

INTERIOR BOARD OF LAND APPEALS

Pacific Offshore Operators, Inc., et al.

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PACIFIC OFFSHORE OPERATORS, INC., ET AL.

IBLA 2003-25

Decided March 3, 2005

Appeal from a decision of the Regional Supervisor, Office of Field Operations, Pacific OCS Region, Minerals Management Service, denying forbearance or request for extension of time to comply with a repair/replacement schedule for OCS Platforms Hogan and Houchin. Lease OCS-P 0166

Affirmed in part; set aside and remanded in part.

1. Oil and Gas Leases: Generally--Outer Continental Shelf Lands Act: Generally

An MMS decision not to extend a deadline for completion of repairs/replacement of corroded structures on two OCS platforms will be affirmed on appeal if it is supported by substantial evidence and not shown to be in error or otherwise contrary to law. The continued presence of those conditions violated applicable regulations requiring the lessee to protect health, safety, property, and the environment by maintaining equipment in a safe condition (30 CFR 250.107), to assure the structural integrity of the platforms for the safe conduct of operations (30 CFR 250.900(a)), and to protect equipment against the effects of corrosion (30 CFR 907(d)).

2. Oil and Gas Leases: Generally--Outer Continental Shelf Lands Act: Generally

An MMS decision setting a deadline for completion of repair/replacement of platform equipment and/or structures will be set aside if the basis for the decision is not found in the record. In the absence of a stated

rationale and evidence supporting the decision, the Board cannot reasonably conclude that the decision is not arbitrary or capricious and appellants are afforded no way to challenge the decision.

APPEARANCES: Carlos F. Negrete, Esq., San Juan Capistrano, California, for appellants; Frank A. Conforti, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Pacific Operators Offshore, Inc. (POOI), Signal Hill Service, Inc. (Signal Hill), and Robert and Richard Carone (the Carones) have appealed an August 14, 2002, decision issued by the Regional Supervisor, Office of Field Operations, Pacific OCS Region, Minerals Management Service (MMS). In its decision MMS denied forbearance of and an extension of time for completion of repair/replacement maintenance set out in a repair/maintenance schedule dated July 12, 2002, as revised by MMS on July 26, 2002, and directed completion of all of the scheduled work by December 31, 2002. The record forwarded to the Board consists of two volumes. Volume 1 is referred to as the "Administrative Record," and Volume 2 is referred to as the "Supplemental Administrative Record." The final document in the Supplemental Administrative Record is a January 17, 2003, "Notification of Incidents of Noncompliance" (INC).

Factual Background

In a November 20, 2000, report prepared for POOI, Thomas & Beers set out the findings of its Level 1 Topside Inspection of Platform Hogan and the Platform Houchin. (Administrative Record at Tab 25.) The report stated that "[o]verall, the topsides structure above the water line is in acceptable condition, showing no signs of damage." (Administrative Record at 182.) However, one area of concern on the Platform Hogan was noted. The report stated: "The elevated catwalk in the wellroom is corroding to a point of concern. Additionally the bolts [that] support the catwalk are very corroded. As a minimum, these bolts should be cleaned and verified for integrity, as soon as possible. Eventually the walkways systems should be cleaned, inspected, repaired, if required, and repainted." (Administrative Record at 182.) The report set out a number of areas on Platform Houchin deemed unacceptable. Generally the coating was found to be "in fair to poor condition," and the mud deck plate was found to be "corroded in some locations to a point where concentrated loads could be a problem." (Administrative Record at 201.) "Cleaning, inspection, repairs (if required), and painting of the heliport should be a priority." *Id.* Some of

the beams supporting the south side wellhead grating were found to be “severely corroded and causing the handrail to be unstable.” Id. “Corrosion of the +14 level & jacket” was found to be “reaching the point of concern and there is a possibility of damage occurring.” Id.

On April 2, 2001, POOI submitted a “proposed Matrix for the coating program for the specific regions on Platforms Hogan and Houchin detailed in the 2000 Topside Inspections” to MMS. (Administrative Record at 161.) POOI stated that, on Platform Hogan, it estimated that the repair of the elevated catwalk in the wellbay area would take from 3 to 4 months, and that the work was in progress. (Administrative Record at 162.) For Platform Houchin, POOI stated that it would take 12 months to complete the work in the mud deck plate and that the work was ongoing. Id. POOI estimated that the work on the southside structure would take 2 to 3 months, and was considering removing it. The 14' level grating repair was expected to take 4 months and POOI noted that some of that work had been started. Id.

