



**MEMORANDUM OF AGREEMENT
BETWEEN THE
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT –
U.S. DEPARTMENT OF THE INTERIOR
AND THE
U.S. COAST GUARD – U.S. DEPARTMENT OF HOMELAND SECURITY**

BSEE/USCG MOA: OCS-02

Effective Date: January 10, 2017

SUBJECT: CIVIL PENALTIES

A. PURPOSE

The parties to this Memorandum of Agreement (MOA) are the United States Coast Guard (USCG) and the Bureau of Safety and Environmental Enforcement (BSEE) (together, participating agencies). The purpose of this MOA is to identify responsibilities of BSEE and the USCG for assessment and compromise of civil penalties under the Outer Continental Shelf Lands Act (OCSLA). Implementation of this MOA will be in accordance with the Memorandum of Understanding (MOU) between BSEE and the USCG, signed on 27 November 2012. The participating agencies will review their internal procedures and, where appropriate, revise them to accommodate the provisions of this MOA. This MOA replaces the MMS/USCG MOA OCS-02 dated 12 September 2006.

B. AUTHORITIES

The USCG enters this agreement under the authority of Title 14 U.S. Code (USC) §§ 93(a)(20) and 141.¹ The USCG regulates offshore activities pursuant to: the OCSLA, as amended, 43 USC §§ 1331 *et seq.*, including §§ 1333, 1347, 1348, 1356;² the Oil Pollution Act of 1990, 33 USC §§ 2701 *et seq.*, including 33 USC § 2712(a)(5)(A);³ Section 311 of the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 USC §1321;⁴ the Maritime Transportation

¹ Pub. L. 103-206, § 316, 107 Stat 2426 (1993); Pub. L. 104-324, Title IV, § 405(a), 110 Stat. 3924 (1996).

² Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. 95-372, Title II, § 201, 92 Stat. 632.

³ Oil Pollution Act of 1990, Pub. L. 101-380, Title I, § 1012 (codified as amended by Pub. L. 111-281, 124 Stat. 2984 (2010)).

⁴ Federal Water Pollution Control Act of 1972, Pub. L. 92-500, § 311 (codified as amended by Pub. L. 107-303 (2002)).

Security Act, 46 USC § 70103;⁵ and Executive Order 12777.⁶ Applicable USCG regulations are found under parts of Titles 33 (Navigation and Navigable Waters) of the Code of Federal Regulations (CFR) and 46 (Shipping) CFR. The USCG also exercises authority under the National Contingency Plan, 40 CFR Part 300.

The BSEE enters this agreement under the authority of OCSLA;⁷ Section 311 of the Clean Water Act;⁸ and Executive Order 12777.⁹ Applicable BSEE regulations are found under relevant parts of Title 30 (Mineral Resources) of the CFR, including Parts 250 and 254.

C. AGENCY RESPONSIBILITIES

The OCSLA provides the Secretary of the Interior with the authority to issue civil penalties to any person who fails to comply with OCSLA, its implementing regulations, or any term of a lease, license, or permit issued pursuant to OCSLA.¹⁰ The OCSLA-based regulations under 33 CFR Subchapter N are USCG regulations that would be appropriate for civil penalty assessment. If it is determined that a violation may warrant a civil penalty solely under the provisions of the OCSLA, BSEE (for the Secretary of the Interior) is the agency that will assess and potentially compromise civil penalties for that violation. The USCG retains civil penalty action authority for vessel-related activities under Title 46 USC and for the OPA/MARPOL regulations that are incorporated in Title 33 CFR.

Both BSEE and the USCG possess regulatory authority to inspect for violations of Title 33 Subchapter N. Therefore, BSEE's Civil Penalty Program may be referred a violation of USCG regulation to review from either the USCG or from within BSEE, depending on which agency cited the violation. Before BSEE assesses any civil penalty for violations of Title 33 Subchapter N, the USCG will confirm that a violation of their regulations occurred and that a reasonable time was given for the violator to fix the deficiency. BSEE will only assess civil penalties for violation of OCSLA regulations in 33 CFR Subchapter N after notice of a violation and expiration of a reasonable period for corrective action, as required by 43 USC § 1350(b)(1) and 33 CFR Subchapter N.

1. USCG PROCESS

If the violation is cited by the USCG, the USCG will investigate and document the OCSLA-based violation cases according to the procedures in 33 CFR §140.40 with the following clarification: The cognizant Officer-in-Charge, Marine Inspection (OCMI) involved in the detection activity will confirm that a violation occurred and establish a reasonable time for the violator to correct the deficiency. The OCMI may do this in

⁵ Maritime Transportation Security Act of 2002, Pub. L. 107-295, Title I, § 102(a) (as amended by Pub. L. 111-281, Title VIII, § 812(c), 124 Stat. 2997 (2010)).

⁶ Exec. Order No. 12,777, 56 Fed. Reg. 54757 (1991).

⁷ 43 USC §§ 1331, *et seq.*

⁸ 33 USC § 1321.

⁹ 56 Fed. Reg. 54757 (1991).

