District Court Rules That BSEE Has No Statutory Authority to Enforce OCSLA Safety and Environmental Regulations Against Contractors

By Valisa Berber-Thayer, Chris Reagen | January 12, 2017

RELATED PRACTICES Energy, Power and Natural Resources, Environmental, Oil and Gas

In a recent ruling rendered on December 23, 2016, the U.S. District Court for the Western District of Louisiana found that the plain language of the Outer Continental Shelf Lands Act ("OCSLA")[1] does not grant the Bureau of Safety & Environmental Enforcement ("BSEE") the authority to enforce the environmental and safety duties established under OCSLA against contractors.[2]

The case arose from the issuance of a violation in the form of a Notice of Incident of Noncompliance ("INC") on March 5, 2013, to Island Operating Co., Inc. ("Island") in connection with an incident that occurred on June 3, 2012. Island, a personnel contractor whose employees, at the time of the incident, were working for Apache, the holder of the lease under OCSLA where the incident occurred, was issued an INC by BSEE for violation of environmental and safety duties set forth in Section 1348 of OCSLA. Island appealed the issuance of the INC to the Interior Board of Land Appeals ("IBLA") on the grounds that OCSLA does not grant BSEE enforcement authority against contractors and that the issuance of the INC violated the Administrative Procedure Act.[3] The IBLA affirmed the issuance of the INC to Island, and Island subsequently appealed the IBLA's decision before the U.S. District Court for the Western District of Louisiana.

In its appeal, Island – supported by *amicus* filed by multiple industry participants – challenged the authority of BSEE to enforce OCSLA's safety and environmental provisions, and their implementing regulations, against any entity that is not the holder of a lease or permit under OSCLA. In reaching its decision, the Court applied the analytical framework set forth in *Chevron U.S.A., Inc. v. Nat-Res. Def. Council, Inc.*,[4] looking first to whether "Congress [had] directly spoken to the precise question at issue" and noting that an analysis of the permissibility of an agency's construction of a statute, as expressed in its implementing regulations, should only be undertaken if Congress has not spoken directly to the question at issue.[5] The Court reviewed the relevant portions of OCSLA, highlighting that Section 1348 (which sets forth the OCSLA duties as to safety and environmental issues), stipulates that "[i]t shall be the duty of any holder of a lease or permit under [OCSLA]" to comply with the safety and environmental regulations set forth therein.[6] Based on its reading of OCSLA, the Court determined that the plain language of Section 1348 explicitly limited the duties imposed by OSCLA as to safety and environmental matters to lease-holders and permit-holders. Thus, any entity (such as a contractor) that is neither a lease-holder nor a permit-holder cannot be found to have violated the safety and environmental duties imposed under Section 1348 and therefore cannot be subject to a penalty or fine for such an alleged violation. The Court specifically rejected BSEE's position that the broad language in other sections of OCSLA trumped the controlling action of the narrow provisions of Section 1348, expressly holding that the penalties for violating OCSLA's safety and environmental requirements, set forth in Section 1350, applied only to those parties to which OCSLA specifically prescribes a duty to comply with its safety and environmental requirements – *i.e.* lease-holders and permit-holders – despite Section 1350's broad language

© 2026 Haynes and Boone, LLP

subjecting “any person” that fails to comply with the relevant provisions of OCSLA to the penalties set forth in that section.

Further, the Court found BSEE’s reliance on the regulations promulgated under OCSLA, which extend liability beyond the lease-holder or permit-holder to “the person actually performing the work”, to be unpersuasive, noting that BSEE’s regulations cannot expand the safety and environmental duties under OCSLA beyond the current language of the statute itself.[7] However, the Court declined to extend its ruling to compel BSEE to comply with OCSLA by discontinuing the practice of issuing INCs to contractors, noting that it considered such a ruling to be overly broad.

As it is likely the Department of the Interior will appeal the Court’s decision, the industry cannot immediately consider this significant victory as the final end point for BSEE’s attempt to impose its safety and environmental duties directly on contractors operating on the federal Outer Continental Shelf Lands. However, the Court’s decision does represent a significant step toward clarification of contractors’ potential liability under OCSLA.

Should you have any questions, please contact any of the lawyers listed below.

---

[1] 43 U.S.C. § 1331, *et. seq.* (2012).

[2] Island Operating Co., Inc. v. Jewell, et al., No. 6:16-CV-00145, 2016 WL 7436665 (W.D. La. Dec. 23, 2016).

[3] 5 U.S.C. § 551 *et. seq.* (2012).

[4] 467 U.S. 837 (1984).

[5] Island Operating Co., Inc., 2016 WL 7436665, at *3 (quoting Chevron, 467 U.S. at 842-843).

[6] *Id.* at *2 (quoting OCSLA, 43 U.S.C. §1348(b)).

[7] *Id.* at *8 (quoting 30 C.F.R. § 250.146(c)).

© 2026 Haynes and Boone, LLP