On October 1, 2001, POOI sent MMS an updated Matrix for cleaning and coating the platforms. It stated that the repair of the elevated catwalk in the wellbay of Platform Hogan was completed. (Administrative Record at 160.) For Platform Houchin, POOI again stated that it would take 12 months to complete the work in the mud deck plate, that the work was ongoing, and about 25 percent completed. Id. The work on the southside structure had not been started and POOI was still considering removing it. The 14' level work was expected to take 4 months and the report stated that the work was 25 percent complete. Id.

On November 9, 2001, POOI forwarded the 2001 Topside Inspection conducted by Thomas & Beers on Platforms Hogan and Houchin to MMS. (Administrative Record at Tab 21.) This report contains the same conclusion as was set out in the 2000 report regarding the elevated catwalk on Platform Hogan. It also noted a “bent grating in the well room which is a potential tripping hazard.” (Administrative Record at 118.) The report contained similar statements as were found in the 2000 report regarding Platform Houchin mud deck plate, wellhead grating, and +14 and lower jacket members. (Administrative Record at 138-39.) The report observed progress on the helideck, rating that item as “satisfactory.” Id.

On April 23, 2002, a full year after POOI had submitted its Matrix schedule for rectifying concerns noted in the 2000 Topside Inspection, MMS inspected the platforms. In a May 9, 2002, letter, the earliest of the documents referenced in POOI's Notice of Appeal, MMS advised POOI as follows:

[t]here are many items concerning the Platform Hogan and Houchin topsides that must be addressed by POOI as expeditiously as possible, including corrosion protection from the waterline up, in order to allow continued drilling and production operations from these platforms. Anticipated future drilling and production from these platforms further underline the urgency of these corrective actions. Items to be addressed concern proper maintenance of the structures to ensure the structural integrity of the platforms as a workbase for oil and gas activity, corrosion protection (painting, etc.), and potential safety issues (such as damaged grating, corroded handrails, holes in deck plating or weak deck plating) that are a result of the degraded condition of the coating systems and/or the members due to corrosion or other factors. Many of these items and others have been detailed in previous annual inspection reports that you submitted by letters dated November 29, 2000, and November 9, 2001, to MMS per 30 CFR 250.912(b) requirements. POOI has made progress in addressing some of these items. However, your rate of progress is too slow, and the scope of items being addressed is too limited. For example, a much more extensive painting program is required for these platforms pursuant to NACE Standard RP-01-76-94 than is currently being demonstrated by POOI. In this area and other areas identified below, POOI should use a systematic, as opposed to piecemeal, approach when evaluating and making repairs.

During our most recent inspection of these platforms, on April 23, 2002, we identified several other items of concern on Platforms Hogan and Houchin that will also require your attention due to corrosion, possible deterioration or other problems, and they are as follows: (1) Some of the pipeline risers on both platforms have corrosion in several areas. This is especially evident at the +14ft. level; (2) The wellbay manifolds on both platforms are corroded. (3) Several of the conductors on both platforms have corrosion. These items and other items that have corrosion should also be included in the plan to be submitted to the District Supervisor as described below.

* * * * *

As discussed in our April 24, 2002, meeting with you, POOI is hereby directed to submit a plan to the District Supervisor, Camarillo, within 30 calendar days of receipt of this letter that describes in detail (including a schedule) what you plan to do to bring the Hogan and Houchin topsides into full compliance with the above regulations,

including NACE Standard RP-01-76-94. Items one through three that were previously mentioned above and other items that have corrosion should also be included in the plan. We expect you to take whatever steps are needed to accomplish this work and to ensure that it is completed by December 31, 2002. Your failure to do so will cause MMS to take action up to and including the shutting in of these facilities. Additionally, MMS will not approve any additional drilling activities from these platforms if POOI has not made adequate progress addressing the structural and safety items previously mentioned in this letter.

(Administrative Record at 83-84.)

By letter dated June 7, 2002, POOI transmitted a maintenance and inspection schedule for Platforms Hogan and Houchin. (Administrative Record at Tab 17.) In a letter dated June 19, 2002, MMS informed POOI that the maintenance and inspection schedule POOI had submitted did not provide sufficient detail to determine what work was planned or whether all of the items set out in MMS' May 9, 2002, letter were included. (Administrative Record at Tab 16.) POOI was directed to provide a detailed plan of the proposed work. MMS also suggested that POOI meet with MMS to discuss the issues and plan. A meeting was held on July 3, and on July 12, 2002, POOI submitted a maintenance and inspection schedule more specifically outlining the planned work and timetable specifically addressing deck plating repairs, grating repairs, wellbay structure repairs, chain handrail repairs, and the Platform Hogan elevated catwalk repair. The schedule also addressed the Platform Hogan heliport upgrade and platform painting on both platforms. POOI added that all structural repairs would be done in accordance with 30 CFR 250.900 and 30 CFR 250.802. (Administrative Record at Tab 14.)

