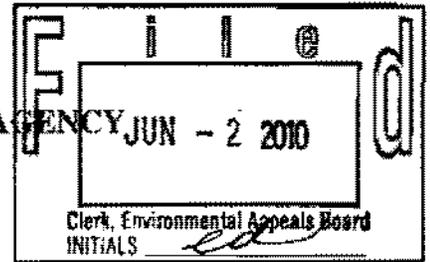


ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



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 DENYING REQUEST TO HOLD BRIEFING SCHEDULE IN ABEYANCE,  
POSTPONING ORAL ARGUMENT ON PETITIONS FOR REVIEW,  
AND SCHEDULING ORAL ARGUMENT ON PETITIONERS' MOTION TO VACATE  
AND REMAND AND ON REGION'S MOTION TO HOLD IN ABEYANCE**

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. ("SOI"). 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");<sup>1</sup> 2) EARTHJUSTICE, on behalf of several conservation groups ("EJ Petitioners"),<sup>2</sup> and; 3) Alaska Eskimo Whaling Commission and

---

<sup>1</sup> 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").

<sup>2</sup> 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 of Indigenous Lands ("REDOIL"), Alaska

Inupiat Community of the Arctic Slope (“AEWC”)<sup>3</sup> (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).

The Region has now filed a motion dated May 28, 2010, 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 (“DOF”) 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 (citing Press Release, U.S. Department of the Interior, *Salazar Calls for New Safety Measures for Offshore Oil and Gas Operations*;

---

Wilderness League, Audubon Alaska, Center for Biological Diversity, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, and Sierra Club.

<sup>3</sup> 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).

*Orders Six Month Moratorium on Deepwater Drilling* (May 27, 2010) and accompanying Fact Sheet (“DOI Fact Sheet”)). Specifically, DOI stated that Shell’s Applications for Permits to Drill in the Chukchi and Beaufort Seas will not be considered until 2011 pending further information-gathering and evaluation of oil spill response mechanisms in the Arctic. Motion to Hold in Abeyance at 2; DOI Fact Sheet at 1.

The Region does not propose to withdraw or reconsider the challenged Permits, but rather to “hold matters in abeyance,” averring that a stay is necessary because “Region 10 does not know whether the general review to be conducted during the moratorium will lead to events that could affect the CAA [Clean Air Act] permitting in this case.” Motion to Hold in Abeyance at 1, 3. The Region’s Motion to Hold in Abeyance indicates that during the proposed stay, the only question the Region must answer is whether the existing Chukchi and Beaufort Permits warrant revision based on DOI’s review of oil spill risks and response capabilities in Arctic waters. Motion to Hold in Abeyance at 3.

Shell filed an opposition to the Region’s Motion to Hold in Abeyance, in which Shell argues, among other things, that the issues Petitioners raise on appeal are primarily legal in nature and not likely to be affected by any changes to Shell’s drilling plans following conclusion of DOI’s review. See *Opposition of Shell Gulf of Mexico Inc. and Shell Offshore Inc. to Motion to Hold Matters in Abeyance* at 6-7. Shell asserts that “[t]he temporary suspension of DOI permitting for Shell’s wells until 2011 does not affect the Board’s ability to determine these primarily legal issues in 2010.” *Id.* at 7. Shell also notes that the “short seasonal window for Arctic drilling” will likely require the OCS PSD permits to be processed “on a tight schedule” in 2011 and any “narrowing of issues” that may be accomplished by the Board’s analysis of the

pending petitions now would reduce burdens on the parties and Board in 2011. *Id.* at 8. Shell also observes that “if the Board were to remand the permits on any of these issues, \* \* \* there might then be time for Region 10 to revise the permits \* \* \* and reissue them well in advance of a 2011 summer drilling season.” *Id.*

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. *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”). In support of their Motion to Vacate and Remand, the Petitioners contend that “the government is conducting a far-reaching and comprehensive review of Shell’s drilling plans, and this review is likely to result in substantial changes to the operations, their emissions, and any future air permits, and may curtail Arctic drilling permanently.” *Id.* at 2. In addition, Petitioners assert that Shell has already proposed to add further support vessels to the fleet assisting in the Chukchi and Beaufort exploratory drilling activities, which they contend may necessitate a new or revised PSD analysis. 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 all parties’ assertions, the Board could better evaluate these differing motions if it had the benefit of the merits briefing now scheduled to be filed June 4 and 14, 2010. In addition, the Board would be aided by a response from the Region to Petitioners’ Motion to Vacate and Remand and to Shell’s opposition to the Region’s Motion to Hold in Abeyance.

