

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

\_\_\_\_\_)  
In re: )  
 )  
Shell Offshore, Inc. ) OCS Appeal Nos. 08-01, 08-02, & 08-03  
Kulluk Drilling Unit )  
 )  
OCS Permit No. R10OCS-AK-07-01 )  
(Revised) )  
\_\_\_\_\_)

ENVIRONMENTAL APPEALS BOARD  
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RECEIVED

**NOTICE OF PERMIT WITHDRAWAL**  
**AND**  
**PARTIALLY UNOPPOSED MOTION TO DISMISS PETITIONS AS MOOT**

On June 18, 2008, the Director of the Office of Air, Waste and Toxics for the U.S. Environmental Protection Agency (“EPA”), Region 10, issued an Outer Continental Shelf (“OCS”) Air Quality Control Minor Permit to Shell Offshore Inc. (“SOI”) under the Clean Air Act. OCS Permit No. R10OCS-AK-07-01 (Revised) allows SOI to conduct exploratory oil and gas drilling operations in the Beaufort Sea off the Alaska North Slope utilizing the Kulluk drilling rig. Thereafter, three Petitions for Review of the permit were filed with the Environmental Appeals Board (“EAB” or “Board”). On December 18, 2008, after this matter had been fully briefed by the parties, the Board filed a Order Staying Proceedings in this matter “until such time as the Ninth Circuit has issued its final mandate” in the related case of *Alaska Wilderness League v. Kempthorne*, No. 07-71457. *Id.* at 4.

While the final mandate has not yet issued in the *Alaska Wilderness League* case, EPA Region 10 hereby notifies the Board that Region 10 received a letter from SOI on March 26, 2009, stating that SOI was “withdrawing its application for [OCS Permit No. R10OCS-AK-07-01 (Revised)] for operation of the *Kulluk* drilling vessel in the Beaufort Sea” and requesting that “Region 10 terminate and cancel the proposed permit immediately.” *See* Ex. 1 (attached). In response, EPA Region 10 has terminated all permitting activity on the *Kulluk* OCS permit application, will not move to finalize the revised OCS Air Quality Control Minor Permit issued to SOI, and has declared OCS Permit No. R10OCS-AK-07-01 (Revised) to be null and void.<sup>1</sup>

Accordingly, EPA Region 10 hereby moves that the Board dismiss the pending petitions as moot and close this permit appeal. In support of this motion, EPA Region 10 states the following:

1. On April 24, 2009, EPA Region 10 provided notice of SOI’s permit application withdraw and EPA’s termination of the pending permit and all related activity to the public and all interested parties in accordance with the notices provided for prior permitting activities relating to the *Kulluk* OCS permit application. *See* Ex. 2 (attached).<sup>2</sup>

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<sup>1</sup> As EPA Region 10 previously explained, SOI already requested that EPA Region 10 suspend permitting activity for the Frontier Discoverer drilling rig that was part of the original permit appeal, and the Region has not finalized that air permit. *See* Response of EPA Region 10 to the Petitions for Review (filed October 6, 2008) at 4 n.2.

<sup>2</sup> The notice was distributed electronically to the EAB parties and public commenters that received prior notices and was posted on the Region 10 website for this permitting action. *See* EPA Terminates Minor Source Air Permitting Activity for Shell *Kulluk* at [http://yosemite.epa.gov/R10/AIRPAGE.NSF/webpage/Outer+Continental+Shelf+\(OCS\)](http://yosemite.epa.gov/R10/AIRPAGE.NSF/webpage/Outer+Continental+Shelf+(OCS)). In accordance with notices of past permitting activity, this notice will also be published in local newspapers, although those newspaper notices have not been published as of the date of this filing.

2. Given that all permit activity for OCS Permit No. R10OCS-AK-07-01 has been terminated, the permit will not be finalized, and Region 10 has stated that the permit is now null and void, the pending petitions should be dismissed as moot and this permit appeal should be closed. *See In re West Suburban Recycling and Energy Center*, 8 E.A.D. 192, 197 (EAB 1999) (dismissing as moot a petition for review of a PSD permit because there was “no realistic prospect” that the facility described in the permit application would be completed). *Cf. In re Keene Wastewater Treatment Plant* (NPDES Appeal No. 07-18), Order Noticing Withdrawal of Permit and Dismissing Portions of Petition for Review as Moot (EAB Dec. 5, 2007) (dismissing as moot portions of petitions challenging permit limits after the permitting authority provided notice that it was withdrawing those limits and preparing a new draft permit with different limits).
3. Counsel for EPA Region 10 contacted the other parties in this case regarding the filing of this Notice of Permit Withdrawal and Motion to Dismiss Petitions as Moot. Counsel for the North Slope Borough Petitioners and SOI stated that their clients did not oppose the motion. Counsel for the Alaska Wilderness League Petitioners indicated that they were still conferring with their clients and would inform the Board directly of their position on the motion. Petitioner Bill MacClarence has not yet responded to phone and e-mail messages regarding this filing.<sup>3</sup>

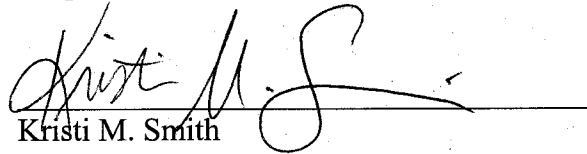
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<sup>3</sup> As previously noted, Counsel for EPA Region 10 understand that Mr. MacClarence is recovering from a serious medical condition. *See Initial Response to Order to Show Cause and Unopposed Motion to Hold Case in Abeyance* (filed Dec. 11, 2008) at n.5.