POOI's July 12, 2002, submittal showed that Platform Hogan deck plating repairs, grating repairs, chain handrail repairs, elevated catwalk repair, and that cleaning and inspection of high-level areas of concern would be completed by December 31, 2002. The remaining item, "well bay structure repairs," was to be completed by June of 2003. Reinstatement of the systematic cleaning and painting program was to commence in September 2002 and to continue thereafter. Id.

On the Houchin Platform the deck plating repairs, grating repairs and chain handrail repairs, and the cleaning and inspection of high concern areas (per the Level 1 Inspection Report) were to be completed by December 2003. Outstanding items identified to be completed after December 2003 included wellbay structure repairs, which were to be completed in May 2003, and reinstatement of the systematic cleaning and painting program starting September 2002. See, id.

In a letter received by MMS on July 29, 2002, POOI complained about the lack of efficiency in MMS inspections, stating that “the scheduled inspections have not progressed in a timely or efficient manner. The short daily visits with minimal time spent on inspections has made it difficult as well as costly for [POOI] to provide extra personnel to be available to accommodate the inspectors.” (Administrative Record at 71.) It added that, “[h]istorically, the normal time frame for completion of annual inspection has been consistently between three and four hours a day per facility. POOI expressed its concern that MMS “is apparently pursuing a course designed to needlessly extend the length of time reasonably required to conduct these inspections.” Id.

By letter received by MMS on August 29, 2002, Signal Hill, one of the appellants in this case, asked for MMS forbearance on the timetable, stating, inter alia, that the total cost to perform the required repair and maintenance ranges from a minimum of \$1.5 million to approximately \$4 million. Signal Hill noted that there was not sufficient cash flow to pay for that work, and there probably would not be for approximately a year. Signal Hill added that its bank would not release borrowed funds for any purpose other than field redevelopment calculated to generate additional cash flow. (Administrative Record at 67.)

MMS denied Signal Hill’s request for forbearance in a decision addressed to Signal Hill, dated August 14, 2002. (Administrative Record at Tab 8.) MMS informed Signal Hill Service that MMS approved POOI’s July 26, 2002, letter containing the maintenance and inspection plan for Platforms Hogan and Houchin “subject to all work being completed by December 31, 2002 and other conditions listed therein.” (Administrative Record at 46.) MMS stated that it believed “MMS has been very accommodating in working out a reasonable plan to address deficiencies at your facilities,” emphasizing that it is the lessee’s responsibility to operate proactively in preventing and correcting deficiencies promptly so as not to compromise safety of personnel or risk damage to the environment and to be in compliance at all times with all applicable regulatory requirements. In view of these obligations, MMS stated that it expected full compliance from POOI in implementing the approved plan. Id. MMS stated that POOI’s “failure to (1) adhere diligently to the approved schedule that demonstrates sufficient progress that would ensure completion of the entire plan by December 31, 2002, or (2) complete all identified tasks by that date will result in the shutting down of production, drilling and work over operations at your platforms until all the identified deficiencies have been corrected.” Id. Additionally, MMS stated, “if during any MMS inspection, the condition of any of the subject items is observed to pose a risk to the safety of personnel, equipment or the environment, an Incident of Noncompliance will be issued and require prompt remedial attention.” Id.

The August 14, 2002, decision contained notification of appeal rights and stated that “[a]ppealing decisions/orders, however does not preclude you from complying with the July 26, 2002 order from the Regional Supervisor unless as provided for in 30 CFR 290.7.” POOI, Signal Hill, and the Carones appealed.

Beginning in August 2002, POOI provided a progress update report to MMS on a monthly basis. In turn, MMS prepared and transmitted a monthly status report on the work to the Regional Director, MMS. In its report setting out the status of the maintenance work on Platforms Hogan and Houchin, dated December 31, 2002, MMS set out the status of the operations on December 19, 2002. MMS acknowledged that POOI had met the December 31, 2002, deadline for chain handrail repairs on both platforms, the repairs to the elevated catwalk on Platform Hogan, and the Heliport upgrade of markings on Platform Hogan. (Supplemental Administrative Record at Tab 4.)

According to MMS, left outstanding and uncompleted were the deck plate repairs on Platform Houchin, grating repairs on both platforms, wellbay structure repairs, and cleaning and inspection of areas of high concern. After noting that noticeable progress had been made in instituting a systematic cleaning and painting program, the report notes that the size of the crew was too small to complete this maintenance activity in a timely manner. Id.

