

July 21, 2014

Armand Southall
Regulatory Specialist, ONRR
P.O. Box 25165, MS 61030A
Denver, CO 80225Re: Statoil Comments on Proposed Rule to Amend Civil Penalty Regulations, RIN-1012-AA05**Submitted via: <http://www.regulations.gov> and U.S. mail**

Dear Mr. Southall:

Statoil USA E&P Inc. (“Statoil”) submits this letter in response to the Office of Natural Resources Revenue’s (“ONRR”) May 20, 2014 Proposed Rule entitled “Amendments to Civil Penalty Regulations.”¹ This Proposed Rule would substantially amend ONRR’s civil penalty regulations for royalty reporting and payment by federal and Indian oil and gas lessees.

Statoil fully incorporates by reference the comments on the Proposed Rule submitted by the American Petroleum Institute, of which Statoil is a member. As API’s comments explain in detail, the Proposed Rule exceeds ONRR’s legal authority under the Federal Oil and Gas Royalty Management Act of 1982 (“FOGRMA,” including as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996). In essence, ONRR seeks to rewrite the statute and upend the civil penalty hierarchy Congress carefully and purposefully created by overextending applicability of FOGRMA’s knowing or willful civil penalty provisions. At the same time, the proposed rule would amend ONRR’s existing regulations to deprive lessees of due process and the statutory right to a hearing on the record. That effort is legally indefensible. This proposal is so legally deficient that it cannot provide a basis for a final rule and ONRR must either retain its existing entirely adequate rules that have been in place for 30 years or issue a new proposed rule that stays within FOGRMA’s bounds.

Statoil also objects to the Proposed Rule as a transparent, post-hoc effort to bolster ONRR’s litigation position in Statoil’s pending administrative appeal regarding ONRR’s legal authority to apply the same definition of “maintain” under 30 U.S.C. § 1719(d)(1) as contained in the Proposed Rule. As ONRR is well aware, the Interior Board of Land Appeals (“IBLA”) is presently considering the threshold question of whether ONRR’s theory of violation is legally cognizable, i.e., whether a lessee’s failure to timely correct information on previously filed Form MMS-2014 Reports “can be penalized under 30 U.S.C. § 1719(d)(1) for knowingly or willfully maintaining incorrect information. . . .” See *Statoil USA E&P Inc.*, IBLA No. 2013-111. That appeal has been fully briefed and is awaiting a decision by the IBLA.

Having received no final adjudication of its novel legal theory of “maintain,” ONRR now seeks to codify this and other problematic interpretations via its Proposed Rule. As an initial matter, the fact that ONRR is now engaging in a rulemaking confirms that ONRR’s appealed order to Statoil (and relatively recent

¹ 79 Fed. Reg. 28,862 (May 20, 2014).

orders to other individual companies)² impermissibly applied a novel substantive interpretation of 30 U.S.C. § 1719(d)(1) without prior notice or rulemaking. Second, as to Statoil's pending IBLA appeal, ONRR cannot legally implement the substance of its rulemaking before it is finalized, particularly where civil penalties are involved. More significantly, ONRR's Proposed Rule does not change the fact that ONRR's new interpretation of "maintain" under FOGRMA remains fundamentally insupportable and incompatible with FOGRMA, as explained in API's filed comments on the Proposed Rule adopted herein and in Statoil's IBLA appeal. ONRR can no more adopt an unlawful reading of the statute in a regulation than it can in orders to individual companies. Consequently, ONRR must, at a minimum, revise and re-propose its rule consistent with the adequate remedies Congress actually afforded the agency under FOGRMA for unexceptional royalty reporting and payment errors after notice from ONRR.

Thank you for your time and attention to Statoil's comments. Please do not hesitate to contact Thomas Gottsegen at 713.485.2635 if you have any questions.

Sincerely,


Thomas Gottsegen

² Statoil understands that there are other pending administrative appeals regarding other aspects of ONRR's Proposed Rule as well. These appeals should also be permitted to reach their conclusion before a new rule is adopted.