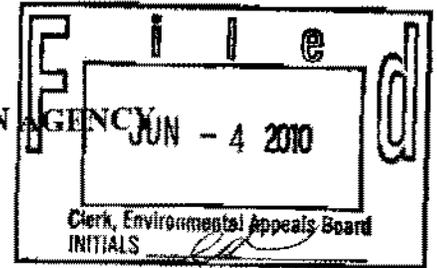


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Shell Gulf of Mexico, Inc.)
Shell Offshore, Inc.) OCS Appeal Nos. 10-01 through 10-04
Frontier Discovery Drilling Unit)
)
OCS Permit No. R10OCS/PSD-AK-09-01)
OCS Permit No. R10OCS/PSD-AK-2010-01)
)

**ORDER GRANTING EPA REGION 10'S MOTION FOR EXTENSION OF TIME AND
ESTABLISHING THE SAME RESPONSE SCHEDULE FOR SHELL GULF OF
MEXICO INC. AND SHELL OFFSHORE INC.**

On March 31, 2010, Region 10 ("Region") of the U.S. Environmental Protection Agency ("EPA") issued an Outer Continental Shelf ("OCS") Prevention of Significant Deterioration ("PSD") Permit to Construct, Permit Number R10OCS/PSD-AK-09-01 ("Chukchi Permit"), to Shell Gulf of Mexico, Inc. ("SGOMP"). On April 9, 2010, the Region issued a second OCS PSD Permit to Construct, Permit Number R10OCS/PSD-AK-2010-01 ("Beaufort Permit") (collectively, "Permits"), to Shell Offshore, Inc. ("SOF"). Three groups filed petitions for review of both the Chukchi and Beaufort Permits with the Environmental Appeals Board ("Board"):

- 1) Center for Biological Diversity ("CBD");¹
- 2) EARTHJUSTICE, on behalf of several conservation groups ("EJ Petitioners");² and
- 3) Alaska Eskimo Whaling Commission and

¹ CBD requested review of the Permits simultaneously in a single Petition for Review designated as OCS Appeal No. 10-01. *See* Petition for Review (Apr. 30, 2010) ("CBD Petition").

² EJ Petitioners requested review of the Permits simultaneously in a single Petition for Review designated as OCS Appeal No. 10-02. *See* Petition for Review (May 3, 2010) ("EJ Petition"). The EJ Petitioners include Natural Resource Defense Council, Native Village of Point Hope, Resisting Environmental Destruction on Indigenous Lands ("REDOIL"), Alaska Wilderness League, Audubon Alaska, Center for Biological Diversity, Northern Alaska

Inupiat Community of the Arctic Slope (“AEWC”)³ (collectively, “Petitioners”). The permits would authorize, subject to conditions, SOI and SGOMI (collectively, “Shell”) “to construct and operate the Frontier Discoverer drillship and its air emission units and to conduct other air pollutant emitting activities” in the Chukchi and Beaufort Seas off the North Slope of Alaska for the purpose of oil exploration. OCS PSD permits are governed by 40 C.F.R. part 55 and the procedural rules set forth in 40 C.F.R. part 124. *See* 40 C.F.R. § 55.6(a)(3).

On May 7, 2010, Shell filed a motion requesting that the Board expedite consideration of the petitions due to the short time Shell has to conduct drilling during the Arctic summer and the short time before that drilling season would start. The Board held a scheduling conference on May 13, 2010, and the Board on May 14, 2010, issued an order setting briefing deadlines and scheduling oral argument for June 18, 2010. *See* Order Consolidating Petitions for Review and Setting Briefing Schedule (May 14, 2010).

On May 28, 2010, the Region filed a motion requesting that the Board hold the above-captioned matters in abeyance based on recent announcements from President Obama and the U.S. Department of the Interior (“DOI”) suspending until 2011 Shell’s plans to drill exploratory wells in the Chukchi and Beaufort Seas. *See* Motion to Hold Matters in Abeyance (May 28, 2010) (“Motion to Hold in Abeyance”) at 2-3. Shell filed an opposition to the Region’s Motion to Hold in Abeyance on June 1, 2010, arguing, among other things, that “[t]he temporary

Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, and Sierra Club.

³ AEWC filed a Petition for Review of the Chukchi Permit, designated as OCS Appeal No. 10-03. *See* Petition for Review (May 3, 2010). AEWC subsequently filed a Petition for Review of the Beaufort Permit, designated as OCS Appeal No. 10-12. *See* Petition for Review (May 12, 2010).

suspension of DOI permitting of Shell's wells until 2011 does not affect the Board's ability to determine these primarily legal issues in 2010." See Opposition of Shell Gulf of Mexico Inc. and Shell Offshore Inc. to Motion to Hold Matters in Abeyance at 7. On June 2, 2010, Petitioners filed a motion requesting that the Board vacate and remand the Permits or, alternatively, to grant the Region's Motion to Hold in Abeyance, contending that the comprehensive review of Shell's drilling plans will likely result in substantial changes to Shell's operations, their emissions, and any future air permits. See Petitioners Natural Resources Defense Council, et al., Alaska Eskimo Whaling Commission, et al., and Center for Biological Diversity's Motion to Vacate and Remand the Air Permits, and Response to the Environmental Protection Agency's Motion to Hold These Proceedings in Abeyance ("Motion to Vacate and Remand") at 2. Petitioners state in the alternative that "in the face of likely substantial changes to the permits" it is no longer appropriate to continue adjudication of the pending petitions. *Id.*