A further inspection was conducted on January 15, 2003, and a report of that inspection is found in the Supplemental Administrative Record at Tab 3. In its conclusion the inspection team stated that

POOI has completed or almost completed six items, is making progress in other areas, and [is] just starting design/contracting activity in the more time consuming areas; however, significant manpower and materials will be required to complete this maintenance and inspection project. POOI did not complete Cleaning and Inspecting High Concern Areas and Reinstatement Systematic Cleaning and Painting Program by December 31, 2002; even with significantly increasing the dedicated maintenance work crew at this point in time, the anticipated completion dates are expected to be August 1, 2003, and September 30, 2003, respectively. Other areas of concern include the Level II and III Inspections and Wellbay Structural Repairs with estimated completion dates of March 15, 2003, and August 1, 2003, respectively. Although Deck Plating and Grating Repairs were not completed by December 31, 2002; it appears that completion is very close and should be accomplished by the end of February, 2003. * * *

Sixteen ^[1/] notices of noncompliance were issued on January 15, 2003, * * * addressing the incomplete items with the respective correction dates specified therein.

(Supplemental Administrative Record at 21.)

On January 17, 2003, MMS transmitted a cover letter and INCs citing instances of non-compliance on the two platforms and citing applicable regulations violated. The INCs covered (1) deck plating repairs and (2) grating repairs, which were to be completed on both platforms by February 28, 2003 (the date identified in MMS' December 31, 2002, report); (3) wellbay structural repairs, riser repairs, wellbay manifold repairs, and well conductor repairs on Platform Hogan, which were to be completed by August 1, 2003 (the date set out in MMS' January 15, 2003, report); (4) pipeline riser, wellbay manifold, and conductor repairs on Platform Houchin, which were to be completed by August 1, 2003; (5) sump system and fire water system repair and structural augmentation for the systematic cleaning and painting, which were to be completed by September 30, 2003; (6) fire water system repair on Platform Houchin, which was to be completed by April 30, 2003; and (7) the repair of a leaking deluge fire water line (no completion date was given).

Arguments on Appeal

In their statement of reasons, the appellants argue that at MMS' request, POOI provided a preliminary 18-month plan to resolve several outstanding maintenance and upgrade issues on the platforms. (Statement of Reasons (SOR) at 2-4.) Appellants state that the preliminary plan was prepared without input from the third party vendors who would perform the operations, and that shortly after presenting the plan POOI commenced work on maintenance items and began working with contractors to finalize the scope of work they would be bidding on. (SOR at 4.) They state that MMS "began demanding that all work be completed by December 31, 2002, with the threat of platform shutdown if the work was not completed by that date." *Id.* They argue that, from the outset, they explained that all of the maintenance tasks could not physically be completed by December 31, 2002, noting that, as vendor bids and proposals later proved, the painting task alone was impossible to complete by December 31, 2002. POOI notes that they pointed this out to MMS in writing and in face-to-face meetings with MMS. (SOR at 4-5.) Concerned about the financial ramifications of shutdown, appellants requested an extension of time, both orally and in writing, and that their requests were denied each time without effort to resolve or understand the impossible conditions which MMS had

^{1/} Actually 17 INCs were issued. An INC calling for repair of a leaking deluge fire water line was apparently not counted.

imposed, and that MMS' response was to issue a decision demanding that all work be completed by December 31, 2002. (SOR at 5.)

The appellants contend that this action was taken, notwithstanding POOI's good-faith efforts to comply with the impossible maintenance schedule that had been imposed. They argue that, in fact, shortly after the order was issued, a meeting was held with MMS during which it was revealed that inspectors were unaware that a substantial amount of work already had been completed when the decision was issued. Appellants state that POOI "learned at that meeting that the source of decision making and orders had originated at 'headquarters' and were non negotiable, notwithstanding POOI's good faith efforts to comply with the impossible order that continues to this day." (SOR at 5.) Appellants charge that MMS' action was a knowing and willful attempt to put POOI out of business and exhibits a pattern of discrimination against the minority-owned company. They contend that MMS' action has placed the company "in the difficult financial position of spending considerable sums of money in order to act in good faith to comply as best we could with the impossible Order all the while recognizing that our efforts would fail in that the MMS could shut us down and destroy the company." (SOR at 5-7.)

