

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
)	
SHELL GULF OF MEXICO, INC)	
Frontier Discoverer Drilling Unit)	OCS Appeal Nos. OCS 10-01
OCS Permit No. R10 OCS/PSD-AK-09-01)	through 10-4
)	
and)	
)	
SHELL OFFSHORE, INC.,)	
Frontier Discoverer Drilling Unit)	
OCS Permit No. R10 OCS/PSD-AK-10-01)	
_____)	

EPA REGION 10 MOTION FOR EXTENSION OF TIME

On December 30, 2010, the Environmental Appeals Board (Board) issued an Order Denying Review in Part and Remanding Permits in this matter (Remand Order). U.S. Environmental Protection Agency (EPA) Region 10 hereby moves the Board for an extension of the deadline for filing any motion for reconsideration and/or clarification of the Remand Order. In support of this motion, EPA Region 10 states the following:

1. The Remand Order addresses three of the issues raised in the petitions in this matter – upholding Region 10’s determination and denying review with regard to one issue (application of BACT to the Associated Fleets’ emissions) and finding that EPA Region 10 erred with regard to the other two issues (regarding the OCS source determination and the environmental justice analysis of the impact of NO₂ emissions). The Remand Order does not address the merits of the other issues raised in the petitions and remands the challenged permits in their entirety.

2. Under the relevant regulations, any motion for reconsideration and/or clarification of the Remand Order would be due on January 12, 2011. See 40 C.F.R. §§ 124.19(g) and 124.20(d) (requiring any such motion to be filed within ten days from issuance of a final order, and adding three additional days to the deadline for mail service).¹
3. In light of the complexity of the issues addressed in the Remand Order, additional time is needed in order to:
 - a. coordinate review of the key issues addressed in the Remand Order between multiple offices within EPA Region 10 and EPA Headquarters;
 - b. reach a decision as to whether it is necessary to seek reconsideration and/or clarification of any aspects of the Remand Order; and
 - c. if a decision is made to seek reconsideration and/or clarification, write a fully developed brief to assist the Board in considering our request.
4. Additional time will also allow EPA to review the October 7, 2010 Oral Argument Transcript that is frequently cited in the Remand Order but is not yet available in the docket for this matter.
5. EPA Region 10 informed the other parties in this matter regarding its plan to file this Motion for Extension of Time and sought their consent in filing this Motion. Their responses are as follows:

¹ The relevant regulation only addresses motions to reconsider, but the EAB Practice Manual states that motions for clarification will also be considered and applies the same filing deadline as applies to motions for reconsideration. See id. (Sept. 2010) at 49, n.55.

- a. Counsel for Petitioners (Alaska Eskimo Whaling Commission and the Inupiat Community of the Arctic Slope, EarthJustice on behalf of several conservation groups, and Center for Biological Diversity) indicated that they do not object to Region 10's motion for an extension of time until January 21 in which motions for reconsideration and/or clarification can be filed, so long as the extended deadline was available to any party in this case and Region 10 would also ask the EAB to provide the opportunity for the other parties to respond to any motions for reconsideration and/or clarification that may be filed and to provide the same amount of time in which to prepare those responses (i.e., 22 days; until February 14, 2010).
- b. Citing concerns with further delay of these permitting actions, Counsel for Shell Gulf of Mexico, Inc. and Shell Offshore Inc. indicated that they did not consent to Region 10's requested extension and opposed Petitioners' conditional consent, including the extension of the normal deadlines for filing an opposition to any such motion for reconsideration and/or clarification.

WHEREFORE, for the reasons set forward above, EPA Region 10 requests that the Board grant this Motion for Extension of Time and extend the deadline for any party to file a motion for reconsideration and/or clarification of the Remand Order in this

matter by nine (9) days, until January 21, 2010, and allow for responses to any such motions in a manner and time frame that the Board deems appropriate.

Dated this 7th day of January, 2011

Respectfully submitted,

_____/s/_____
Kristi M. Smith
Air and Radiation Law Office
EPA Office of General Counsel

Julie Vergeront
Juliane R. B. Matthews
Assistant Regional Counsel
EPA Region 10

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the MOTION FOR EXTENSION OF TIME to be served by electronic mail upon the counsel listed below.

1/7/11
Date

/s/
Kristi M. Smith
Attorney Advisor
Air and Radiation Law Office
EPA Office of General Counsel

Counsel

Service e-mail

Vera P. Pardee, Kevin P. Bundy,
& Brendan R. Cummings
Center for Biological Diversity

vpardee@biologicaldiversity.org
kbundy@biologicaldiversity.org
bcummings@biologicaldiversity.org

Tanya Sanerib & Christopher Winter
Crag Law Center

tanya@crag.org
chris@crag.org

David Hobstetter, Erik Grafe,
& Eric Jorgensen
Earthjustice

dhobstetter@earthjustice.org
egrafe@earthjustice.org
ejorgensen@earthjustice.org

Duane A. Siler, Susan M. Mathiascheck,
& Sarah C. Bordelon
Crowell & Moring LLP

dsiler@crowell.com
smathiascheck@crowell.com
sbordelon@crowell.com