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Attorneys for Shell Offshore Inc.

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

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

**SHELL OFFSHORE INC.'S REPSONSE TO REQUEST
TO MODIFY BRIEFING SCHEDULE**

Petitioners Alaska Wilderness League et al. ("AWL") have requested that the Environmental Appeals Board ("the Board") modify the briefing schedule established in these

consolidated appeals.¹ By letter dated July 22, 2008, the Board directed EPA Region 10 to file the Agency's response to the three petitions on or before August 21, 2008, together with a certified index to the entire administrative record. By order dated August 6, 2008, the Board consolidated these petitions for review, granted Shell Offshore Inc. ("SOI") permission to respond to the petitions, directed SOI to file its response on or before August 22, 2008, and directed Petitioners in all three matters to file their replies on or before September 5, 2008.

AWL now requests that the Board establish a contingent briefing schedule. If EPA's certified index to the administrative record of the *Kulluk* OCS air permit, which will be filed on August 21, includes documents "beyond those provided on [Region 10's] web site," then Petitioners would be allowed to revise their initial petitions for review "to take into account new information contained in the formal Administrative Record." See Request to Modify Briefing Schedule at 4. Under the proposed contingent schedule, Petitioners would, in that event, be allowed to file revised petitions to address this "new information" on or before September 4, 2008. EPA and SOI would file their responses to the revised petitions on or before September 25, and Petitioners would file their replies by October 9, 2008. If, on the other hand, EPA's certified index to the administrative record includes only documents on Region 10's website, then the existing briefing schedule would generally apply.²

AWL's proposal could inject serious uncertainty into the briefing schedule, which would not be known until August 21 – the same date that EPA's and SOI's briefs would be due under one of the two alternative scenarios. However, EPA's counsel has confirmed to the Board that

¹ AWL states that all Petitioners in these consolidated appeals join in the Request.

² Under this scenario, AWL's proposed schedule varies only slightly from the schedule established by the Board in its August 6 Order in that AWL requests an August 21 due date for SOI's response and a September 12 due date for Petitioners' replies.

the certified index will include at least some documents not on Region 10's website.³ That being the case, SOI views AWL's proposal as an appropriate method for dealing with the fact that, under the Board's procedures, the filing of the record would otherwise occur after Petitioners' initial briefs are filed.

Accordingly, SOI does not object to AWL's proposed schedule, or to EPA's proposed extension of that schedule, provided that (1) the Board allows Petitioners to address in their revised petitions only "new" information (if any) that was not available to them on the Region 10 website before the administrative record was filed and does not allow Petitioners to otherwise revise their petitions; and (2) the deadline for SOI's brief is the same as the deadline for EPA's brief, i.e., October 4, 2008, under EPA's proposal.

SOI is very concerned that Petitioners' proposal introduces a one-month delay into the Board's prior briefing schedule, with briefing to be completed by October 9 rather than September 5. EPA's proposal would extend the completion of briefing to October 18. While SOI appreciates the Board's assurance in the August 6 Order that the Board will assign the same priority in its docket to the consolidated petitions as to a PSD construction permit appeal, SOI respectfully requests that the Board take such additional action as is appropriate to offset some or all of this delay by expediting oral argument on the petitions and a final decision on their merits.

DATED: August 14, 2008.

Respectfully submitted,



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³ See Letter from Elliott Zenick to Clerk of the Board (Aug. 13, 2008). Counsel for EPA states that the Agency does not oppose Petitioners' motion, but asks that the deadline for EPA's brief be extended until October 4, with Petitioners' replies due October 18.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Response to Request to Modify Briefing Schedule was electronically filed with the Environmental Appeals Board and sent, via U.S. Mail and Electronic Mail on the 14th day of August, 2008, to the following:

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Shaunice Thomas, Secretary