

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

In re:)
)
)

Shell Offshore Inc.)
Kulluk Drilling Unit)
)

OCS Permit No. R10OCS-AK-07-01)
(Revised))
)
_____)

OCS Appeal Nos. 08-01, 08-02, and 08-03

**SHELL OFFSHORE INC.'S PRELIMINARY RESPONSE
TO
ORDER TO SHOW CAUSE**

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On November 21, 2008, the Environmental Appeals Board cancelled oral argument in this matter citing the uncertainty *Alaska Wilderness League v. Kempthorne*, No. 07-71457 (9th Cir. Nov. 20, 2008), “casts over the timing and content of the permit.” Order, dated Nov. 21, 2008. In that order, the Board also ordered Shell Offshore Inc. (“SOI”) and U.S. EPA Region 10 (the “Region”) to show cause why the Outer Continental Shelf (“OCS”) permit should not now be remanded to the Region.

In *Alaska Wilderness League*, the United States Court of Appeals for the Ninth Circuit vacated the Mineral Management Service’s (“MMS”) approval of SOI’s exploration plan for proposed drilling in the Beaufort Sea. Emissions from the drilling of wells at locations approved by MMS under that exploration plan are the subject of the permit on appeal in this case (though it is not clear that the Ninth Circuit decision would affect in any way the content or timing of the minor source air permit for the *Kulluk*, which is not tied to a specific exploration plan). SOI believes that *Alaska Wilderness League* was wrongly decided, contrary to controlling legal authority, and SOI is considering requesting rehearing of the court’s decision. The deadline for filing such a request with the Ninth Circuit is January 5, 2009. Shell understands that MMS also is considering seeking rehearing from the Ninth Circuit.


If rehearing is granted, the Ninth Circuit’s current decision will not be operative and could have no effect on Shell’s OCS air permit at issue here until rehearing is complete (and then only if affirmed) and a mandate issued. If the Court denies a rehearing request (or no party requests it), then the question of whether remand of this permit is appropriate can be considered following the issuance of mandate at that time. Therefore, SOI believes that it is premature now to consider the implications of *Alaska Wilderness League*, if any, on this appeal.

Accordingly, SOI concurs in EPA's request that the Environmental Appeals Board place this matter in abeyance and stay its consideration of whether to remand the permit. SOI requests that, unless a party demonstrates in the interim upon motion to the Board that good cause exists for an earlier resumption of these proceedings based upon changed facts and circumstances, the parties to this appeal be required to file responses to the Board's Order to Show Cause fourteen (14) days after the Ninth Circuit issues the mandate in *Alaska Wilderness League*, whether the mandate issues following the expiration of time in which to file a request for rehearing, the Court's rejection of any such rehearing requests, or the Court's decision on rehearing. Under any of these scenarios, the Ninth Circuit will have issued a final decision that will enable the parties in these appeals to respond meaningfully to the Order to Show Cause.

DATED this 15th day of December 2008.

Respectfully submitted,

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