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2007 SEP -4 PM 2:00 Christopher Winter
Staff Attorney
ENVIR. APPEALS BOARD chris@crag.org

September 3, 2007

VIA OVERNIGHT DELIVERY

917 SW Oak St.
Suite 417
Portland, OR
97205

TEL:
503.525.2724

FAX:
503.296.5454

www.crag.org

Ms. Eureka Durr
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W. Suite 600
Washington, D.C. 20005

Re: *In Re Shell Offshore, Inc. – Kulluk Drilling Unit*
OCS Appeal Nos. 08-02 & 08-03

Dear Ms. Durr:

Please find enclosed an original and five copies of Petitioners' Response to Order Requiring Clarification on Ripeness and Supplement to Petitions for Review Based on New Record Documents. Please contact this office if you have any questions regarding this filing. Thank you for your assistance.

Sincerely,

Christopher Winter

Enclosure

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ENVIR. APPEALS BOARD

Christopher Winter
CRAG LAW CENTER
917 SW Oak St.
Suite 417
Portland, OR 97205
Ph: (503) 525-2725
Fax: (503) 296-5454
chris@crag.org

*Attorneys for Petitioners North Slope Borough, Alaska Eskimo Whaling Commission and
Inupiat Community of the Arctic Slope*

Peter Van Tuyn
Bessenyey & Van Tuyn, L.L.C.
310 K St. #200
Anchorage, AK 99507
Ph: (907) 278-2000
Fax: (907) 278-2004

Clayton Jernigan
Eric Jorgensen
EARTHJUSTICE
325 Fourth Street
Juneau, AL 99801
Ph: (907) 586-2751
Fax: (907) 463-5891

*Attorneys for Petitioners Alaska Wilderness League, Center for Biological Diversity,
Natural Resource Defense Council, Northern Alaska Environmental Center, Pacific
Environment, and Resisting Environmental Destruction on Indigenous Lands
("REDOIL"), a Project of the Indigenous Environmental Network*

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

In re:)
) OCS Appeal Nos. 08-02 & 08-03
)
Shell Offshore, Inc.) **PETITIONERS' RESPONSE TO ORDER**
Kulluk Drilling Unit (Kulluk)) **REQUIRING CLARIFICATION ON**
) **RIPENESS AND SUPPLEMENT TO**
Permit No. R10OCS-AK-07-01 (Revised)) **PETITIONS FOR REVIEW BASED ON**
) **NEW RECORD DOCUMENTS**

Petitioners North Slope Borough, Alaska Eskimo Whaling Commission and the Inupiat Community of the Arctic Slope hereby submit the following Response to the Order Requiring Clarification (dated August 19, 1008) and Supplement to their Petition for Review based on information contained in the Administrative Record that was not made available at the time the original petitions were filed. Petitioners Alaska Wilderness League, Center for Biological Diversity, Natural Resources Defense Council, Northern Alaska Environmental Center, Pacific Environment and Resisting Environmental Destruction on Indigenous Lands (“REDOIL”), a project of the Indigenous Environmental Network, join in this response and the supplement to the petitions for review.

RESPONSE TO ORDER REQUIRING CLARIFICATION

The Environmental Appeals Board (the “Board”), in an Order filed August 19, 2008, requested that the parties clarify whether this appeal is ripe at this time for the Board’s consideration.

Pursuant to regulation, “a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.” 40 C.F.R. § 124.15(a). The Environmental Protection Agency’s (“EPA”) final decision opens a 30-day window in which appeals of such decisions can be made to the Board. 40 C.F.R. § 124.19(a).

The EPA sent to all interested parties a notice on June 18, 2008 of its final permit decision for Air Quality Control Minor Permit No: R10OCS-AK-07-01 (Revised). Administrative Record Document DD-4. Although it noted that the “permit is not effective until EPA has completed its consultation obligations under the Endangered Species Act (“ESA”) with respect to the polar bear,” the notice also stated that appeals of

the revised permit are due to the Environmental Appeals Board “before July 21, 2008.”

Id.

Petitioners thus followed EPA’s directive and timely filed their appeals.

Petitioners also recognize that the final permit terms may change as a result of the ESA consultation. Consequently, petitioners have no objection to a stay of these proceedings until the ESA consultation is complete, including any permit revisions that are required as a result of that consultation.

To the extent the proceedings are not stayed, petitioners reserve all rights to challenge in an amended or future petition for review any permit terms revised by EPA after the consultation process is completed.