MMS has responded to appellants' SOR. The key thrust of MMS' response is that POOI had been given ample time to complete the required work and multiple extensions. MMS characterizes POOI's effort to establish June 7, 2002, as the starting date to consider whether the work would be expeditiously completed as "ludicrous" given that as early as November 2000, POOI had received and sent to MMS the Thomas & Beers' inspection reports for both platforms, detailing many, if not all of the problems enumerated in MMS' May 9, 2002, letter to POOI. MMS emphasizes that the 2000 and 2001 reports noted substantial levels of corrosion for portions of the platforms and recommended corrective action, and that in a letter received by MMS on May 2, 2001, POOI set out a schedule for resolution of the concerns detailed in the 2000 Topside Inspections. It notes that, according to POOI's letter, "the matrix schedule [attached] is being followed and work performed by J. R. Alred, Inc." Different items were identified in a schedule as "not started, in progress, and completed." See Administrative Record at 161-62. MMS notes that POOI stated that all items were to be completed within 12 months.

MMS states that in a six-month progress report filed by POOI, it assured MMS that all the maintenance and repair work would be completed within 12 months, notwithstanding the obvious evidence that there had been slippage in the schedules. MMS points out that a month later, it received copies of the 2001 Thomas & Beers inspection report for the two platforms in which the same problems noted in the previous year's report and the same corrective actions were once again stated. (Answer at 8; see also, Administrative Record at Tab 21.)

MMS reasons that by April 2002, POOI had been aware of the problems at issue for nearly 18 months, had conveyed the impression that it had retained a contractor to fix them, and had exceeded its own repair schedule by about 6 months. (Answer at 8.) MMS states that, after discussing the matters internally and with POOI, MMS personnel (including a structural engineer) inspected the platforms on April 23, 2002. It notes that “[p]ictures taken during the inspection (plus others taken on 8/28/02 and 9 26/02) are contained on a CD, and included in the Record.” Id., see also, Administrative Record at 222-26. MMS asserts that “the CD contents for April 23, 2002, graphically portray the advanced corrosion and potential safety risks on both platforms after an alleged 18 months of effort * * * .” (Answer at 8.)

MMS states that, “[b]ased on photographs and statements by MMS’ structural engineer,” it concluded that the “completion of the required repairs by December 31, 2002 was feasible.” (Answer at 8.) According to MMS, the date was based on its “years of experience with offshore platforms and its evaluation of the amount of work involved.” (Answer at 8-9.) MMS states “even if appellants[’] previous assurances that it had embarked already on the process of retaining a contractor and commencing the work were true, additional resources would be required.” (Answer at 9.)

MMS asserts that on April 24, 2002, its representatives met with POOI representatives to discuss the issues, and that its May 9, 2002 letter recounted the meeting and MMS’ request that POOI submit a plan of action. It notes that 6 weeks after the meeting, POOI “provided a schedule which its counsel now characterizes as ‘preliminary’ and devised without benefit of any engineering or contract input.” MMS asked “what prevented such input in the weeks between April 24 and June 7, 2002” and “what prevented such input in the 18 months since the 2000 Thomas & Beers report first detailing the problems.” (Answer at 9.)

MMS contends that POOI’s argument that subsequent bids prove that MMS’ December 31, 2002, date was impossible to meet is specious, arguing that the bids reflect the resources POOI was willing to commit. MMS argues:

In particular, POOI notes that a painting proposal clearly states that the cleaning and painting process “will require significant additional time...” SOR, page 2. An examination of that proposal is instructive. MMS’ October 31, November 30, and December 31, 2002 Progress Reports note that a quote from West Coast Welding and Construction estimates a 14 to 20 month period for the systematic cleaning and painting of the platforms. The quote, dated September 2002 but not provided to MMS until October 29, 2002, specifies a two-person crew. Supplemental Record, Tab 6, page 74. Assuming, for the sake of

argument, that these are reliable estimates, the cleaning and painting of both platforms requires between 28 and 40 man-months (14-20 months x2 men). If, again, for the sake of argument, four persons are used, as noted in the November and December reports (see Supplemental Record, Tabs 3 and 4, pages 21 and 28) then the timeframe shrinks to 7-10 months. If POOI had started the work on May 1, 2002 (not an unreasonable expectation given the 18 months of prior notice and discussion) the job would have been done by November 2002 (7 months) or February 2003 (10 months).

(Answer at 9-10, footnote omitted.) Notwithstanding the foregoing argument, MMS states that “as shown in Exhibit 3 (last column), MMS has agreed to the full measure of additional time requested by POOI’s counsel for completing those action items involving “cleaning painting the platforms” and repairing “the high concern areas of both platforms.” (Answer at 10 n. 5.)

