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VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

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VIA Overnight Mail and E-Mail

Armand Southall
Regulatory Specialist, ONRR
P.O. Box 25165, MS 61030A
Denver, Colorado

Re: Proposed Rule to Amend Civil Penalty Regulations, RIN-1012-AA05

Dear Mr. Southall:

Anadarko Petroleum Corporation ("Anadarko") submits the following comments in response to the Office of Natural Resources Revenue's ("ONRR") request for comments on its proposed rule to amend its civil penalty regulations published in the Federal Register on May 20, 2014. 79 Fed. Reg. 28862. Under the proposed rule, the civil penalty regulations would apply not only to Federal and Indian oil and gas leases but also to Federal and Indian solid mineral leases, geothermal leases and agreements for outer continental shelf energy development under 30 U.S.C. § 1337(p). Anadarko offers its comments with respect to application of the proposed rules to Federal and Indian oil and gas leases. In addition to the comments set out below, Anadarko adopts and incorporates the comments submitted by the American Petroleum Institute ("API").

Background

Anadarko is among the world's largest independent oil and natural gas exploration and production companies. Anadarko holds interests in Federal and Indian oil and gas leases – approximately 16,500 acres of lands leased from Indian tribes and approximately 3 million acres of land leased from the Federal government. Anadarko has filed approximately 225,117 lines of royalty data with the ONRR and 380,797 lines of OGOR data in 2013. In addition to filing the requisite reports for all of the wells, Anadarko responded to approximately 80 data requests and 32 audits last year alone.

Anadarko takes its payment and reporting obligations seriously; however, given the complexity of the regulations, differing interpretations by ONRR staff and the need to estimate amounts that are required to be included in reports, such as cost of services, errors may occur. Moreover, given the sheer volume of data that must be submitted to ONRR, key stroke errors are almost inevitable. ONRR's proposal to penalize companies for such errors is unsupportable and unnecessary. The existing regulations already provide ONRR with a mechanism by which to obtain corrections and the ability to impose significant penalties in the event any such errors remain uncorrected. We therefore urge ONRR to withdraw the proposed rule as unnecessary.

Comments

As Anadarko is adopting the comments submitted by API, we will not duplicate the legal arguments made regarding ONRR's lack of authority to impose penalties without an opportunity to correct as has been proposed in § 1241.60, nor its proposed definitions of "maintenance", "submission" and "knowing and wilful". Instead, Anadarko's comments will focus on ONRR's proposed expansion of the actions that would fall within the ambit of a failure or refusal to "permit lawful entry, inspection or audit" and application of ONRR's proposed definition of knowingly and willfully preparing, maintaining or submitting false, inaccurate or misleading information. Under Section 103(a) of the Federal Oil and Gas Royalty Management Act ("FOGRMA"), 30 U.S.C. § 1713(a), "[a] lessee...directly involved in developing, producing, transporting, purchasing or selling oil or gas ... shall *maintain* any records, make any reports, and provide any information that the Secretary may, by rule, *reasonably* require for the purposes of implementing [FOGRMA]..." FOGRMA provides a penalty of up to \$10,000 per violation for each day of a violation for "any person who "fails or refuses to permit...an audit". 30 U.S.C. §1719(c)(2). In the preamble to the proposed regulation, ONRR states it will "likely treat delays in providing documents... as a knowing or willful failure to permit an audit" resulting in an immediate assessment of penalties rather than treating a delay in providing documents as curable 30 U.S.C. §§ 1719(a) or (b).

As noted above, last year, Anadarko responded to 80 data requests and 32 audits. Information requested by ONRR pursuant to an audit can sometimes be difficult to obtain, especially when properties have changed ownership multiple times. ONRR's proposal to treat delays in providing documents as a failure to permit an audit is not supported by the plain language of the statute or the legislative history. When FOGRMA was enacted, an audit system did not exist, and Congress implemented provisions to cure this defect. However, Congress also recognized that once a system was in place and functional, "...the level of auditing may be

reduced. The final level of auditing activity should reflect the cost benefit of audits in recovering the previously unpaid royalties and in reassuring the public that the new system is collecting all of the revenues which are actually due." See H. Rep. No. 97-859 at 23. Nowhere in the legislative history is there any support for equating a delay in providing information with a refusal to allow an audit. Based on the above, should ONRR proceed with issuance of a final rule to clarify that any delays in providing requested information whether pursuant to an audit, compliance review or data request will be addressed under proposed §§1241.50 and 1241.52. Proposed Section 1241.60(b)(1)(ii) should be reserved, as Congress intended, for those instances in which a lessee actually refuses to permit an audit.

As noted in API's comments, complying with ONRR's royalty and reporting obligations is no simple task and is further complicated in those situations in which there are multiple lessees or multiple leases. In some instances, a lessee could be subject to the most severe penalties for what ONRR could assert as maintenance of false or inaccurate information, even though a lessee submits such information based on an email request from ONRR. Paradoxically, failure to comply with ONRR's email could subject a lessee again to the most severe penalty. This is especially problematic given that criminal liability could be imposed in this instance. For example, a lessee could receive an email from ONRR directing it to revise volumes reported on leases that are included within a unit. However, because the Bureau of Land Management (BLM) has yet to approve the submitted unit revisions, the correct division orders cannot be established and therefore the volumes ONRR would expect to be reported are actually incorrect. In this instance, a lessee would be required to submit the "incorrect" information as directed by ONRR and then once BLM approves the unit revision, back out the volumes previously reported and submit volumes based on the new unit interests. If it did not do so, arguably under ONRR's proposed definitions, a lessee would be subject to penalties. Nothing in the legislative history of FOGPMA provides support for such a result.

Based on all of the reasons set out in API's comments and the above, Anadarko urges ONRR to withdraw its proposed rule as unwarranted and unnecessary.

Sincerely,



David J. Owens
Vice President, Deputy General Counsel