PETITIONERS’ SUPPLEMENT TO PETITIONS FOR REVIEW
BASED ON NEW RECORD DOCUMENTS

The Board on August 18, 2008 ordered that petitioners file by September 4, 2008 “any revisions to their respective petitions in light of documents contained in the Region’s certified index to the administrative record that were not previously made available to petitioners.” This document provides that revision on behalf of Petitioners North Slope Borough et al. and Alaska Wilderness League et al.

Petitioners argued that EPA’s “operational dependence” conclusion is erroneous. *See* North Slope Borough, et al., Petition for Review at 30-38; Alaska Wilderness League, et al., Petition for Review at 31-41. The certified administrative record contains documents that further support petitioners’ arguments in this regard and supplement the record analysis presented in the petitions for review. North Slope Borough Petition at 31-35; Alaska Wilderness League Petition at 31-35.

As petitioners noted, “Shell’s exploration enterprise is focused not on individual wells but rather on wells drilled in concert to provide Shell collective information.”

Alaska Wilderness League Petition at 32. As such, EPA arbitrarily determined that the operations of the *Kulluk* drill ship at each planned well site in Shell’s exploratory drilling enterprise should be considered a separate stationary source.

These points are bolstered by information in a number of documents that were not in the original record. For example, Shell provided its applications for permits to drill (“APDs”) to EPA, and in doing so, claimed that the entire applications constituted confidential business information (“CBI”). EPA responded with a request to Shell that it specify which portions of the APD qualify as CBI and why. Administrative Record Document HH-4.

Shell responded that drill site locations and seismic data submitted with its supplement to the APD qualify as CBI, for the following reason:

Seismic data such as this can be used to assess the potential for an area to contain economic quantities of oil and gas. The seismic data in this report extends beyond SOI’s leasehold and onto the adjacent un-leased land. ... Proprietary geologic models and reservoir models are developed for regional interpretation as well as individual area evaluations. New seismic and well data inputs refine these proprietary models that influence lease acquisition strategies, delineate geologic areas and drilling targets, influence resource estimates, reservoir development analyses, and field development plans.

Administrative Record Document HH-4, Attachment at 1 (emphasis added); *see also id.* at 2 (The geological age of the potential pay zones in an exploration well is confidential because this knowledge provides a competitive advantage in identifying the location of other potential target areas).

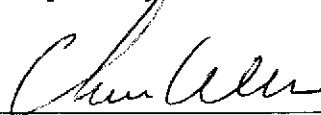
EPA apparently agreed with Shell’s asserted CBI rationales. *See* APD Flaxman Island 6658 # 0001 at 70 (Administrative Record Document HH-1.A) (exclusion from the

public record of information from the APDs); APD Flaxman Island 6707 # 001 at 66 (Administrative Record Document HH-1.B) (same); APD Flaxman Island 6708 # 0001 at 65 (Administrative Record Document HH-1.C) (same); APD Supplemental Information at 2 (Administrative Record Document HH-1.D) (same). Consequently, in addition to serving as another admission from Shell of the interdependent nature of its drilling operations, the new record documents reveal that EPA agreed with Shell's characterization of the interdependent nature of its drilling operations.

These record documents further refute EPA's determination that operations conducted at different well sites under the revised permit are not interdependent. Thus, EPA's conclusion is erroneous that the *Kulluk's* operations at different well sites can always be treated as separate air pollution sources.

DATED this 23rd Day of September, 2008.

Respectfully submitted,



Christopher Winter
CRAG LAW CENTER

Attorney for Petitions North Slope Borough,
Inupiat Community of the Arctic Slope and
the Alaska Eskimo Whaling Commission

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2008, I served true and correct copies of
PETITIONERS' RESPONSE TO ORDER REQUIRING CLARIFICATION ON
RIPENESS AND SUPPLEMENT TO PETITIONS FOR REVIEW BASED ON NEW
RECORD DOCUMENTS on the following parties by first class mail:

Juliane R. B. Matthews
Office of Regional Counsel (ORC-158)
U.S. EPA, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98110

Duane A. Siler
Susan Mathiascheck
Patton Boggs LLP
2250 M Street N.W.
Washington, D.C. 20036

Bill MacClarence, P.E.
10840 Glazanof Drive
Anchorage, AK 99507

DATED this 3rd day of September, 2008



Christopher Winter
CRAG LAW CENTER