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ENVIR. APPEALS BOARD

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July 30, 2008

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**VIA HAND DELIVERY**

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1341 G Street, N.W., Suite 600  
Washington, D.C. 20005

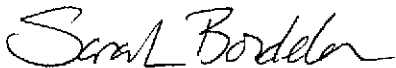
Re: *Shell Offshore Inc.*, OCS Appeal Nos. 08-01, 08-02, and 08-03

Dear Clerk of the Board,

Enclosed please find an original and one copy of Shell Offshore Inc.'s Request for Leave to Respond and Motion for Expedited Review and supporting Exhibit A. These documents have also been electronically filed. Please return a file-marked copy of each document to the waiting courier.

Please do not hesitate to contact me at (202) 457-6132 if you have any questions or concerns.

Sincerely,



Sarah C. Bordelon  
Associate

SCB:scb

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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 ONSHORE INC.'S REQUEST FOR LEAVE TO RESPOND AND  
MOTION FOR EXPEDITED REVIEW**

Pursuant to 40 C.F.R. Part 55, 40 C.F.R. Part 124, and Section III.D of the Environmental Appeals Board Practice Manual, permittee Shell Offshore Inc. ("SOI") hereby requests leave to participate in proceedings on, respond to, and seek expedited review of the petitions for review filed in the above-captioned case. OCS Minor Permit No. R10OCS-AK-07-01 (Revised) ("Revised Permit") has been challenged in three separate petitions to review filed by Bill MacClarence (No. 08-01), the North Slope Borough, the Inupiat Community of the Arctic Slope, and the Alaska Eskimo Whaling Commission (No. 08-02), and Alaska Wilderness League,

Center for Biological Diversity, Natural Resources Defense Council, Northern Alaska Environmental Center, Pacific Environment, Resisting Environmental Destruction on Indian Land, a Project of the Indigenous Environmental Network (“REDOIL”) (08-03) (collectively, “Petitioners”). This permit was issued to SOI by Region 10 of the Environmental Protection Agency (“EPA”) pursuant to the Clean Air Act, acting on remand instructions from this Board in a proceeding challenging OCS Minor Permit No. R10OCS-AK-07-01 (“Original Permit”). The Revised Permit controls air emissions from SOI’s activities at drill sites authorized by the Mineral Management Service (“MMS”) in the Beaufort Sea Outer Continental Shelf (“OCS”). Permittee SOI has invested hundreds of millions of dollars in its project in the Beaufort Sea OCS, and its participation in these proceedings is therefore appropriate to protect its significant interests in this matter. SOI therefore respectfully requests that the Board allow it to participate in all aspects of these proceedings and to respond to the petitions for review. SOI further requests that the Board grant this appeal expedited review in light of the uniquely time-sensitive nature of Arctic exploration.

### **REQUEST FOR LEAVE TO RESPOND**

**I. THE SAME REASONS THAT MERITED SOI’S PARTICIPATION IN THE 2007 PROCEEDINGS CONCERNING THE ORIGINAL PERMIT SUPPORT SOI’S PARTICIPATION IN PROCEEDINGS CONCERNING THE REVISED PERMIT.**

Recognizing SOI’s appropriate and distinct interest in the matter, the Board granted SOI leave to respond to and fully participate in proceedings concerning the petitions filed in 2007 challenging the Original Permit. *Shell Offshore, Inc. (Kulluk Drilling Unit and Frontier Discoverer Drilling Unit)*, OCS Appeal Nos. 07-01 & 07-02, slip op. at 8 (EAB, Sept. 14, 2001). As discussed below, the reasons that supported the Board’s decision last year apply with equal

force to support SOI's participation in the resolution of the petitions for review challenging the Revised Permit.