MMS denies appellants’ contention that it has taken action to put POOI out of business, noting that, “as an initial matter, as the lessor of these offshore leases the Government has a vested interest in continuing production from the platforms. Economically, continued production benefits the government through royalties” and continued production advances the stated goals of the Outer Continental Shelf Lands Act. See 43 U.S.C. § 1332(3). (Answer at 12.) MMS explains that the

offshore environment is a harsh one. Salt corrosion, weather, and the inherent dangers of offshore drilling and production can make such operations risky for personnel, equipment, and the environment. MMS is also required, under the OSCLA, to protect life, property and the marine and human environment. 43 U.S.C. § 1332(6). The shut-in of components, and even entire facilities, is one of the enforcement actions that MMS is obligated to pursue in the event of serious regulatory violations, or where actions (or inactions) pose a risk of harm to life or the environment.

(Answer at 12-13.)

MMS notes that, in an August 29, 2002, letter to MMS, POOI’s President and CEO clearly recognized the need for the action MMS was demanding. MMS contends that POOI explained that a “delay of nearly a year in even starting to address the problems” was wholly unacceptable. Recognizing that the cash flow difficulties outlined in that letter “are indeed unfortunate,” it states that “MMS cannot responsibly allow them to outweigh its obligation to insure human and environmental safety.” (Answer at 13.) MMS suggests that, given POOI’s statement

that it would be unable to begin the required work for a year, POOI should not have been surprised that MMS inspectors were unaware that substantial work had been completed by the end of August 2002. MMS emphasizes that the facilities at Platform Hogan and Platform Houchin had not been shut-in because POOI has made some progress on many of the required actions. MMS notes, however, that it continues to believe that, had POOI forcefully and quickly acted, it could have completed all the required work by December 31, 2002, and that, nonetheless, it has continued to work with POOI, and agreed to substantial extensions for completion of several major tasks. MMS asserts that the progress POOI made resulted in additional time being granted, but that MMS also intended to encourage POOI to increase its efforts. (Answer at 13.)

Discussion

[1] The Secretary of the Interior is authorized under the Outer Continental Shelf Lands Act (the Act), as amended, 43 U.S.C. §§ 1331-1356 (2000), to lease Outer Continental Shelf (OCS) tracts for the exploration and development of mineral resources, including oil and gas. In section 3 of the Act, 43 U.S.C. § 1332 (2000), Congress announced that the OCS “is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards,” and advises that

operations in the [OCS] should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

43 U.S.C. § 1332(6) (2000). Congress directed the Secretary to prescribe rules and regulations deemed necessary to accomplish its stated objectives. See 43 U.S.C. § 1334(a) (2000); W&T Offshore, Inc., 148 IBLA 323, 354 (1999).

Section 22(b) of the Act mandates that any holder of a lease or permit in the OCS is under a duty “to maintain all operations within such lease area or within the area covered by such permit in compliance with regulations intended to protect persons, property, and the environment on the [OCS].” 43 U.S.C. § 1348(b) (2000). Section 22(c) provides for “scheduled on-site inspection [by the Department or the Coast Guard], at least once a year, of each facility on the [OCS] which is subject to any environmental or safety regulation promulgated pursuant to this subchapter, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillage, or other major accidents.” 43 U.S.C. § 1348(c) (2000).

Applicable regulations governing the conduct of oil and gas operations on the OCS are contained in 30 CFR Part 250. 30 CFR 250.912(a) and (b) require the lessee or permittee to, inter alia, periodically inspect the platform, and annually, on November 1, file a report with the regional supervisor stating which platforms have been inspected, the extent and area of inspection, the type of inspection employed, and the results.

The regulation found at 30 CFR 250.107, requires an OCS lessee to protect, the health, safety and the environment by inter alia, maintaining all equipment in a safe condition. Lessees are required to inspect and maintain all OCS platforms and structures (platforms) “to assure their structural integrity for the safe conduct of drilling, workover and producing operations, considering the specific environmental conditions at the platform location.” 30 CFR 250.900(a); see also 30 CFR 250.912(a). “All production facilities, including separators, treaters, compressors, headers and flowlines shall be designed, installed, and maintained in a manner which provides for efficiency, safety of operation, and protection of the environment.” 30 CFR 250.802(a)

Salt water corrosion poses one of the greatest single risk to the structural integrity of offshore steel facilities and equipment. Recognizing this risk, 30 CFR 250.907(d) provides:

All materials shall be protected from the effects of corrosion by a corrosion-protection system. The design of such systems shall take into account the possible existence of stress corrosion, corrosion fatigue, and galvanic corrosion. If the intended sea environment contains unusual contaminants, any special corrosive effects of such contaminants shall also be considered. Protection systems shall be designed in accordance with the National Association of Corrosion Engineers (NACE) publication, NACE Standard RP-01-76, Recommended Practice, Corrosion Control of Steel, Fixed Offshore Platforms Associated With Petroleum Production, or other comparable standards.