After considering the parties' assertions, the Board issued an order on Wednesday, June 2, 2010, requiring that the Region and Shell proceed in filing their responses to the Petitions according to the originally scheduled date of Friday, June 4, 2010, and additionally requiring the Region to file its response to the Petitioners' Motion to Vacate and Remand and its reply to Shell's opposition to the Region's Motion to Hold in Abeyance on or before Tuesday, June 8, 2010. The Board further ordered that the oral argument scheduled for Friday, June 18, 2010, will be held on Petitioners' Motion to Vacate and Remand and on the Region's Motion to Hold in Abeyance (and any replies or responses pertaining to those motions). Oral argument on the merits of the petitions for review is postponed, and the Board will issue a future order regarding any oral argument on the merits.

On June 3, 2010, the Region filed a partially unopposed motion requesting an extension of time to file its response to the Petitions and the Certified Index of the administrative record for both Permits until Monday, June 7, 2010, and an extension to file its response to Shell's opposition to the Region's Motion to Hold in Abeyance and Petitioners' Motion to Vacate and Remand until Thursday, June 10, 2010. See EPA Region 10's Partially Unopposed Motion for Extension of Time ("Motion for Extension of Time"). The Region states that this time will allow for appropriate review of the response brief by EPA management, and that its response to Shell's and Petitioners' motions will require coordination between multiple EPA offices. *Id.* at 2-3. The Region also notes that CBD and AEWC do not oppose the request for an extension of time, and that at the time of filing, counsel for EJ Petitioners were on travel or otherwise away from their offices and unable to provide their position as to the revised schedule. *Id.* at 4.

Subsequently, EJ Petitioners filed a motion on June 3, 2010, responding to the Region's Motion for Extension of Time. See Petitioners Natural Resources Defense Council, Native Village of Point Hope, Resisting Environmental Destruction on Indigenous Lands (REDOIL), Alaska Wilderness League, Audubon Alaska, Center for Biological Diversity, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, and Sierra Club's Response to EPA Region 10's Partially Unopposed Motion for Extension of Time. EJ Petitioners object to the portion of the Region's proposed briefing schedule that "provides for a shorter period of time for Petitioners to file a reply than originally provided by the Board," and request that "if the Board extends the response brief deadline that it allow Petitioners until June 17 to file their reply." *Id.*

Shell filed a partial opposition to the Region's Motion for Extension of Time on June 3,

2010, objecting solely on the basis that under the revised schedule proposed by the Region, Shell's response to the Petitions would still be due Friday, June 4, 2010, instead of on the same date EPA seeks for itself, Monday, June 7, 2010. See Partial Opposition of Shell Gulf of Mexico Inc. and Shell Offshore Inc. to EPA's Motion for Extension of Time. Shell avers that it is inequitable to allow the Region, the principal respondent in defending its permitting decisions, an extension of time to file its response brief and to not afford Shell the same extension. *Id.*

Based on the information above, the Board hereby grants an extension of time to file response briefs until Monday, June 7, 2010, for both the Region and Shell. The Region is ordered to submit its Certified Index of the administrative record for both Permits by Monday, June 7, 2010. In addition, the Board grants the Region's request for an extension of time to file its response to Shell's opposition to the Region's Motion to Hold in Abeyance and Petitioners' Motion to Vacate and Remand until Thursday, June 10, 2010 (any other parties may file responses or replies to the pending motions by this date as well). Petitioners' briefs replying to the Region's and Shell's responses to their Petitions, originally due by Monday, June 14, 2010, now must be filed by Tuesday, June 15, 2010. Oral argument on Petitioners' Motion to Vacate and Remand and on the Region's Motion to Hold in Abeyance (and any replies or responses pertaining to those motions) will be held on Friday, June 18, 2010.

So ordered.

Dated: June 4, 2010

ENVIRONMENTAL APPEALS BOARD

By: 
Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Granting EPA Region 10's Motion for Extension of Time and Establishing the Same Response Schedule for Shell Gulf of Mexico Inc. and Shell Offshore Inc., in the matter of Shell Gulf of Mexico, Inc., and Shell Offshore, Inc., OCS Appeal Nos. 10-01 through 10-04, were sent to the following persons in the manner indicated:

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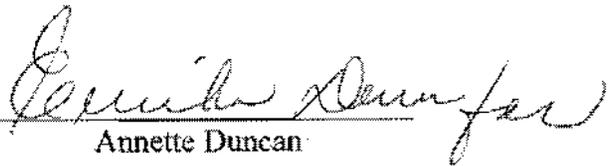
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Dated:

June 4, 2010


Annette Duncan
Secretary