**II. PERMIT HOLDERS ARE GENERALLY ALLOWED TO PARTICIPATE IN PERMIT APPEALS BEFORE THE BOARD.**

The regulations governing OCS permitting, 40 C.F.R. Part 55, state that the Administrator will follow, for OCS air permits, the administrative procedures outlined in 40 C.F.R. Part 124 to process prevention of significant deterioration ("PSD") permit applications. EPA takes the position that OCS permits, including the minor source permit that is the subject of the current petitions, are subject to the administrative procedures applicable to PSD permits outlined in Part 124, including the EAB appeal procedures.

The Board has recognized that permittees have a significant interest in defending challenged permits, and has consistently held that it is appropriate to allow permittees to participate in appeal proceedings and to file responses to petitions for review. *See, e.g., In re ConocoPhillips Co.*, PSD Appeal No. 07-02, slip op. at 10 (EAB, June 2, 2008); *In re Christian County Generation, LLC*, PSD Appeal No. 07-01, slip op. at 10 (EAB, Jan. 28, 2008); *In re Newmont Nevada Energy Investments, LLC, TS Power Plant*, 12 E.A.D. 429, 437 (EAB 2005). The EAB Practice Manual explains that the Board will "generally allow the permit applicant to respond to a petition filed by a third party petitioner if the permit applicant has filed a request to respond." EAB Practice Manual at 30. The Board followed this policy when it granted SOI permission to participate in the 2007 proceedings on the Original Permit. *Shell Offshore, Inc.*, slip op. at 8. As discussed below, permittee SOI continues to have a significant interest in defending the Revised Permit, and therefore it would be appropriate for the Board to grant SOI's request to participate fully in these proceedings.

### III. SOI HAS A SIGNIFICANTLY PROTECTABLE INTEREST IN ITS BEAUFORT SEA OPERATIONS.

The Revised Permit authorizes minor source air emissions from a drilling unit to be operated by SOI during the short Arctic season (generally July through October). Without the final OCS minor source air permit at issue here, SOI cannot proceed with its current plan of exploration and development for its Beaufort Sea OCS leases. SOI has devoted hundreds of millions of dollars and substantial human resources to the planned program in which this drilling unit is to be used. SOI therefore has a significantly protectable interest that is implicated by the current petitions for review.

SOI would like to consider exploration drilling and related activities on some of its Beaufort Sea leases in the OCS as early as the 2009 season, provided it obtains government approvals sufficiently in advance of the season.<sup>1</sup> See Declaration of Chandler T. Wilhelm, July 24, 2008, ¶ 7 (“Wilhelm Decl.” attached as Exhibit A).<sup>2</sup> In preparation for this exploration program, SOI has undertaken various efforts over the past three years and invested significant financial and other resources in developing the technical capabilities and analysis to support a safe, environmentally responsible and successful exploration program. The actual cost for SOI’s 2007 activities related to the exploration program alone exceeds \$300 million. *Id.* at ¶ 12. The following summarizes some of the resources that SOI has committed to this program:

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<sup>1</sup> As SOI informed the Board during the 2007 challenge to the Original Permit, the U.S. Court of Appeals for the Ninth Circuit issued a temporary injunction prohibiting SOI from proceeding on its Minerals Management Service-approved exploration plan. *Alaska Wilderness League v. Kempthorne*, No. 07-71457, Order (9th Cir. Aug. 15, 2007). The court sua sponte ordered expedited review in the order granting the temporary injunction, and oral argument took place in December 2007. SOI expects a decision soon and is therefore making all necessary preparations to go forward with the 2009 season in anticipation of the court’s decision.

<sup>2</sup> In support of this Request for Leave to Respond and Motion for Expedited Review, SOI is attaching the “Declaration of Chandler T. Wilhelm,” which was prepared on July 29, 2008, by Mr. Wilhelm. Mr. Wilhelm executed the declaration consistent with the requirements of 28 U.S.C. § 1746 for unsworn declarations made under the penalty of perjury.

