New ONRR Regulations Increase Civil Penalties for Federal and Indian Mineral Leases

By Chris Reagen | August 11, 2016

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The Department of the Interior's Office of Natural Resources Revenue ("ONRR") has published its final rule that expands the civil penalty regulations for violations of federal mineral laws and regulations. Issued on August 1, 2016 (81 Fed. Reg. 50,306), the final rule applies to oil and gas, coal, and geothermal resources on all federal mineral leases onshore and on the Outer Continental Shelf ("OCS"), any federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands, and to all easements, rights-of-way, and other agreements on the OCS. Lessees and other interest holders may be surprised to learn that they will be subject to more substantial and immediate civil penalties and that ONNR is not required to provide any notice or an opportunity to correct "knowing or willful" violations before civil penalties may be assessed. Effective August 31, 2016, the maximum penalty can now reach $58,871 per day, per violation.

ONRR has established more specific guidelines in the final rule regarding the types of violations and how these violations prescribe the selection and issuance of each type of enforcement notice. The new civil penalty regulations will apply prospectively to a Notice of Noncompliance ("NONC"), Failure to Correct Civil Penalty Notice ("FCCP"), or Immediate Liability Civil Penalty Notice ("ILCP") issued on or after the effective date. However, ONRR has discretion in deciding the amount of the penalty to assess, as it may consider the severity of the violation, any history of noncompliance, and the size of the business, including the parent company and any subsidiaries.

ONRR may issue either a NONC or an ILCP depending upon the type of violation it discovers and whether ONRR deems the violation to be knowing or willful. Failure to correct a violation identified in the NONC may result in penalties up to $1,177 per day for each violation and can increase to a maximum of $11,774 per day for violations not corrected within the identified period of time.

Notably, ONNR is not required to provide any notice or an opportunity to correct "knowing or willful" violations before civil penalties may be assessed. For ONRR to show that a violation occurred "knowingly or willfully," a term that is not defined in the Federal Oil and Gas Royalty Management Act ("FOGRMA"), 30 U.S.C. § 1719, it is not required to provide proof of specific intent to defraud but must only show that an act or failure to act has been committed with:

(i) Actual knowledge;
(ii) Deliberate ignorance; or
(iii) Reckless disregard of the facts surrounding the event or violation.

ONRR states that the proposed definition is intended to improve quality control and management oversight to ensure that companies report and pay in accordance with requirements.

Civil penalties under an ILCP begin running on the day the violation occurs and may continue up to an amount of $23,548 per day, per violation for each day the violation continues if a person "knowingly or willfully" (i) fails to make any royalty payment by the date specified by statute, regulation, order, or term of the lease; or (ii) fails or refuses to permit lawful entry, inspection, or

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audit, including refusal to keep, maintain, or produce documents. The penalty may be increased to $58,871 per day, per violation for each day that the violation continues if a person knowingly or willfully prepares, maintains, or submits a false, inaccurate, or misleading report, notice, affidavit, record, data, or any other written information.

While the 2014 proposed rule adjusted the maximum civil penalty amounts for ONRR penalties under 30 U.S.C. § 1719(a)–(d) by 10 percent, the final rule further increases the civil penalty amounts to incorporate adjustments for inflation in accordance with federal law. ONRR intends to post matrices for civil penalty assessments on its website.

For additional information, please contact one of the lawyers listed below.

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