

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

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In re:	)	
	)	
Shell Gulf of Mexico, Inc.	)	
Permit No. R10OCS/PSD-AK-09-01	)	OCS Appeal Nos. 10-01 through 10-04
	)	
and	)	
	)	
Shell Offshore, Inc.	)	
Permit No. R10OCS/PSD-AK-2010-01	)	
	)	
	)	

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**PETITIONERS' JOINT RESPONSE TO SHELL'S NOTICE OF RELATED DECISION  
AND REQUEST FOR STATUS CONFERENCE**

Petitioners hereby respond to Shell Gulf of Mexico Inc. and Shell Offshore Inc. (Shell)'s Notice of Related Decision and Request for Status Conference, filed November 12, 2010, Docket No. 85, (Shell Notice).

Contrary to Shell's suggestion, no status conference need be scheduled at this time, because circumstances have not changed since the October 7 hearing in these Petitions. Despite the misleading title of Shell's Notice, since October 7, no "decision" has been reached by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) or any other agency on Shell's plans to conduct exploration drilling in the Arctic Ocean. As Shell already informed the Board, Shell Notice at 1 n.1, the company has filed with BOEMRE an application for a permit to drill and revisions to its plans to conduct exploration drilling in Camden Bay in the Beaufort Sea in 2011. *See* Shell Notice, Attachment B at 4.<sup>1</sup> These plans to drill in 2011 are significantly different than those that were approved for 2010. For example, Shell proposes to use several new vessels that were not included in the Environmental Protection Agency's (EPA) original analysis of Shell's plans. Shell Notice, Attachment A at 9-10.<sup>2</sup> BOEMRE has not made any decision with regard to Shell's submissions. Rather, it has stated:

BOEMRE is evaluating the updated E[xploration] P[lan] as a revision to the [2010] Camden Bay EP. BOEMRE must determine if the revised EP is "likely to result in a significant change in the impacts previously identified and evaluated." 30 C.F.R. § 250.285(c). If it is, BOEMRE must review the revised EP for approval in accordance with 30 C.F.R. §§ 250.231, 250.235. If it is not, BOEMRE may approve the revision pursuant to 30 CFR § 250.285.

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<sup>1</sup> Drilling in the Chukchi Sea is on hold per an order of the Alaska Federal District Court in *Native Village of Point Hope v. Salazar*, No. 1:08-cv-00004-RRB (D. Alaska), which enjoined drilling on Shell's Chukchi Sea leases pending completion of the remand in that case. Shell has not submitted any requests to drill in the Chukchi Sea in 2011.

<sup>2</sup> As Petitioners have previously stated, these changed circumstances constitute additional reasons why the Board should vacate the present permits and remand this matter to the EPA to conduct an analysis of all changes to the drilling plan and amend its permit, if necessary.

Shell Notice, Attachment B at 4 n.4. The agency has also requested further information from Shell about its revisions to the exploration plan. *Id.*

In light of the tragic events of the *Deepwater Horizon* spill and the significant changes to Shell's proposed operations in 2011, Petitioners contend that BOEMRE will have to conduct a substantial analysis of Shell's proposal, including a full environmental analysis under the National Environmental Policy Act. The Outer Continental Shelf Lands Act mandates this course of action, specifically requiring consideration of "relevant environmental information" for decisions "relating to exploration plans [and] drilling permits." 43 U.S.C. § 1346(d); *see also id.* § 1340(g); *id.* § 1344(a)(1) ("Management of the [OCS] shall be conducted in a manner which considers . . . social[] and environmental values of the renewable and nonrenewable resources contained in the [OCS], and the potential impact of oil and gas exploration on other resource values of the [OCS] and the marine, coastal, and human environments."); *id.* § 1340(g) ("Any permit for geological explorations . . . shall be issued only if the Secretary determines . . . that . . . such exploration will not be unduly harmful to aquatic life in the area [or] create hazardous or unsafe conditions[.]"); *id.* § 1347(b) ("[T]he Secretary . . . shall require . . . on existing operations . . . the best available and safest technologies . . . wherever failure of equipment would have a significant effect on safety, health, or the environment . . ."); *id.* § 1344(a)(2)(G)–(H) ("Timing and location of exploration . . . shall be based on a consideration of . . . the relative environmental sensitivity and marine productivity of different areas of the [OCS and] relevant environmental and predictive information for different areas of the [OCS].").

In addition to BOEMRE's review of Shell's proposal, other agencies will also have to review and issue permits to Shell before it can conduct any operations in the Beaufort Sea. *See* NRDC Petitioners Response to the Urgent Request by Shell for Leave to Participate and Motion

for Expedited and Combined Review, Docket No. 15, at 2-3 (describing the various permits that are necessary for offshore exploration).

In brief, the circumstances surrounding these Petitions remain substantially unchanged since the October 7 hearing—Shell has proposed significantly different plans to drill in the Beaufort Sea in light of the *Deepwater Horizon* spill, BOEMRE is in the process of reviewing Shell’s proposed plans, and the other agencies from which Shell must obtain permits before it drills have not issued those permits. Accordingly, Petitioners believe that a status conference would not be useful at this point. There is no basis for unusual expedition of the Petitions at this time. Petitioners respectfully suggest that the Board should address these Petitions in the regular course, by remanding the permits in their entirety to Region 10 to in the first instance address the changes to Shell’s proposed operations or, if the Board chooses, to resolve the claims that were the subject of oral argument.

*s/ Erik Grafe*

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Date: November 16, 2010.

## CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2010, a copy of foregoing PETITIONERS' JOINT RESPONSE TO SHELL'S NOTICE OF RELATED DECISION AND REQUEST FOR STATUS CONFERENCE in the matter of *In re: Shell Gulf of Mexico, Inc., Permit No. R10OCS/PSD-AK-09-01 and Shell Offshore, Inc., Permit No. R10OCS/PSD-AK-2010-01*, OCS Appeal Nos. 10-01 through 10-04, was served by electronic mail on the following persons:

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