



Petitioners Alaska Wilderness League et al. (hereinafter referred to as the League) hereby file a request to the Environmental Appeals Board (the Board) to modify the briefing schedule set forth in the Board's letter to Edward Kowalski, Regional Counsel, U.S. EPA Region 10 (July 22, 2008). The League also responds to Shell Offshore Inc's (Shell) Motion for Expedited Review.<sup>1</sup> Petitioners North Slope Borough, Inupiat Community of the Arctic Slope, and Alaska Eskimo Whaling Commission, and petitioner Bill MacClarence, join the League in this request and response.

### **Background**

As an initial matter, since July 19, 2007, when the approval of its exploration plan was enjoined by the Ninth Circuit, Shell has been prohibited from proceeding with the exploratory drilling program for which it requested the permit at issue in this matter. *Alaska Wilderness League v. Kempthorne*, No. 07-71457, Order (9th Cir. filed July 19, 2007). Petitions challenging the approval of Shell's Exploration Plan by the Minerals Management Service remain pending before the Ninth Circuit, and the injunction remains in effect pending resolution of those petitions. *Alaska Wilderness League v. Kempthorne*, No. 07-71457, Order (9th Cir. filed Aug. 15, 2007). In granting the injunction, the Court found that petitioners have a reasonable likelihood of success on the merits. *Id.* Thus, irrespective of the validity of the minor source air pollution permit issued by EPA, at present, Shell cannot utilize that permit to operate the *Kulluk* drill ship in the Beaufort Sea. Nor does Shell intend to operate the *Kulluk* in the Beaufort Sea this year.<sup>2</sup>

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<sup>1</sup> The League does not object to Shell's participation in this proceeding.

<sup>2</sup> On June 20, 2008, two days after EPA issued the revised minor source air pollution permit to Shell to operate the *Kulluk*, Shell publicly announced that it had canceled its plans to conduct exploratory drilling in the Beaufort Sea during the 2008 open-water season. See Ex. A at 1.

## Briefing Schedule

The Board established a schedule for merits briefing pursuant to which EPA would file its response to the petitions by August 21, 2008, and include an index of the entire administrative record with this response.<sup>3</sup> Petitioners submitted arguments based on whatever material was available on EPA's web site supporting its revised permit decision, and at this time do not know whether that web site included the entire administrative record supporting EPA's decision. The proposed schedule below takes into account the possibility that EPA may expand the record beyond those previously available documents.

Moreover, the proposed schedule provides the petitioners with an opportunity to file a reply brief. The League requests this opportunity due to the complexity of the issues raised in the petition.<sup>4</sup> For similar reasons, the Board granted petitioners the right to file a reply brief in the petitions challenging Shell's original permits. *See In Re Shell Offshore, Inc.*, OCS Appeals Nos. 07-01 & 07-02, Order Setting Briefing Schedule (July 20, 2007).

Furthermore, on July 30, 2008, Shell filed a motion with the Board requesting expedited consideration of the petitions, although it did not recommend a specific schedule to meet that end. The League's proposed schedules below respond to Shell's motion in a manner that provides sufficient time for briefing, argument and the Board's decision prior to Shell's desired 2009 exploration activities.

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<sup>3</sup> The Board established a schedule pursuant to which EPA would file any response seeking summary disposition by August 6, 2008, with petitioners provided ten days from service of such a response to file a reply. The League does not believe that this case is appropriate for summary disposition, and nevertheless has no objection to this schedule.

<sup>4</sup> In addition, EPA employed different rationales to justify its decision at different stages of the permitting process, *see Alaska Wilderness League Petition* at 20-24, making it difficult for petitioners to discern the ultimate justification relied on by the agency. A reply to EPA's response will thus assist in further developing this argument for the Board's consideration.

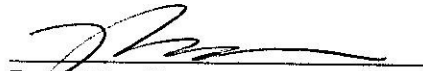
The League proposes that the Board adopt one of two briefing schedules, depending on whether EPA supplements in any way the documents posted on its revised permit web site. See <http://yosemite.epa.gov/R10/AIRPAGE.NSF/Permits/OCS>.

First, if EPA files a formal Administrative Record that matches the documents disclosed on that web site, the League proposes that the petitions for review be considered the merits briefs of the three petitioners, and that EPA and Shell file their responses on or before August 21, 2008. Under this proposed schedule, petitioners may file a reply on or before September 12, 2008. The Board could then hold argument and issue a decision well before Shell's desired 2009 exploration season.

Alternatively, should EPA's formal Administrative Record include documents beyond those provided on its web site, the League requests that EPA be ordered to file such record by August 21, 2008, and proposes the following briefing schedule. The League and other petitioners may review the Record for completeness and file any revisions to the merits arguments in their petitions on or before September 4, 2008, to take into account new information contained in the formal Administrative Record. EPA and Shell must file their responses to the petitioners' merits arguments on or before September 25, 2008. The League and other petitioners must file any reply to EPA's or Shell's response briefs on or before October 9, 2008. This proposed schedule would also permit the Board to schedule argument and come to a decision on the petitions well before Shell's desired 2009 exploration season.

DATED this 7th day of August, 2008

Respectfully submitted,



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League, Center for Biological Diversity, Natural  
Resources Defense Council, Northern Alaska  
Environmental Center, Pacific Environment, and  
Resisting Environmental Destruction On Indigenous  
Lands, a project of the Indigenous Environmental  
Network (“REDOIL”)

**CERTIFICATE OF SERVICE**

I, Peter Van Tuyn, hereby certify that on August 7, 2008, I served true and correct copies the attached Request To Modify Briefing Schedule And Response To Shell Offshore Inc's Motion For Expedited Review to the following parties by first class mail:

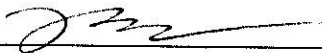
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DATED: August 7, 2008

  
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