As stated, MMS’ decision to require the work identified in POOI’s schedule to be completed by December 31, 2002, and to deny the request for extension to begin completing repairs until June 2003, are at issue in this appeal.

This Board has previously held that when reviewing an authorized officer’s decision to issue an INC in the case of onshore mineral development, and the imposition of administrative assessments/liquidated damages, an agency decision will be upheld if it is supported by substantial evidence and an appellant must either show error by a preponderance of the evidence or that the decision is arbitrary,

capricious, or otherwise contrary to law. See e.g. Petro-X Corp., 127 IBLA 111, 119 (1993); Omimex Petroleum, Inc., 123 IBLA 1, 5 (1992); Fancher Oil Co., 121 IBLA 397, 402 (1991); Mapco Oil and Gas Co., 94 IBLA 158, 161 (1986).

For the reasons stated below, we affirm MMS' decision denying forbearance and requiring compliance by completion of (1) deck plating replacement where indicated (Houchin); (2) deck grating repairs (Hogan and Houchin) and; (3) wellbay structural repairs (Houchin only) by December 31, 2002.

It is clear from the record that these items were enumerated in the Thomas & Beers' Level I Topside Inspection reports submitted to MMS in 2000 and 2001. POOI acknowledged that these items were identified in Thomas & Beers' 2000 Topside I Inspection in a letter dated October 1, 2001, which stated that "the approved schedule [attached] is being followed and work on this ongoing project is moving forward at a satisfactory pace. This project will continue until all areas of concern have been cleaned, coated and reinspected for structural integrity." POOI's attached "Level 1 Inspection-Structural Maintenance Matrix" on Platform Houchin included, inter alia, wellbay structure repairs on the Houchin Platform, deck plating, grating, etc. The subsequent 2001 Topside Inspection identified the same areas as being in need of repair, and iterated the concerns with respect to the structural integrity of the wellbay area and its ability to support equipment loads. POOI's progress report promised completion within one year, but also evidenced a lack of concerted effort to complete the required maintenance/repair activities within the stated period of time.

MMS' April 23, 2002, inspection disclosed conditions on the two platforms that clearly did not comport with the cited regulations, and in some cases clearly posed a danger to the personnel conducting operations on the platforms. The condition of the elevated catwalk, chain handrails, and wellbay grating support on the southern end of the Houchin wellbay represented the clearest violations of the operating regulations. The MMS inspection prompted the demand that POOI create a timetable (June 7, 2002 schedule) for effecting the necessary repairs. POOI did not and does not dispute the necessity of repairs/replacement on appeal and does not contend that the existing conditions did not violate the applicable regulation.

Given the ongoing and continued deterioration, failed compliance, and the harshness of the offshore environment, we do not find that MMS was arbitrary or capricious when it rejected the attempt to "start" the time clock for compliance for the foregoing categories with POOI's June 7, 2002, schedule. POOI had essentially been granted almost 3 years to rectify conditions which are a clear violation of the operating regulations. See 30 CFR 250.107 and 250.907(d). POOI has not

established error in MMS' determination requiring the items identified as (1) - (3) be completed by December 31, 2002. Nor do we find that MMS erred when it refused to grant forbearance in the form of an extension until June 2003 to begin work on these items.

That POOI as a lessee is bound by applicable offshore operating regulations is clear. Duly promulgated regulations have the force and effect of law and are binding on the Department and this Board. Noah's World of Water, 141 IBLA 288, 292 (1997); Chevron U.S.A., Inc., 139 IBLA 173, 176 (1997); Conoco, Inc. (On Reconsideration), 113 IBLA 243, 249 (1990). It is equally clear that MMS has a duty to enforce those regulations to ensure the protection, health, and safety of personnel, property, and the environment. See W & T Offshore, Inc., *supra* at 354. The sophisticated nature of offshore drilling and producing operations and the harshness and often unforgiving nature of the OCS environment has no onshore parallel, regulatory or otherwise. POOI's financial incapability at any particular time simply provides no excuse for lack of compliance. MMS' decision not to extend the compliance schedule given the conditions observed on both platforms properly recognized that many of the conditions observed, if not corrected immediately, would endanger personnel or the environment, requiring issuance of INCs.

[2] Notwithstanding our finding, we believe it appropriate to set aside MMS' decision regarding the deadline for cleaning and inspecting high concern areas, pipeline risers, wellbay manifolds, and well conductors.