- over \$100 million to develop a robust spill response capacity and a comprehensive C-Plan that uses the best available drilling and well control procedures and technologies to prevent a spill and employ response personnel and equipment. Wilhelm Decl. at ¶ 9.
- Over \$200 million to acquire, update and maintain the *Kulluk* so as to safely drill in the Arctic. *Id.* at ¶ 14.
- background research and data acquisition and analyses in the Beaufort and Chukchi Seas during the 2006-2008 seasons. *Id.* at ¶ 13.
- employment of approximately thirty technical experts who devoted many months to the engineering of the potential exploratory wells. *Id.* at ¶ 14.
- millions of dollars and significant company time to retain a contractor and required vessels to conduct seismic activities. *Id.* at ¶ 6.

SOI has also devoted considerable time and resources to obtain the necessary federal and state permits and approvals for its exploration plan. In addition to obtaining the Original Permit and defending it in front of the Board, SOI has continued to work with Region 10 to address the questions presented on remand by providing requested supplemental information and submitting detailed comments throughout the process. SOI has also taken the following steps to secure other required major federal and state authorizations:

- On February 15, 2007, MMS conditionally approved SOI's offshore oil and gas Exploration Plan (the "Plan"). In its Plan, SOI proposed three years of exploration activities, beginning during the 2007 season, to evaluate the oil and gas potential of certain of its Beaufort Sea leases. This plan is subject to a temporary injunction issued by the Ninth Circuit, but the court has granted expedited review of the merits of the case, and SOI expects a decision soon. Wilhelm Decl. at ¶ 8.
- On July 27, 2007, SOI obtained a determination from the State of Alaska under the federal Coastal Zone Management Act that the Plan is consistent with the State's approved coastal zone management program. *Id.* at ¶ 10.
- SOI works on an ongoing basis to ensure that SOI has all necessary authorizations from National Marine Fisheries Service and U.S. Fish and Wildlife Service to undertake activities that are determined to have only a negligible impact on protected marine species. *See id.* at ¶ 11.

The Revised Permit is necessary for SOI to operate the drilling unit to be used in conducting its exploration activities. SOI has a significantly protectable interest meriting its participation in these proceedings. Moreover, the timing of this appeal is critical for the planning and execution of SOI's operations, and SOI consequently has a compelling interest in expedited review of these petitions.

#### **IV. DISPOSITION OF THESE PETITIONS FOR REVIEW COULD IMPAIR SOI'S INTERESTS.**

The petitions for review place at risk all of SOI's significant interest and investments in its current Beaufort Sea exploration plan. While SOI is confident that EAB will ultimately uphold Region 10's issuance of the *Kulluk* permit, any significant delay in EAB's resolution of the petitions for review could prevent finalization of the permit in time for SOI's to consider a 2009 exploration season.

Planning and preparations for the 2009 season must begin many months in advance of the actual season. SOI would need to begin committing to contracts for ice management vessels, logistics support, and rig personnel, and commence rig warm-up as early as January of 2009. Wilhelm Decl. at ¶ 7. Loss of the 2009 season would have negative effects immediately and in the long-term. If the 2009 season is lost, SOI will lose not only whatever monetary outlay it has made and will make with respect to that season,<sup>3</sup> but also another year of the ten-year term of its Beaufort Sea leases, and it will incur another year's delay in moving toward an eventual return on its investment in these leases. *Id.* at ¶ 15. In addition, because SOI currently plans to conduct future exploration drilling in the Beaufort Sea based on the analysis of the data acquired in 2009, SOI's inability to complete that data acquisition may delay or otherwise impede SOI's future

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<sup>3</sup> As the 2009 season approaches, SOI must make increasing commitments of money and resources, which are then at risk if the season is ultimately lost.

program. *Id.* It is therefore appropriate for SOI to participate at all stages of the process in order to defend against Petitioners' challenges.