¹⁰ 33 USC § 1350(b).

consultation with BSEE, particularly on matters in which BSEE has expertise or knowledge of industry practice. The OCMI may require immediate corrective action for more significant deficiencies, including those of a serious, irreparable, or immediate threat; however, a case package to refer a civil penalty to BSEE will not be initiated until after the party has been notified of the deficiency and fails to comply with an order to correct the deficiency in accordance with 33 CFR § 140.105.

If the violator does not correct the deficiency and does not file an appeal with the appropriate USCG official in the time allotted under 33 CFR § 140.25, the cognizant District Commander will refer the case to BSEE for civil penalty assessment, pursuant to 43 USC § 1350 and 33 CFR § 140.40.

When referring a case to BSEE, the OCMI will forward the following information:

- a. The case file that consists of a summary of the investigation and a USCG determination of the regulations violated. This should include the date(s) of the violation, when the violator was notified, the time period given to correct the violation, and the follow-up actions confirming the violation was not corrected during the allowed time period.
- b. A description of the seriousness of the violation and any incidents actually associated with the violation.
- c. If requested, additional information concerning the merits of a civil penalty action. All physical evidence remains with the USCG, but will be made available to BSEE upon request.

If the violator files an appeal of a USCG action, the USCG will not forward the case to BSEE until the appeal has been finalized constituting final agency action.

Any item, collection, or grouping of information about an individual, or information that can be retrieved by using the name of the individual, obtained by the USCG pursuant to an investigation into OCSLA violations must be maintained or used in compliance with the Privacy Act (5 USC § 552a) and entered into an appropriate system of records.

2. BSEE PROCESS

Upon receipt of the violation report, the BSEE Regional OCS Civil Penalty Coordinator (Regional Coordinator) will appoint a Reviewing Officer (RO) who will process the report in accordance with the procedures outlined in the BSEE OCS Civil Penalties Program Guidebook.

Notification of the BSEE RO's decision regarding the civil penalty assessment, and the collection, compromise, or dismissal thereof, will be provided to the OCMI originating the violation report.

If BSEE cites the violation, then the civil penalty assessment process will follow the procedures outlined in the BSEE OCS Civil Penalties Program Guidebook. For cases involving violation of USCG regulations, BSEE will copy the cognizant OCMI on the letter advising the violator of the civil penalty review. After review, BSEE will send a copy of the Notice of Proposed Civil Penalty Assessment and copy of the case file to the OCMI. The BSEE will also send a copy of the RO's Final Decision, and appeal information to the cognizant OCMI, if applicable and will notify the OCMI when payment is made and the case is closed.

If, after receiving a copy of either the advisement letter or the Notice of Proposed Civil Penalty Assessment, the USCG would like to participate in the process (either by providing additional information or attending meetings), the OCMI will contact the BSEE RO. The USCG will neither contact the violator nor discuss any part of the civil penalty case with the violator; the USCG will refer any civil penalty discussions to the BSEE RO.

3. CONTACTS

Agency staff responsible for implementation and maintenance of this MOA are:

- a. BSEE: Safety Enforcement Division
 Civil Penalties Coordinator, Mailstop VAE-SED
 45600 Woodland Road
 Sterling, VA 20166
- b. USCG: Commandant (CG-INV)
 U.S. Coast Guard Office of Investigations and Analysis
 2703 Martin Luther King Jr. Ave, S.E., Stop 7501
 Washington, D.C. 20593-7501

D. GENERAL PROVISION

Nothing in this MOA alters, amends, or affects in any way the statutory or regulatory authority of BSEE or the USCG. As required by the Antideficiency Act, 31 USC §§ 1341 and 1342, all commitments made by the participating agencies in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, in and of itself, obligates the parties to expend appropriations or to enter into any contract, assistance agreement, or interagency agreement, or to incur financial obligations. Any transaction involving transfers of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

This MOA is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This MOA neither expands nor is in derogation of those powers and authorities vested in the participating agencies by applicable law. Nothing in this MOA is intended to conflict with current law or regulation or the directives of the USCG or BSEE. If a term of this MOA is inconsistent with such authority, that term is invalid,

but the remaining terms and conditions of this MOA will remain in full force and effect. If any portion of this MOA conflicts with the BSEE/USCG MOU, the MOU controls.

E. AMENDMENTS TO THE MOA

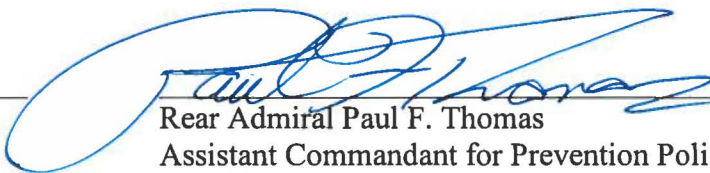
This MOA may be amended by mutual agreement of the participating agencies as described in Section I of the BSEE/USCG MOU dated 27 November 2012.

F. TERMINATION

This MOA may be terminated by either of the participating agencies after providing 30-days advance written notice to the other agency.



Mr. Brian M. Salerno
Director
Bureau of Safety and Environmental Enforcement
U.S. Department of the Interior



Rear Admiral Paul F. Thomas
Assistant Commandant for Prevention Policy (CG-5P)
U.S. Coast Guard
U.S. Department of Homeland Security

