to Improve*](#)

[*Decommissioning Enforcement and Mitigate Related Risks*](#), examining the effectiveness of the DOI in (1) enforcing regulations concerning timely decommissioning deadlines for offshore oil and gas infrastructure and (2) assuring industry capacity to meet decommissioning obligations for that infrastructure. Although Bureau of Safety and Environmental Enforcement (“BSEE”) regulations and clarifying guidance require that decommissioning generally be completed within one year after a lease ends, the GAO concluded that BSEE does not effectively enforce these decommissioning deadlines.

Accordingly, as of June 2023, more than 75 percent of end-of-lease and idle infrastructure in the Gulf of Mexico was overdue for decommissioning according to BSEE’s deadlines. This includes more than 2,700 wells and 500 platforms. Critically, the GAO notes that decommissioning delays can increase or signal the risk that operators will default on their decommissioning obligations, leaving the government to bear those obligations. This is particularly notable as DOI reported that 37 offshore oil and gas operators have filed for bankruptcy since 2009 and that offshore bankruptcies are expected to continue to increase.

BSEE can exercise a number of enforcement measures to ensure offshore infrastructure is decommissioned within prescribed deadlines. These enforcement tools include:

- ordering an operator—or all operators with joint and several liability for that infrastructure—to meet decommissioning obligations;
- issuing citations (generally incidents of noncompliance) for regulatory violations;
- issuing civil penalty fines;
- directing suspension of operations; and
- referring operators to the Bureau of Ocean Energy Management (“BOEM”) for potential disqualification from conducting offshore operations.

Although the report highlights the fact that BSEE has very rarely referred operators with poor environmental or safety performance records to BOEM for disqualification, BOEM and BSEE officials reported that they are actively exploring processes for addressing operator fitness issues. A DOI report notes that a “fitness to operate” standard would establish criteria for qualifying operators and evaluate how to apply such a standard to potential new operators or current operators seeking to gain additional properties. Such a standard would help ensure operators can meet their safety, environmental, and financial responsibilities.

Despite these enforcement tools and efforts to improve compliance, the GAO concluded that DOI has not effectively compelled operator compliance with decommissioning deadlines and has not ensured adequate financial and technical capacity to meet decommissioning obligations in advance of a default. The report concludes by calling for (1) BSEE to increase enforcement of decommissioning deadlines, (2) BOEM to improve financial assurances for decommissioning in advance of a bankruptcy or delay, and (3) potential congressional oversight by establishing a reporting mechanism or direction by clarifying how DOI should balance statutory decommissioning priorities.

Oil and Gas Pipelines: Agencies Should Improve Oversight of Decommissioning

A second GAO report also released in January entitled [*Oil and Gas Pipelines: Agencies Should*](#)

[*Improve Oversight of Decommissioning*](#), focused on the decommissioning of gathering lines on federal lands. Gathering lines carry natural gas, crude oil, and other hazardous liquids from production wells to processing facilities, refineries, and transmission pipelines. The Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") is the federal agency responsible for regulating the safety of pipelines transporting natural gas, crude oil, and other hazardous liquids, to include gathering lines on federal lands. Historically, PHMSA has not regulated most gathering lines, because gathering lines traditionally pose lower risks as they tend to be in less populated areas and operate at low pressures. This lower risk, however, is changing given the increased extraction of gas and oil from shale deposits resulting in larger, higher pressure gathering lines, and populated areas moving closer to some rural gathering lines.

To account for the increased risk profile of larger diameter, higher pressure gathering lines, PHMSA updated the federal pipeline safety regulations in 2019 and 2021 to impose new reporting requirements for operators of previously unregulated gathering lines. Among other things, PHMSA required all operators of hazardous liquid gathering lines to submit annual reports containing data on pipeline characteristics, such as diameter and age, starting in 2021. PHMSA required the same of all operators of natural gas gathering lines starting in 2023. For orphaned gathering lines, however, there is no known operator to file the required PHMSA reports. PHMSA's regulations also require operators of regulated gathering lines, both hazardous liquid and natural gas pipelines, to comply with certain abandonment and deactivation regulations. These requirements, however, do not extend to all gathering lines.

The GAO report concludes that it is unknown how many gathering lines are on federal lands or the extent to which operators have properly decommissioned these gathering lines. To date, the responsible federal land management agencies have limited data and have carried out limited oversight of gathering line decommissioning. The GAO found that this limited oversight can lead to orphaned gathering lines, requiring the federal government to have to step in to manage and pay for decommissioning. Accordingly, the GAO calls for additional federal oversight of gathering lines on federal lands, including developing plans to improve data collection for oversight purposes, specifying decommissioning timing requirements, and identifying gathering lines presenting the greatest safety, environmental, or fiscal risks to prioritize.

Implications

These GAO reports, in addition to [*announced federal funding for decommissioning orphaned assets*](#), signal increased attention to operator accountability in decommissioning oil and gas infrastructure—both offshore and onshore. Operators can expect that such focus may lead to an increase in enforcement activity requiring timely decommissioning. It remains to be seen, however, how the regulatory agencies may go about implementing additional enforcement measures. For example, BSEE may be able to increase enforcement under its current regulations by issuing policy guidance, or the agency could undergo a rulemaking to update its current decommissioning regulations. Similarly, how the agency undertakes implementing its enforcement tools may vary. BSEE could undertake an enforcement activity by beginning with less severe methods—like issuing an order to decommission—and then escalate up to a potential disqualification as a final measure.

Likewise, PHMSA may increase enforcement of reporting requirements for newly regulated gathering lines to ensure that it has accurate information regarding the scope of the gathering line infrastructure, to include those traversing federal lands. The new reporting requirements seek to limit the opportunity for previously unregulated gathering lines to become orphaned, as PHMSA now requires operator information on all gathering lines. Further, PHMSA has signaled an intent to initiate

a rulemaking that addresses regulatory requirements for “idled” pipe, which, if left without oversight, may become orphaned. Although PHMSA regulations currently do not differentiate between “idled” pipelines, those that are not in operation but have not been formally abandoned and deactivated, and operating pipelines, PHMSA is likely to issue a proposed rule in the near term that proposes specific requirements that operators of idled gathering lines must take to ensure the integrity of those assets, even when not in active operation. It remains to be seen how far PHMSA will go with this rulemaking and if it extends to all gathering lines, or a subset thereof.

The increasing costs and attention from federal agencies on both offshore and onshore decommissioning may result in a growing number of disputes about who bears the costs of decommissioning. Oil and gas assets are often operated for decades and are owned by a number of different entities. As such, the issue of predecessor liability often arises and is a source of regulatory and financial uncertainty. We expect that, as federal policies continue to evolve, predecessor liability disputes will result in litigation. We also expect that transactions involving oil and gas assets will increasingly include provisions that clearly allocate decommissioning cost risks among the parties.

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