**V. EPA'S INTEREST IS NOT IDENTICAL TO SOI'S INTEREST.**

SOI's legitimate business interests are not represented by EPA's participation in this case as a Respondent. First, while SOI and EPA will join in defense of the permit, EPA's interests are distinct from SOI's. EPA is required to represent the public's broad overall interest. SOI's interests are economic, and are properly based on its desire to protect its property and contractual rights associated with its OCS leases. EPA's representation of the public's general interest is different enough from SOI's particularized interest that the Agency simply (and understandably) is unable to give SOI's unique interests sufficient attention or weight. It is also unlikely that EPA's arguments in defense of the permits will be identical to SOI's.

Second, if SOI is allowed to participate in this case, SOI will likely present information and perspectives that might otherwise not be presented. Wilhelm Decl. at ¶ 5. SOI has specific useful information regarding its proposed exploration activities that it can provide to the Board that might otherwise not be presented. Consequently, SOI's participation is vital to protecting SOI's very substantial investment in its Beaufort Sea leases.

Because SOI's private interests are distinct from those of the general public, EPA will not be in a position to fully represent SOI's interests in defending the permits at issue in response to the petitions. It is therefore appropriate for the Board to grant SOI leave to participate fully in these proceedings.



## MOTION FOR EXPEDITED REVIEW

SOI appreciates the expeditious and thorough review the EAB accorded the Original Permit last summer. For similar reasons pertaining to the unique nature of SOI's drilling program and the extremely short open-water season in which SOI must operate, SOI requests that the EAB again provide expedited review of these challenges to the Revised Permit.<sup>4</sup> Because the *Kulluk* can enter the Beaufort Sea and operate there only during the brief open-water season, SOI's entire 2009 exploratory season must be compressed into that 14 to 16 week period. SOI's current schedule provides for beginning operations shortly after the 2009 open-water season begins, contingent upon EPA's final issuance of the air permits and judicial approval of the Plan.<sup>5</sup> Consequently, unlike most prospective permittees, SOI is not simply in a position where a delay in permit issuance means an equivalent delay in facility construction and startup. Here, any material delay could mean the forfeiture of the entire 2009 exploration program. *See* Wilhelm Decl. at ¶ 7.

SOI has undertaken tremendous efforts over the past three years and invested hundreds of millions of dollars and countless other resources to develop a safe, environmentally responsible exploration program. Wilhelm Decl. at ¶¶ 13,14. Because the open-water season in the Beaufort Sea is so short, SOI's logistical preparation and upfront investment in exploratory drilling and

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<sup>4</sup> Last year, SOI had hoped to be able to drill during the 2007 season, and had invested hundreds of millions of dollars towards that effort. This year, SOI has already been prevented from pursuing drilling during the 2008 season. In anticipation of the 2009 season, however, expedited review is still appropriate. SOI must plan and begin making increasingly large commitments of resources for the 2009 season as early as January of 2009. Those investments will be lost if the 2009 season cannot proceed. Given the timeline, the magnitude of the investments at issue, and the possibility of a judicial appeal of any final permit with an associated attempt to enjoin SOI's drilling, SOI already faces huge risks relating to the timing of a final permit. Another expedited ruling from EAB would significantly ameliorate those risks.

<sup>5</sup> SOI acknowledges that the permit's effective date has not yet been determined because the permit was issued contingent on completion of section 7 consultation under the Endangered Species Act. SOI is confident that consultation will be completed quickly.

support activities are extensive. As the 2009 season approaches, SOI will be forced to either make investments as it did for 2007, at the risk of losing them if a final permit is not issued in time to operate during 2009, or decide not to drill, losing another year from its lease term and another critical year from its exploration and possible development timeline. Even a short delay that cuts into the 2009 season would materially diminish the available exploration season and would irreparably compromise investments made for that season, resulting in serious, unrecoverable losses to SOI. *See id.* at ¶ 7.

