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ENVIR. APPEALS BOARD

October 4, 2011

**BY HAND DELIVERY**

Eurika Durr, Clerk of the Board  
Environmental Appeals Board  
U.S. Environmental Protection Agency  
1341 G Street NW, #500  
Washington, DC 20005

**Re: Notification of Request for Expedited Resolution of Anticipated Petitions for Review of Shell Outer Continental Shelf Air Permits R10OCS/PSD-AK-2010-02 and R10OCS/PSD-AK-2020-02**

Dear Ms. Durr:

By this letter, Shell Offshore Inc. (“SOI”) and Shell Gulf of Mexico Inc. (“SGOMI”)<sup>1</sup> respectfully request that the Environmental Appeals Board (“EAB” or “the Board”) begin planning now to expedite its consideration and resolution of any petitions for review that may be filed challenging the two above-referenced re-issued major source air permits.

Region 10 re-issued the permits on September 19, 2011 to SOI and SGOMI for exploration activities utilizing the *Discoverer* drill ship in, respectively, the Beaufort Sea and the Chukchi Sea. Although the permits have new numbers, Region 10 re-issued them in response to the Board’s remand of the permits issued to Shell in 2010 for exploration drilling with the *Discoverer*.<sup>2</sup> The period within which to file petitions for review of the permits closes on October 24, 2011. Opponents of the proposed permits filed lengthy comments and Shell anticipates that the Board will receive petitions to review them.

<sup>1</sup> SOI and SGOMI are referred to herein collectively as “Shell.”

<sup>2</sup> See Order Denying Review in Part and Remanding Permits, OCS Appeal Nos. 10-01 through 10-04 (Dec. 30, 2010) (remanding permits for further consideration of permit’s definition of OCS source and environmental justice impacts of NO2 emissions from the project) and Order on Four Additional Issues, OCS Appeal Nos. 10-01 through 10-04 (March 14, 2011) (directing the Region to further explain its analysis of secondary PM2.5 formation from project emissions).

As the Board well knows from prior proceedings on Shell's OCS air permits, for over five years Shell has worked with Region 10 to secure permits that would enable Shell to explore the Arctic OCS leases for which Shell paid the federal government some two billion dollars.<sup>3</sup> As detailed in prior filings in this matter, Shell has made a tremendous multi-year effort, investing significant sums of money over and above its lease payments, to develop and permit a safe and environmentally responsible Arctic drilling program.

As the Board is aware, because the *Discoverer* can only operate in relatively ice-free waters with the protection of ice management vessels, Shell's Arctic drilling season is limited to the open water season, which varies from year to year, but which generally begins in July and ends in October.<sup>4</sup> As has been stated in prior filings, Arctic operations have very long lead times and 2012 proposed operations will be no different. Shell will soon face a series of decisions regarding commitments about whether to begin incurring large expenditures to support operations next summer. These irrevocable commitments are necessary in order to obtain and mobilize the necessary vessels, personnel, support services, fuel, supplies and other goods and services for the planned operations.

Shell is diligently pursuing other approvals it will need for the 2012 drilling season and expects to have those approvals early in 2012. Shell is confident that Region 10 has thoroughly addressed all the issues on which the Board remanded these permits, but it is essential that the Board decide the petitions as soon as practicable and certainly by December 31, 2011, before Shell must start making commitments for its 2012 expenditures. Given (1) Shell's multi-year effort to secure OCS air permits, (2) the Board's limited remand of those permits, and (3) the fact that the Board opted in its December 30, 2010 order to allow "come-back" appeals on the remanded issues, Shell respectfully submits that the EAB should accord the highest priority to timely resolution of any such appeals on the current permits.

Shell appreciates that, under EAB's 2011 Standing Order regarding petitions for review of, *inter alia*, OCS air permits, briefing of the appeals will be expedited, with a 21-day period for EPA and Shell to respond to petitions for review and a presumption against reply briefing. Oral argument also is disfavored.<sup>5</sup> Additionally, the Board has determined that, as the permittee,

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<sup>3</sup> The current Beaufort and Chukchi Air Permits are the fourth round of permits that Region 10 has issued since 2007 to SGOMI and/or SOI for proposed exploration. Shell will not burden the Board with the extensive history of permitting here, given the familiarity of the Board with the prior processes. Suffice it to say that Shell has now been issued six permits (both major and minor source permits) for its exploration activities since 2006, with none being operational to this point.

<sup>4</sup> The permits allow Shell to commence drilling on July 1 of each year.

<sup>5</sup> Order Governing Petitions for Review of Clean Air Act New Source Review Permits (April 19, 2011) at 2-3.

Shell will be entitled to submit an opposition to any petition for review without needing to move for leave to intervene.<sup>6</sup>

Under these procedures, briefing should be completed no later than November 14, 2011. In anticipation of the Board's adherence to, at a minimum, this streamlined briefing procedure Shell respectfully requests that the Board plan now to expedite its consideration of the petitions so that the Board can issue a decision on them by not later than December 31, 2011.

Additionally, before the October 24, 2011 deadline for filing petitions for review of the re-issued permits, and consistent with its approach in considering these permits initially, the Board may wish to order in advance that (1) any come-back petitions for review of either of these two re-issued permits will again be consolidated in a single proceeding; (2) any party may file only one brief in the consolidated proceeding on both permits; and (3) that brief is subject to the limitations on length set forth in the Standing Order.<sup>7</sup>

As always, thank you for your consideration of these requests.

Sincerely,



Duane A. Siler  
Counsel for Shell Offshore Inc. and Shell Gulf of  
Mexico Inc.

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<sup>6</sup> *Id.* at 5.

<sup>7</sup> Both petitions and responses are limited to 14,000 words or 30 pages, at the party's option. *Id.* at 2.