WHEREFORE, for the reasons set forward above, Region 10 requests that the Board dismiss as moot the pending petitions for review of OCS Permit No. R10OCS-AK-07-01 and close this case.

Date: April 27, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristi M. Smith", is written over a horizontal line.

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the Notice of Permit Withdrawal and Partially Unopposed Motion to Dismiss Petitions as Moot (OCS Appeal Nos. 08-01 thru 08-03) were served on the following persons via U.S. Mail and electronic mail:

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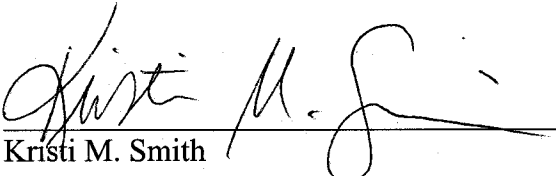
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Date: April 27, 2009

  
Kristi M. Smith

Notice of Permit Withdrawal and Partially Unopposed Motion to Dismiss Petitions as Moot  
(OCS Appeal Nos. 08-01 thru 08-03)

## Exhibit 1



Shell Exploration & Production

Received  
MAR 26 2009

Mr. Richard Albright  
Director, Office of Air, Waste and Toxics  
United States Environmental Protection Agency  
Region 10  
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Seattle, Washington 980101

Office Of Air, Waste  
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Tel. (907) 646-7112  
Email [susan.childs@shell.com](mailto:susan.childs@shell.com)  
Internet <http://www.shell.com>

20 March, 2009

Re: Shell Offshore, Inc. Permit No R10OCS-AK-07-01 (Revised)

Dear Mr. Albright:

Please be advised that Shell Offshore, Inc. is hereby withdrawing its application for the above-referenced permit for operation of the *Kulluk* drilling vessel in the Beaufort Sea. The permit was issued on June 18, 2008, but has not become final because it is on appeal to the Environmental Appeals Board. Shell requests that Region 10 terminate and cancel the proposed permit immediately.

We would appreciate your written confirmation that the permit has been terminated so that we may advise the Environmental Appeals Board of this development.

If you have any questions regarding this submission, please contact me at (907) 770-3700 or at [Susan.Childs@shell.com](mailto:Susan.Childs@shell.com), or Mark Schindler at (907) 230-8632 or at [Mark.Octane@me.com](mailto:Mark.Octane@me.com)

Sincerely (or Quyanaqpak),

Shell

Susan Childs  
Regulatory Affairs Manager, Alaska Venture

cc: Shell Pete Slaiby  
Shell Marc Stone  
NSB Mayor Itta  
MMS Jeff Walker  
EPA Nancy Helm  
ADEC John Kutterbach  
Project File  
Administrative Record

Notice of Permit Withdrawal and Partially Unopposed Motion to Dismiss Petitions as Moot  
(OCS Appeal Nos. 08-01 thru 08-03)

## Exhibit 2





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

Public Notice  
EPA Terminates Minor Source Air Permitting Activity for Shell Kulluk

April 24, 2009

The U.S. Environmental Protection Agency (EPA) is terminating Outer Continental Shelf (OCS) minor source air permitting activity for Shell to conduct exploratory oil and gas drilling activity utilizing the Kulluk drilling rig and its support vessels in the Beaufort Sea.

Background

On June 18, 2008, EPA issued minor air quality OCS Permit No. R10OCS-AK-07-01 (Revised) to Shell Offshore, Inc. (Shell). The permit authorized Shell to conduct exploratory oil and gas drilling activity on the Beaufort Sea OCS utilizing the Kulluk drilling rig and its support vessels in a manner consistent with air quality protection requirements.

Petitions for review before the EPA's Environmental Appeals Board (EAB) were filed challenging the permit. Pursuant to 40 C.F.R. §§124.15(b) and 124.19(f)(1), because review of the permit was requested and that review is still pending, the permit is not yet effective.

EPA Action and Its Affect

By letter dated March 20, 2009, Shell informed EPA Region 10 that it is "withdrawing its application for OCS Permit No. R10OCS-AK-07-01 for operation of the *Kulluk* drilling vessel in the Beaufort Sea" and requests that "Region 10 terminate and cancel the proposed permit immediately."

Accordingly, EPA Region 10 has terminated all minor source air permitting activity for Shell's proposed exploratory oil and gas drilling operation with the Kulluk in the Beaufort Sea. Therefore, OCS Permit No. R10OCS-AK-07-01 (Revised) will not be finalized. Furthermore, because the application has been withdrawn and the permit will not be finalized, the permit issued on June 18, 2008 is null and void.

Availability of Materials

Materials related to this matter are available for public review at no cost to you at EPA's website at: <http://yosemite.epa.gov/R10/AIRPAGE.NSF/Permits/OCS>