As with delays to the 2007 season, the harm caused by a delay to the 2009 season would not be limited to 2009, nor would it be limited to SOI's interests. SOI's leases have limited terms, and Arctic oil exploration and development necessarily depend on extended planning horizons. Therefore, any delay resulting in the loss of a season, or even a portion of a season, means the loss of a material portion of the lease term. Such a loss jeopardizes bringing any eventual hydrocarbon discoveries into production and threatens the entirety of SOI's investment in the leases involved. *Wilhelm Decl.* at ¶ 15. These losses would be irreparable, and would injure not only SOI but the public interest as well. *See Amoco Production Co. v. Gambell*, 480 U.S. 531, 545 (1987) (in evaluating preliminary injunctive relief, the Supreme Court observed that resources committed to an exploration plan would be unrecoverably lost were exploration enjoined and that the public interest in oil and gas exploration supported allowing exploration to continue). If exploration is stopped because of such delays, hundreds of people employed by SOI and its contractors could lose their jobs. Indeed, as SOI informed the Board last fall, the delays it has encountered to date have already forced SOI to make some job reductions. Further, the nation's interest in promoting domestic oil and gas exploration and development activities to enhance its energy security would suffer. *See Executive Order 13211* of May 18, 2001, "Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 Fed. Reg. 28355 (May 22, 2001) (giving specific permitting priority to domestic oil and gas exploration and activities and requiring federal agencies to expedite the federal permitting process). For all these reasons, any material delay of EPA’s final decision on the permits at issue would work a disproportionate and irreparable harm, justifying expedition of the EAB appeal process.

SOI therefore respectfully requests that EAB expedite review and resolution of these petitions. We understand that, because the Revised Permit will be reviewed as if it were a Prevention of Significant Deterioration (PSD) permit, EAB will expedite it ahead of other types of appeals. In addition, the Revised Permit comes before the Board following EAB’s remand of the Original Permit and further proceedings by Region 10. For this reason, too, expedited review of these follow-on appeals is appropriate. SOI respectfully requests that, for the reasons discussed above, EAB expedite these appeals by according them high priority among PSD appeals. A material delay in the resolution of the *Kulluk*’s permit could place an entire multi-year project at risk.

Any such expedition could not prejudice the Petitioners. EAB practice requires a petitioner to present all of its evidence and arguments in its petition, and reply briefing is not ordinarily taken. *See, e.g.*, Practice Manual at 30 (“The regulations further contemplate that, based on the EAB’s review of the petition alone, the EAB will then issue a decision either granting or declining review.”); *id.* at 31 (“Since the EAB frequently issues a decision that is dispositive of the matter based on the petitioner’s brief and the responses thereto, [footnote omitted] petitioners are advised that a petition for review should set forth, in detail, all of the issues and all of the arguments in their favor.”); *id.* at 36. By contrast, as discussed above, any

material extension of the timeline for EAB review is likely to severely and irreparably injure SOI.

For the reasons discussed above, the extraordinary circumstances attendant on the Revised Permit justify expedited review of these petitions. SOI therefore respectfully requests that the Board provide expedited review of these appeals.

CONCLUSION

For the foregoing reasons, the Board should grant SOI's request to respond to the petitions and should grant expedited review of the petitions filed in the above-captioned matter.

DATED this 30th day of July 2008.

Respectfully submitted,



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*Attorneys for Shell Offshore Inc.*

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

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

**DECLARATION OF CHANDLER T. WILHELM  
28 U.S.C. § 1746**

1. My name is Chandler T. Wilhelm. I have first-hand experience with, and personal knowledge of, the facts and matters discussed in this declaration.

2. I am the Alaska Exploration Manager for Shell Exploration & Production Company ("SEPCo"). SEPCo's principal office is in Houston, Texas. SEPCo and Shell

Offshore Inc. ("SOI"), the legal entity holding state and federal oil and gas leases in the Beaufort Sea, have a new and rapidly expanding presence in Alaska, which includes an office in Anchorage. SEPCo and SOI are affiliates of Shell Oil Company ("Shell").

3. I am a professional petroleum geologist with approximately 25 years of experience working in the oil and gas exploration and production industry. I hold the following degrees: B.A., 1979, Geology, Pomona College; M.S., 1983, Geological Sciences, University of Colorado; Certificate of Completion, 1997, Global Finance Program, University of Texas Graduate School of Business. I have been employed by Shell or its affiliates since 1983.

