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Department of the Interior
Minerals Management Service
ATTN: Rules, Processing Team
Mail Stop 4700
381 Elden Street
Herndon, VA 20170-4817

RE: "Oil Spill Financial Responsibility for Offshore Facilities"
62 Federal Register 14052, March 25, 1997

Dear Sir/Madam:

Marathon Oil Company is active in all aspects of the domestic and international petroleum industry with involvement in the exploration, production, pipeline, refining and marketing sectors. This letter is being submitted to provide comments on the Minerals Management Service (MMS) proposed rule, Oil Spill Financial Responsibility for Offshore Facilities, as published in the Federal Register on March 25, 1997 (62 FR 14052). As a member of the American Petroleum Institute, Marathon supports API's comments on this proposed program and Marathon incorporates those comments by reference.

The proposed oil spill financial responsibility (OSFR) amount of up to \$150 million represents a large increase from the existing \$35 million. This is proposed at a time when, according to MMS' most recent data, over the past twenty years, the amount of oil discharged by OCS operations has decreased. The excellent record can in part be attributed to industry and MMS efforts regarding effective spill prevention and emergency response activities. Specifically, offshore exploration, production, and pipeline facilities follow facility design and operating practices which make remote the potential for a spill of catastrophic proportions. Proper function and operation of equipment are verified by regulatory agencies such as the MMS. If, despite these proven safety systems, a spill occurs, response preparedness is achieved through comprehensive contingency planning, training and exercises, including an operator certification that sufficient personnel and equipment are available to respond to a "worst case discharge".

Given the above, and the fact that offshore oil and gas production is a critical component of the U.S. domestic economic and energy base having contributed more than \$100 billion to the U.S. Treasury since 1954, it is critical to minimize regulatory impacts. Marathon has several concerns about the MMS proposal, particularly with regard to the entity furnishing evidence of financial responsibility and the proposed self insurance provisions. These and other issues of concern are discussed below.

1. THE "DESIGNATED APPLICANT" PROPOSAL IS NOT ADVISABLE AND SHOULD BE ABANDONED

The Agency proposes to introduce the concept of the "designated applicant," and, under proposed section 253.11, would require that every lease, permit or right of use and easement (RUE) with a covered offshore facility (COF) must have a single designated applicant. Marathon believes that this requirement is unworkable, adds confusion, goes beyond the statute's definition of responsible party, and is unnecessary for the efficient administration of the rule.

Under the MMS proposal, the designated applicant is required to submit Form MMS 1016 and agree to demonstrate OSFR on behalf of all the responsible parties for the lease, permit, or RUE. If the designated applicant is not a responsible party, it must agree to be liable for oil pollution damages, cleanup costs, and other claims under OPA jointly and severally with the responsible parties. MMS states that its "intent is that the responsible parties agree who the one designated applicant should be on their behalf". MMS also wants that person to be liable for any damages or other claims so a claimant, or the Oil Spill Liability Trust Fund (the Fund), does not have to pursue anyone other than the person who agreed to be the designated applicant. Of course, the other responsible parties still remain liable if the designated applicant does not satisfy the liability.

Marathon believes the MMS has misjudged the willingness of lessees and operators to assume liabilities that they would not otherwise incur. A responsible party who is not a Lessee or Operator of Record will not agree to demonstrate OSFR. Further, Marathon believes that it is even more unlikely that a third party, that is not even a responsible party, will agree to demonstrate OSFR, and also agree to be liable jointly and severally for claims under OPA with the responsible parties. In this regard, it must be borne in mind that although the maximum OSFR that must be evidenced is limited to \$150 million, the liability of a responsible party is not so limited, and the party agreeing to serve as the designated applicant may be effectively forced to take on the unlimited liability of all of the responsible parties that it represents.

Instead, the MMS should modify Section 253.11 to provide that OSFR must be demonstrated by the lessee, the designated operator for the lease pursuant to 30 CFR § 250.8, or by the unit operator designated under a federally approved unit including the OCS lease; with respect to a state lease, OSFR must be demonstrated by the operator of record for the lease, or by the unit operator; with respect to a permit, OSFR must be demonstrated by the permittee; with respect to a RUE with a COF, OSFR must be demonstrated by the holder of the RUE, or, if there is a pipeline on the RUE, by the owner or operator of the pipeline.

The "designated applicant" concept should be deleted from these regulations.

2. THE GEOGRAPHIC SCOPE OF THE PROPOSED RULE IS OVERLY BROAD

In the 1996 Amendments to OPA 90, Congress provided that "offshore facilities" should include those areas traditionally known as the "territorial seas" and the "ocean". In addition, Congress provided that certain coastal areas would be covered.

