



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

October 12, 2021

M- 37071

Memorandum

To: Secretary

From: Solicitor

Subject: Continuation of BSEE Inspection Fee Collection Authority during a Continuing Resolution

In recent years, Congress has funded the Bureau of Safety and Environmental Enforcement's (BSEE's) inspection program for outer Continental Shelf (OCS) oil and gas exploration and production facilities primarily through fees collected from the designated operators of OCS facilities. The Department's Interior Board of Land Appeals (IBLA) recently issued an opinion in *Medco Energi LLC*, IBLA No. 2020-184, that concluded that the BSEE fee collection authority lapsed during the period of a Continuing Resolution (CR), as the authority purportedly had been limited to the prior fiscal year by the applicable appropriations act. As set forth below, this Memorandum Opinion (M-Opinion) concludes that the BSEE fee collection authority does not lapse during the period of a CR and that the collection of inspection fees by the Department is both authorized and required during any such periods. Accordingly, the IBLA decision is based on an incorrect reading of applicable law and may not be relied upon by any employee of the Department.¹

I. Background

A. BSEE Inspection Program Funding

Funding for the BSEE OCS inspection program is provided in the Offshore and Environmental Enforcement account in a manner that differs from the typical Federal agency appropriation, though it is not a unique structure. First, like most agency programs, the BSEE inspection program receives an annual appropriation derived from the General Treasury and enacted as a lump sum to be used for the program. Next, and unlike the usual agency appropriation, Congress directs that the Secretary credit amounts generated from inspection fees collected during the applicable fiscal year to this appropriation to reduce the dollar value of the baseline appropriation

¹ Under 209 DM 3.2A (11), Solicitor's M-Opinions are "binding, when signed, on all other Departmental offices and officials and [. . .] may be overruled or modified only by the Solicitor, the Deputy Secretary, or the Secretary." Accordingly, M-Opinions are binding on the Office of Hearings and Appeals and the IBLA. 212 DM 13.8C. *See also* Binding Nature of Solicitor's M-Opinions on the Office of Hearings and Appeals, M-37003 (Jan. 18, 2001).

from the Treasury.² A representative formulation of the statutory language that governs the offshore inspection account is as follows:

For an additional amount, \$65,000,000, to remain available until expended, to be reduced by amounts collected by the Secretary and credited to this appropriation, which shall be derived from non-refundable inspection fees collected in fiscal year 2016, as provided in this Act: *Provided*, That to the extent that amounts realized from such inspection fees exceed \$65,000,000, the amounts realized in excess of \$65,000,000 shall be credited to this appropriation and remain available until expended[.]³

In this way, Congress ensures that the BSEE inspection program has sufficient funds to operate continuously throughout the year, through the back-stop of funding from the Treasury, but expects that the actual costs of the inspection program will ultimately be funded by the associated fees.⁴

B. BSEE Inspection Fee Collection Authority

As noted, the BSEE annual appropriation itself provides that the program’s appropriation is to be reduced by a fee “as provided in this Act.”⁵ Every year since 2010, that fee has been found in a separate section of the appropriations act that is entitled, “General Provisions, Department of the Interior.”⁶ In that provision, typically found at Section 107, Congress requires the Secretary to collect inspection fees for BSEE’s inspection of certain OCS facilities pursuant to the Outer Continental Shelf Lands Act (OCSLA).⁷ A representative provision is as follows:

² Congress began the practice of annually funding, and directing the Department to collect fees to offset the annual funding for, OCS inspections in 2010. *See, e.g.*, Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-88, Div. A, Title I, § 115, 123 Stat. 2904, 2928-2929 (2009); Full-Year Continuing Appropriations, 2011, Pub. L. No. 112-10, Div. B, Title I, § 1101(a)(4), 125 Stat. 38, 102 (2011); Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, Div. E, Title I, § 109, 125 Stat. 786, 1008 (2011); Consolidated & Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, Div. F, Title I, § 1101(a)(3), 127 Stat. 198,412 (2013); Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, Div. G, Title I, § 107, 128 Stat. 5,311 (2014); Consolidated & Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div. F, Title I, § 107, 128 Stat. 2130, 2418-2419 (2014); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. G, Title I, § 107, 129 Stat. 2242, 2549 (2015); Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. G, Title I, § 107, 132 Stat. 348, 658 (2018).

³ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. G, Title I, § 107 (hereinafter, Section 107). The same language was enacted as Section 107 in the Consolidated Appropriations Act, 2017, Pub. L. No. 115-131, Div. G, Title I.

⁴ This formulation enables the applicable legislative committees’ compliance with scoring limitations, by annually enacting revenue (fees) to offset the enacted outlay from the Treasury (the appropriation).

⁵ *See supra* note 3.

⁶ *See supra* note 2.

⁷ 43 U.S.C. § 1348(c). OCSLA requires BSEE to conduct annual scheduled onsite inspections of each facility on the OCS that is subject to environmental or safety regulation promulgated under OCSLA, as well as unscheduled inspections.