4. As Alaska Exploration Manager for SEPCo, I direct execution of SOI's Alaska exploration program. I manage and oversee administration of SOI's Alaska oil and gas lease portfolio, participate in decisions on investments in new oil and gas leases, and oversee execution of seismic and drilling operations. I have a staff of approximately 30 technical professionals in Houston and Anchorage who work as a part of my team. In addition, I work closely with Legal, Regulatory Affairs, and Government and External Affairs staff in Anchorage, Houston, and Washington, D.C., to ensure that SOI conducts its business in Alaska with appropriate attention to stakeholder issues and in compliance with all applicable local, state, and federal laws, as well as Shell standards.

5. I make this declaration in support of SOI's Request for Leave to Respond and Motion for Expedited Review in the above-captioned appeals. SOI has substantial interests that are directly and significantly affected by these appeals, as I discuss further below. No other party to these appeals represents SOI or SOI's interests. SOI desires to

participate in this appeal as a party to protect its interests. I believe that SOI's participation will be helpful and beneficial to the Board and the process generally, and that SOI's participation will aid in the development of a more complete record in this case. If SOI is denied intervention, SOI will have no other means of protecting its interests in this matter. SOI's motion to intervene is not brought for purpose of delay or any other improper purpose.

6. SOI plans to conduct exploratory drilling, site clearance, and seismic activities on certain of SOI's 179 federal oil and gas leases in the Beaufort Sea. Seismic and site clearance activities in support of future drilling seasons were conducted successfully in 2006 and 2007 at a net cost to Shell in excess of \$75 million. These same activities are also currently underway in 2008. On July 11, 2008, the U.S. Court of Appeals for the Ninth Circuit denied a request for a temporary injunction pending appeal that would have enjoined SOI's seismic activities for the 2008 season. SOI is therefore executing, through a contractor, its 2008 seismic and site clearance activities as planned at a projected total cost in excess of \$60 million.

7. SOI would like to consider exploratory drilling using the Kulluk in the Beaufort Sea as early as the 2009 season. Because of the limited summer drilling season, SOI would need to begin committing to contracts for ice management vessels, logistics support, and rig personnel, and commence rig warm-up as early as January of 2009. To carry out these activities, SOI is required by law to obtain a number of different governmental approvals from various agencies of the federal government and State of Alaska. These include: (1) approval by the Minerals Management Service ("MMS") of



SOI's Plan of Exploration ("EP"), (2) an air permit, which is the subject of these appeals, (3) Coastal Zone Management Act ("CZMA") certification, (4) Incidental Take Authorizations under the Marine Mammal Protection Act and (5) an Oil Discharge Prevention and Contingency Plan ("ODPCP" or "C-Plan"). As discussed below, SOI has invested substantial resources in obtaining all of these authorizations and either has received, or expects to receive on a timely basis, all of them. However, exploration cannot occur without the OCS air permit at issue in these appeals, which is why SOI has a vital interest in the outcome of these appeals.

8. **Exploration Plan.** On February 15, 2007, the MMS conditionally approved SOI's EP, authorizing the drilling of up to four wells at specific locations that summer and fall, and additional wells in 2008 and 2009. On August 15, 2007, the U.S. Court of Appeals for the Ninth Circuit issued a temporary injunction that prohibits SOI from proceeding on its EP. The court granted expedited review of the appeal challenging the EP and held oral arguments in December 2007. As of the date of this Declaration, the Court of Appeals has not issued a decision on the merits of the appeal.

9. **Oil Discharge Prevention and Contingency Plan.** SOI has developed and funded a comprehensive ODPCP that details the many proactive measures that will be implemented to prevent a spill during exploratory operations and, in the unlikely event of a spill, minimize any potential impacts from that spill. SOI's C-Plan was conditionally approved by the MMS on February 15, 2007. In total, SOI has committed in excess of \$100 million to develop a robust spill response capacity (including vessels, equipment and personnel).