As distinguished from the other categories, which were addressed in the 2000 and 2001 Thomas & Beers' Level I Topside Inspections, neither those inspections nor POOI's October 2000 schedule, which referred to coating work, encompassed the program which MMS required following its inspection of the two platforms. Moreover, the MMS category title of "Reinstate Cleaning and Painting Program" suggests commencement of a continuing program rather than having clearly identified work completed by a specific date. MMS did not flesh out precisely what it required before its inspection in 2002, and it was not until then that it precisely stated what it contemplated as being included in an overall painting and coating of both platforms pursuant to the cleaning and painting program.

MMS' May 9, 2002, letter, which was written following MMS' April 23, 2002, Inspection, identified what MMS admitted were new areas of concern: pipeline risers, wellbay manifolds, and conductors on both platforms. (Administrative Record at Tab 18.) Consequently, MMS' claim on appeal that POOI had an 18-month notice with respect to what was to be accomplished in the painting program by December 31, 2002, is not supported by the record.

On appeal, MMS states that based on its expertise in the offshore area, it concluded the December 31 date was attainable and criticized POOI for not seeking a bid based on the assignment of more than two contract personnel to this task. The “time clock” for the completion of this item started with MMS’ May 9, 2002, letter directing POOI to “clean and inspect high areas of concern” was not reasonably ascertainable until after MMS’ inspection of the platforms and MMS’ May 9, 2002, letter.

Further, the stated basis for MMS’ conclusion that the December 31 deadline was reasonably attainable for this part of the project, *i.e.* the evidence demonstrating specific expertise in the offshore area and the volume of work required, is not found in the record now before the Board. In the absence of evidence regarding what its experts deemed to be appropriate and how they came to this conclusion, the Board cannot reasonably conclude that the record supports the decision, and appellants have no way to challenge either the stated rationale or expertise of MMS’ personnel. Samedan Oil Corp., 163 IBLA 63, 70 (2004) (Reconsideration Denied, (Dec. 16, 2004.) In that case we stated: “While as a general rule, as noted in Taylor Energy Co., [148 IBLA 286 (1999)], the Department is entitled to rely upon the reasoned analysis of its experts in matters within their expertise, this assumes the decision sets forth a reasoned analysis of the facts relied upon to reach that expert opinion.” Such was not the case in Samedan. The same is true here.

Our holding in Samedan applies here as well. In its progress reports and on appeal through the Solicitor, MMS postulates that assignment of more people to this task would likely result in an earlier completion time than that identified in POOI’s estimates. This mathematical formulation is unaccompanied by any evidence demonstrating the soundness of the rationale or that the December 31, 2002, completion time was reasonably attainable when taking into consideration the market and the work schedule of available contractors. MMS in post appeal documentation, which was based on a more thorough study of what was entailed stated a completion date of September 30, 2003, while recognizing that a significant amount of work had been completed in the interim. The basis for this latter deadline is unstated as well. Based on estimates it had received, POOI had projected the completion date for this part of the project as June 2004. (Supplemental Administrative Record at Tab 3.) Therefore we conclude that MMS’ December 31, 2002, compliance deadline for completion of “clean and inspect high areas of concern,” not merely “reinstate systematic cleaning and painting program (both platforms),” was not supported by substantial evidence.

With respect to the adequacy of the systematic cleaning and painting program, there is nothing in the record to demonstrate that the program POOI had undertaken (two employees) would not be adequate under normal circumstances. We recognize

that the failure to have a systematic program in place is one of the primary reasons that the conditions had deteriorated to a point that work in addition to a systematic cleaning and painting program was required. However, there is nothing in the record supporting a determination that the systematic program POOI had undertaken would not be in compliance as a maintenance program, once the required repair of the rusted areas was completed. The record contains nothing that would explain what would be a reasonable systematic cleaning and painting program, and therefore the record does not support a finding that the systematic maintenance program POOI had undertaken was not reasonable and adequate. The operative word in this regard is maintenance. The work necessary to clean and inspect high areas of concern is repair, it is not maintenance undertaken to avoid repair.

It is important to recognize that we are not holding that MMS erred when it did not grant forbearance or an additional extension of time until June 1, 2003, to commence work on these items. It is not disputed that the corrosive conditions observed by MMS involving these two items violate applicable regulations (30 CFR 250.907(d), 30 CFR 250.107, 30 CFR 250.900(a), and 30 CFR 250.802(a)), and it is not disputed that correction is required. Neither MMS nor this Board have authority to disregard applicable regulations. However, the record does not support MMS' conclusion that the work should have been completed by December 31, 2002, and there is nothing in the record to support a finding that the systematic maintenance program was not adequate. Accordingly, with respect to these two items we deem it appropriate to set aside MMS' decision and remand the case to MMS for further action in accordance with this decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside in part and remanded for further action in accordance with this decision.

R.W. Mullen
Administrative Judge

I concur:

James F. Roberts
Administrative Judge