These filings will assist the Board in analyzing the Region's request that the Board hold in abeyance, but not remand, the pending Permits despite significant challenges to the Region's analysis and permit decisions.

Based on the information above, the Board is not persuaded that a stay of the briefing schedule in this case is warranted and, accordingly, the Board denies the Region's request to hold the briefing schedule in abeyance. The parties shall adhere to the briefing schedule previously established by the Board's order. *See Order Consolidating Petitions for Review and Setting Briefing Schedule (May 14, 2010)*. In addition, on or before Tuesday, June 8, 2010, the Region shall 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 (any other party may also file a response or reply to the pending motions and responses by that date as well). The oral argument scheduled for Friday, June 18, 2010, will no longer be held on the merits of the petitions for review, but instead the June 18, 2010 oral argument 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). The oral argument on the merits of the petitions for review, previously scheduled for June 18, 2010, is postponed and the Board will issue a future order regarding any oral argument on the merits.

So ordered.

Dated: *June 2, 2010*

**ENVIRONMENTAL APPEALS BOARD**

By:   
Anna L. Wolgast  
Environmental Appeals Judge

## CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Denying Request to Hold Briefing Schedule in Abeyance, Postponing Oral Argument on Petitions for Review, and Scheduling Oral Argument on Petitioners' Motion to Vacate and Remand and on Region's Motion to Hold in Abeyance, 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:

### By Facsimile and First Class U.S. Mail:

Duane A. Siler  
Susan M. Mathiascheck  
Sarah C. Bordelon  
Crowell & Moring LLP  
1001 Pennsylvania Ave. NW  
Washington, DC 20004  
Telephone: 202-624-2500  
Facsimile: 202-628-5116  
dsiler@crowell.com  
smathiascheck@crowell.com  
sbordelon@crowell.com

Tanya Sanerib  
Christopher Winter  
Crag Law Center  
917 SW Oak Street, Suite 417  
Portland, OR 97205  
Telephone: (503) 525-2722  
Facsimile: (503) 296-5454  
tanya@crag.org  
chris@crag.org

Vera P. Pardee  
Kevin Bundy  
Center for Biological Diversity  
351 California Street, Suite 600  
San Francisco, CA 94104  
Telephone: (415) 436-9682 ext. 317 (VP)  
Telephone: (415) 436-9682 ext. 313 (KB)  
Facsimile: (415) 436-9683  
vpardee@biologicaldiversity.org  
kbundy@biologicaldiversity.org

David R. Hobstetter  
Erik Grafe  
EARTHJUSTICE  
441 W. 5<sup>th</sup> Ave., Suite 301  
Anchorage, AK 99501  
Telephone: (907) 277-2500  
Facsimile: (907) 277-1390  
egrafe@earthjustice.org  
akoffice@earthjustice.org

Brendan Cummings  
Center for Biological Diversity  
PO Box 549  
Joshua Tree, CA 92252  
Telephone: (760) 366-2232  
Facsimile: (760) 366-2669  
bcummings@biologicaldiversity.org

Eric P. Jorgenson  
EARTHJUSTICE  
325 Fourth Street  
Juneau, AK 99801  
Telephone: (907) 586-2751  
Facsimile: (907) 463-5891  
ejorgenson@earthjustice.org

**By Facsimile and EPA Pouch Mail:**

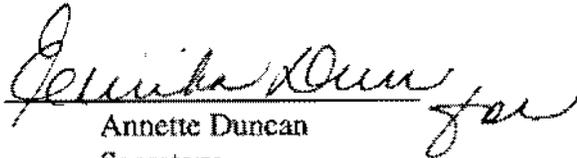
Julie Vergeront  
Juliane R.B. Matthews  
Office of Regional Counsel  
U.S. EPA, Region 10, Suite 900  
1200 Sixth Avenue, ORC-158  
Seattle, WA 98101  
Telephone: (206) 553-1169 or 1497  
Facsimile: (206) 553-0163  
vergeront.julie@epa.gov  
matthews.juliane@epa.gov

**By Facsimile and EPA Interoffice Mail:**

Kristi M. Smith  
Office of General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW (2344A)  
Washington, DC 20460  
Telephone: (202) 564-3064  
Facsimile: (202) 501-0644  
smith.kristi@epa.gov

Dated:

*June 2, 2010*

  
Annette Duncan  
Secretary