

**October 13, 2010**

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## Secretary of the Interior Lifts Deepwater Drilling Moratorium

By **Michael P. Pearson** and **Amanda L. Shaw**

On October 12, 2010, the Secretary of the Interior issued a Decision Memorandum directing the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEM"), formerly the Minerals Management Services ("MMS"), to lift the suspension of deepwater drilling on the Outer Continental Shelf ("OCS") that has been in effect since May of this year.<sup>1</sup>

Recall that, following the blowout of BP's Macondo well and the explosion and sinking of the Deepwater Horizon on April 20, 2010, the Secretary of the Interior, on May 28, 2010, directed the MMS to implement a six-month suspension of all pending, current, and approved drilling operations for new deepwater wells on the OCS (including wellbore sidetracks and bypasses, but excluding emergency drilling activities), as well as the cessation of all deepwater drilling operations then underway and the temporary closure or abandonment of the affected wells. The MMS was also directed not to process any new applications for permits to drill deepwater wells during the six-month suspension period.<sup>2</sup> Two days later, on May 30, 2010, the MMS issued NTL No. 2010-N04,<sup>3</sup> which implemented the foregoing six-month drilling moratorium ("Moratorium 1") in water depths greater than 500 feet.

On June 7, 2010, several plaintiffs – primarily offshore service companies – brought suit in the United States District Court for the Eastern District of Louisiana seeking declaratory and injunctive relief against the Department of the Interior ("DOI") and the BOEM in connection with Moratorium 1.<sup>4</sup> On June 22, 2010, the district court issued an order granting the plaintiffs' motion for a preliminary injunction against the DOI and the BOEM in the case styled *Hornbeck Offshore Services, L.L.C. v. Salazar*.<sup>5</sup> The DOI immediately filed with the United States Court of Appeals for the Fifth Circuit an appeal of the order in *Hornbeck* granting the plaintiffs' motion for a preliminary injunction and a motion to stay enforcement of the preliminary injunction pending resolution of the appeal based on the merits of the case.<sup>6</sup> On July 8, 2010, the Fifth Circuit denied the DOI's motion to stay the preliminary injunction against the enforcement of Moratorium 1.<sup>7</sup>

On July 12, 2010, the Secretary of the Interior released a Decision Memorandum,<sup>8</sup> which specifically superseded Moratorium 1. In his July 12, 2010, Decision Memorandum, the Secretary of the Interior directed the BOEM to withdraw the suspension letters issued to OCS lessees and operators pursuant to Moratorium 1 and, for the period

ending November 30, 2010, to (a) issue new suspension letters to all lessees and operators who conduct drilling operations on the OCS using a subsea blowout preventer ("BOP") or a surface BOP on a floating facility, and (b) cease approval of pending and future permits to drill where the operator contemplates using a subsea BOP or a surface BOP on a floating facility ("Moratorium 2"). Moratorium 2 is the DOI administrative action directly affected by the Secretary's October 12, 2010, Decision Memorandum.

Although the October 12, 2010, Decision Memorandum officially removes the drilling ban on "*all deepwater drilling activity*," OCS lessees and operators must still comply with certain rules and regulations prior to resuming deepwater drilling operations. The more significant regulations include NTL 2010-N05,<sup>9</sup> NTL No. 2010-N06,<sup>10</sup> and a new "Safety Interim Final Rule" relating to drilling safety, which is expected to be published late this week.

NTL No. 2010-N05 requires all OCS operators to:

- submit a general certification from its chief executive officer stating that the operator is knowledgeable of all operating regulations and that the operator is conducting its operations in compliance with those regulations;
- submit BOP and well control system configuration information for the drilling rig that will be used;
- maintain records showing physical inspection and design review of the BOP, which must be performed by an independent third party;
- obtain verification by an independent third party confirming the BOP's compatibility with the drilling rig to be used and the specific well design;
- establish a secondary control system with remote operated vehicle ("ROV") intervention capabilities for the BOP as well as an emergency shut-in system;
- test the mechanism for the ROV capabilities while the BOP is onboard the rig prior to placement subsea;
- obtain an independent verification that the BOP's blind-shear rams are capable of shearing the drill pipe under the maximum anticipated conditions;
- have the BOP physically inspected to ensure continued ability to operate if the BOP's blind-shear rams are activated in a well control situation; and
- obtain certifications from a professional engineer that all well casing designs and cementing procedures are appropriate for the purpose of the well under expected conditions.

NTL No. 2010-N06 requires all operators to submit the following information in connection with the Exploration Plans ("EP"), Development and Production Plans ("DPP") or Development Operations Coordination Documents ("DOCD") that they must file with the BOEM under BOEM regulations:

- an estimated flow rate, total volume, and maximum duration of a potential blowout;
- a discussion of the potential for the well to bridge over, the

likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, and rig package constraints;

- estimates of the time it would take to contract for a rig, move it onsite, and drill a relief well; and
- a description of the assumptions and calculations used to determine the volume of a worst case discharge scenario.

Operators are also required to comply with the Interim Final Rule titled Increased Safety Measures for Energy Development on the Outer Continental Shelf (the "[Safety Interim Final Rule](#)") before recommencing deepwater operations. In general, the Safety Interim Final Rule establishes new, and further codifies existing, safety requirements relating to (i) the design of wells and testing of the integrity of well bores, (ii) the use of drilling fluids, and (iii) the functionality and testing of well control equipment, including BOPs. Longer term, the October 12, 2010, Decision Memorandum also states that OCS lessees and operators will be required to comply with the BOEM's new Workplace Safety Rule, which adopts the American Petroleum Institute's Recommended Practice 75 (RP 75) and requires all operators to develop and maintain a Safety and Environmental Management System ("SEMS") within one year after the date of the new rule. Both new rules are expected to be published in the Federal Register this week and will take effect immediately upon publication. A subsequent e-Alert providing a more detailed analysis of the new rules will be issued in the near future.

If you have any questions or would like further information on these topics, please contact one of our Jackson Walker attorneys below for additional assistance.

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<sup>1</sup> See official signed decision memorandum [here](#).

<sup>2</sup> See full report [here](#).

<sup>3</sup> See full notice [here](#).

<sup>4</sup> *Hornbeck Offshore Services, L.L.C. v. Salazar*, Civ. No. 10-1663 (E.D. La. filed June 7, 2010).

<sup>5</sup> *Hornbeck Offshore Services, L.L.C. v. Salazar*, Civ. No. 10-1663 (E.D. La. June 22, 2010) (Order).

<sup>6</sup> *Hornbeck Offshore Services, L.L.C. v. Salazar*, Civ. No. 10-30585 (5th Cir. filed June 25, 2010).

<sup>7</sup> *Hornbeck Offshore Services, L.L.C. v. Salazar*, No. 10-30585 (5th Cir. July 8, 2010) (order denying defendant's motion to stay preliminary injunction).

<sup>8</sup> United States Department of the Interior, Decision Memorandum from the Secretary of the Interior to the Director of the BOEM, styled

*Decision Memorandum Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Continental Shelf, issued on July 12, 2010.*

<sup>9</sup> See full notice [here](#); see also JW e-Alert discussing NTL No. 2010-N05 at <http://images.jw.com/ealert/energy/2010/0615sm.html>

<sup>10</sup> See full notice [here](#); see also JW e-Alert discussing NTL No. 2010-N06 at <http://images.jw.com/ealert/energy/2010/0701sm.html>

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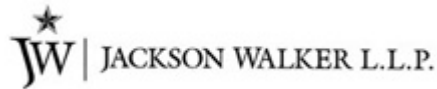
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