10. **Coastal Zone Management Act.** The EP must also be reviewed and approved by the State of Alaska under the federal CZMA. The CZMA consistency review process requires the State to issue a determination that the conditionally-approved EP is consistent with the standards of the State's approved coastal zone management program. The State of Alaska determined that SOI's plan is consistent with Alaska statewide standards on July 27, 2007.

11. **Incidental Take Authorization.** In order to conduct drilling in 2009 SOI must obtain an Incidental Harassment Authorization ("IHA") from the National Marine Fisheries Service ("NMFS") for whales and seals and a Letter of Authorization ("LOA") from the U.S. Fish and Wildlife Service ("USFWS") for polar bears and walrus. SOI is working with NMFS and USFWS on an ongoing basis to ensure that SOI has all necessary authorizations from those agencies to undertake activities that are determined to have only a negligible impact on protected marine species.

12. Because the open-water season in the Beaufort Sea is extremely short, typically lasting only from July through October, the logistical preparation and upfront investment in exploratory drilling and support activities is substantial. In terms of cost, SOI has committed hundreds of millions of dollars on its current three-year EP. The actual costs for SOI's activities in 2007 alone exceed \$300 million.

13. SOI's EP is based on several years of background research, data acquisition, and analysis, including seismic and/or shallow hazards data acquisition in the Beaufort and Chukchi Seas during the 2006 open-water season. SOI expended significant resources in not only planning the 2006, 2007, and 2008 seismic data acquisition program

and securing the equipment and resources necessary to complete the program, but also in obtaining the authorizations and approvals from the United States Government that are required for these types of activities.<sup>1</sup>

14. As noted, SOI has expended and/or committed substantial financial and human resources to planning, permitting, and executing its multi-year Alaska open-water exploration drilling and seismic campaign. From the outset, SOI committed to employing the best available drill ship technology to safely drill in the Arctic. To that end, SOI spent in excess of \$200 million to acquire and upgrade the Kulluk (which is 100 percent Shell-owned). SOI has conducted numerous geological and geophysical analyses of its leases and available technical data to determine the areas most prospective for hydrocarbons and where to drill its planned exploration wells. SOI has completed numerous other technical studies in order to engineer each well. These specialized studies required the efforts of some 30 technical experts, including petroleum engineers, geologists and geophysicists, and countless person-hours of work.

15. In addition, because SOI currently plans to conduct future exploration drilling in the Beaufort Sea based on the analysis of the data acquired in 2009, SOI's inability to complete that data acquisition may delay the schedule for drilling future exploration wells. Given that Arctic exploration and development involves extended planning horizons, the loss of even a single season can jeopardize SOI's ability to evaluate and, ideally, bring its leases into production within the primary term of the leases, which in

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<sup>1</sup> In all, excluding lease bonuses, SOI has spent almost \$600 million between 2005 and the present in technical studies, data acquisition, and preparation for drilling.

turn threatens the substantial investment made by SOI in acquiring and exploring the leases. Moreover, due to the short Arctic open-water season, any delay of SOI's project threatens SOI's ability to conduct a safe and effective data acquisition program.

16. It is critical for SOI, in planning its long-term investments in Alaska, to know that the federal government's permitting decisions are final and effective. For the reasons set forth above, SOI has a vital interest in any appeal that would seek to overturn any of those decisions, including the present challenges to the minor air permit issued by Region 10.

17. I declare under penalty of perjury that the foregoing is true and correct.


Executed on July 29, 2008.

  
Chandler T. Wilhelm

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Request for Leave to Respond and Motion for Expedited Review was electronically filed with the Environmental Appeals Board and sent, via Federal Express, Facsimile, and Electronic Mail on the 30<sup>th</sup> day of July, 2008, to the following:

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Shaunice Thomas, Secretary