

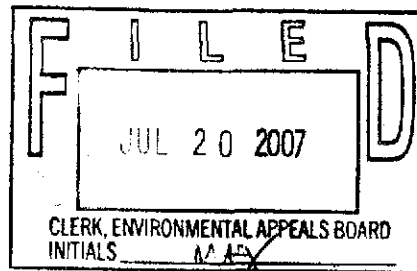
**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

Shell Offshore, Inc.,
Kulluk Drilling Unit and
Frontier Discoverer Drilling Unit

OCS Permit Nos. R10OCS-AK-07-01
R10OCS-AK-07-02

OCS Appeal Nos. 07-01 & 07-02



ORDER SETTING BRIEFING SCHEDULE

On July 16, 2007, the Environmental Appeals Board received two petitions for review of the two Outer Continental Shelf Air Regulation (“OCS”) minor-source permits referenced above (the “OCS Permits”) that U.S. EPA Region 10 (the “Region”) issued to Shell Offshore, Inc. (“SOI”). The Petitions were filed by The North Slope Borough (“NSB”)¹ and by EARTH JUSTICE representing Resisting Environmental Destruction on Indigenous Land, a Project of the Indigenous Environmental Network (“REDOIL”), Northern Alaska Environmental Center, Alaska Wilderness League, Center for Biological Diversity, and Natural Resources Defense Council (“EJ Petitioners”).² Among other things, the OCS Permits would authorize air emissions from two drill ships that would attach to the sea floor off the North Slope of Alaska for the purpose of oil exploration. The issuance of OCS permits is 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).

¹ NSB’s Petition for Review is designated as OCS Appeal No. 07-01.

² The EJ Petitioners’ Petition for Review is designated as OCS Appeal No. 07-02.

By letter dated July 5, 2007, filed with the Board on July 6, 2007,³ SOI has requested that the Board expedite its consideration of any petitions that challenge the OCS Permits issued to SOI.

Letter from John C. Martin, Counsel to SOI, to Eureka Durr, Clerk of the Board, (July 6, 2007)

("SOI's Letter"). SOI's Letter states, in part, that:

[T]he timing of these permits and the unique circumstances surrounding oil exploration off the North Slope of Alaska are such that expediting these appeals as soon as possible is critical to SOI's long-planned exploration project. In order for this project to proceed, SOI must have these final minor source air permits. In addition, the project can only proceed during the extremely limited open-water season in the Beaufort Sea. That period lasts approximately 14-16 weeks beginning in late July. Any appeals would therefore coincide with the open-water season. While SOI believes that EPA properly issued these permits and that they would be upheld through summary disposition of any appeals, under a standard timetable for the Board's review, SOI's 2007 exploration season could well be completely lost, irrespective of the merits of any such appeals. Accordingly, SOI seeks advance, emergency relief expediting the schedule for any appeals.

SOI's Letter at 1-2.⁴ In response to SOI's request for expedited consideration of petitions for review of the OCS Permits, the Board held a teleconference with the parties in these appeals on Thursday, July 19, 2007, for the purpose of addressing scheduling of briefing and related matters in these appeals. Representatives of SOI, NSB, EJ Petitioners, the Region, and the Agency's Office of General Counsel participated in the teleconference.

Based on the foregoing, the Board hereby establishes the following briefing schedule in these appeals:

³ Documents are "filed" with the Board on the date they are received.

⁴ The State of Alaska Department of Environmental Conservation filed a letter confirming "the significant constraints, costs and complexities of planning and undertaking" the work contemplated by the OCS Permits, and that "small delays could result in a loss of an entire * * * season[']s" work opportunity. Letter from Larry Hartig, Commissioner Alaska Department of Environment Conservation, to the EAB (July 18, 2007).

- 1) On or before July 25, 2007, the Region shall file⁵ with the Clerk of the Board and serve on all parties a CD containing electronic copies of most, if not all, of the documents in the administrative records for the Region's decisions to issue the OCS Permits.⁶
- 2) On or before July 26, 2007, SOI shall file with the Clerk of the Board and serve on all parties its brief responding to NSB's and EJ Petitioners' Petitions for Review of the OCS Permits.⁷
- 3) On or before July 27, 2007, the Region shall file with the Clerk of the Board and serve on all parties a Certified Index of all documents in the administrative records for the Region's decisions to issue the OCS Permits.
- 4) On or before August 3, 2007, the Region shall file its brief responding to NSB's and EJ Petitioners' Petitions for Review of the OCS Permits.
- 5) Petitioners may file replies to the Region's and SOI's response briefs on or before August 10, 2007.⁸ Any such replies shall be limited to issues raised in the Region's or

⁵ A document is "filed" on the date it is received by the Clerk of the Environmental Appeals Board.

⁶ Any relevant portions of the administrative record not included in the CD filed on July 25, 2007, shall be included along with the Region's July 27, 2007 filing of the Certified Index.

⁷ By this Order, the Board hereby grants SOI's request, filed on July 17, 2007, to participate in these proceedings.

⁸ The Board's Practice Manual observes that "[A]fter the permitting authority's response has been filed, the EAB normally does not require further briefing before issuing a decision whether to grant review." Environmental Appeals Board, U.S. EPA, Practice Manual 36 (2004), *available at* <http://www.epa.gov/eab/pmanual.pdf>. Having not yet received the Region's and SOI's responses, the Board has not determined that replies will assist the Board in resolving the issues raised in the Petitions and responses. Nonetheless, in light of Petitioners' requests and the need for proceeding expeditiously, the Board has determined to allow the filing of replies within the time stated above.

SOI's briefs and shall not introduce new issues or arguments not presented in the Petitioners' respective Petitions.

- 6) The parties shall reserve Friday, August 10, 2007, for possible oral argument in this case. The Board is not, at this time, determining to hold oral argument, but instead will make that determination upon further analysis of the issues raised in the petitions. In the event that the Board does hold oral argument, the argument will be scheduled for 1:00 pm Eastern Daylight Savings Time to be held in the Board's Administrative Courtroom, U.S Environmental Protection Agency, EPA East Building, Room 1152, 1201 Constitution Avenue, N.W., Washington, D.C. Anyone wishing to participate in the oral argument via the Board's video-conferencing equipment located in the Administrative Courtroom will be given an opportunity to do so.

Service of documents on the parties required by the above-referenced deadlines shall be by hand delivery or other delivery service that effects actual delivery on the same or next calendar day.

So ordered.

Dated: *July 20, 2007*

ENVIRONMENTAL APPEALS BOARD

By: *Kathie A. Stein*
Kathie A. Stein
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Setting Briefing Schedule, in the matter of Shell Offshore, Inc., OCS Appeal Nos. 07- 01 & 07-02, were sent to the following persons in the manner indicated:

Telecopier and First Class Mail: Christopher Winter
Crag Law Center
917 SW Oak St., Suite 417
Portland, OR 97205
Fax: 503-296-5454

John C. Martin
Michele Walter
Patton Boggs, LLP
2550 M Street, N.W.
Washington, D.C. 20037
Fax: 202-457-6315

Michael LeVine
Clayton Jernigan
Eric Jorgensen
EARTH JUSTICE
325 Fourth Street
Juneau, AK 99801
Fax: (907) 463-5891

Telecopier and Pouch Mail: Edward Kowalski, Regional Counsel
Meg Silver
Juliane Matthews
Office of Regional Counsel
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101
Fax: 206-553-0163

Telecopier and Interoffice Mail: Richard Ossias
Associate General Counsel
Office of General Counsel (MC-2344A)
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460-0001
Fax: 202-564-5603

Dated: JUL 20 2007


Annette Duncan
Secretary