MMS has attempted to incorporate the intent of the statute in its proposed rule, but has missed the mark with regard to coastal areas (see API comments). In the process, MMS has made its proposed rule applicable to a far wider geographic area, and therefore, to many more facilities than Congress intended. Specifically, MMS has proposed to regulate facilities located in interior areas that are merely "affected by the tides". As a result, facilities that are located in interior areas and have no direct contact with the open sea would inappropriately be within the scope of these regulations.

In addition to the proposed regulation, the preamble to the proposed rule set forth a second option using broad geographic bands for defining places landward of the coastline. Marathon responds that it is opposed to the use of this concept. As we have indicated above, the statute constrains the agency to certain geographic areas and does not authorize MMS to regulate large areas that are outside of that which is authorized by statute.

3. MMS SHOULD CLARIFY THE METHODOLOGY USED TO CALCULATE WORST CASE SPILL DISCHARGE VOLUMES

Sections 253.13 and 253.14 of the proposed rule describe how much OSFR must be demonstrated by the operator. The amount of OSFR proposes to use a tiered approach which is tied to the worst case oil spill discharge volume for the COF. While Marathon supports the tiered approach, the method of calculating the worst case oil-spill discharge volume must be clarified. This issue is causing considerable confusion in the regulated community, and Marathon strongly encourages MMS to include additional language in this rulemaking to ensure that the confusion is eliminated. To maintain a level playing field and promote consistency within the regulated community, MMS should provide sample methodology and an example production platform, pipeline and exploratory well in either the preamble or the rule.

4. MMS SHOULD LINK THE EFFECTIVE DATE OF PART 253 AND SUBSEQUENT SUBMITTALS WITH THE BI-ANNUAL UPDATE OF THE PART 254 OIL SPILL RESPONSE PLAN

In order to minimize the regulatory burden, the effective date and subsequent submittals demonstrating OSFR should be cross-referenced and coordinated with the requirements of other oil-spill regulations. This would help to avoid unnecessary, premature and duplicative work by the regulated community. For example, under 30 CFR Part 254, operators are required to submit updated facility response plans every two years. Specifically, Marathon recommends that the MMS delay the effective date of Part 253

to coincide with the effective date of the provision of Part 254 that requires the worst case calculation to be made.

5. MMS SHOULD IMPROVE THE SELF INSURANCE PROVISIONS

Section 253.25(a), which divides stockholder/owner equity by 10, is extremely conservative. Company assets as reported in audited financial statements and 10K submittals are already conservative in that the book value, not true market value, is reported. Marathon recommends that stockholder/owner equity be used to demonstrate OSFR. If MMS should require a more conservative demonstration, a 50% safety factor is more than adequate. Thus stockholder/owner equity numbers should at most be divided by 2.

Also, it is recommended that the applicant may use the greater of the computed amounts under 253.25(d). Either of the proposed tests are suitable and the demonstration of OSFR should not be sensitive to stockholder/owner equity at any particular point in time.

6. REPORTING SHOULD BE SIMPLIFIED

Any applicant who demonstrates the full \$150 million in OSFR, using a method that does not limit it to certain specified leases, permits, or Rights of Use and Easement, should not be required to complete and file Forms MMS 1021 (Lease Listing), MMS 1022 (Permit or RUE Listing), MMS 1023 (Lease Changes), or MMS 1024 (Permit or RUE Changes). These forms, especially in the case of Plan's of Exploration, will impose a major continuing paperwork burden on operators and MMS. In addition, no essential new information that is not available to MMS from other sources will be obtained. Applicants should be required to file only a Form MMS 1016 and a Form MMS 1018 or 1019, depending on the method used to establish evidence of financial responsibility.

Although MMS may not have information identifying facilities that are located in state waters, identification is not necessary as long as the applicant has evidenced the maximum \$150 million financial responsibility for any of the applicant's covered offshore facilities.

7. MMS QUESTIONS: 1. (a) EXPANDED INFORMATION COLLECTION

MMS' stated objective is to use the information to establish a reference source of names, addresses, and telephone numbers of parties responsible for COF's and their designated agents and guarantors. In fact, MMS and state oil and gas agencies currently have necessary information on mineral lessees and lease operators, geological and geophysical permittees, and owners of RUE's, because they are involved in regulating these entities on an ongoing basis. Additional paperwork is not needed to obtain this information.

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MMS and states, through existing leasing and permitting procedures, have the means to ensure that companies demonstrate the required financial capability for spill removal costs and damages. Particularly with regard to the OCS, the MMS should integrate the data requirements associated with OSFR into existing regulatory programs, rather than create separate and burdensome databases.

Marathon appreciates the consideration of its comments on this important issue and looks forward to MMS' response prior to finalization of the proposed rules. Please feel free to contact me at 419/421-2492 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Doyle". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

WJD/nsw