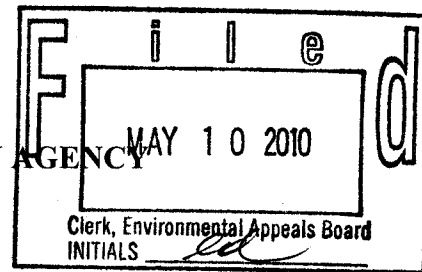


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Shell Gulf of Mexico, Inc.) OCS Appeal Nos. 10-01, 10-02 & 10-03
Frontier Discovery Drilling Unit)
)
OCS Permit No. R10OCS/PSD-AK-09-01)
)

ORDER GRANTING SHELL GULF OF MEXICO, INC., AND SHELL OFFSHORE, INC., LEAVE TO PARTICIPATE AND SCHEDULING CONFERENCE

Region 10 ("Region") of the U.S. Environmental Protection Agency ("EPA") issued an Outer Continental Shelf Prevention of Significant Deterioration Permit to Construct, Permit Number R10OCS/PSD-AK-09-01 ("Chukchi Permit"), to Shell Gulf of Mexico, Inc. ("SGOMI"), on March 31, 2010. The Environmental Appeals Board ("Board") received petitions for review of the Chukchi Permit from the following: 1) Center for Biological Diversity ("CBD");¹ 2) EARTHJUSTICE, on behalf of several conservation groups ("EJ Petitioners"),² and; 3) Alaska Eskimo Whaling Commission and Inupiat Community of the Arctic Slope ("AEWC").³ The CBD and EJ Petitions also request review of a second Outer Continental Shelf

¹ CBD's Petition for Review is designated as OCS Appeal No. 10-01. See Petition for Review (Apr. 30, 2010) ("CBD Petition").

² The Petition for Review filed by EJ Petitioners is designated as OCS Appeal No. 10-02. See Petition for Review (May 3, 2010) ("EJ Petition"). The EJ Petitioners include Natural Resource Defense Council, Native Village of Point Hope, Resisting Environmental Destruction of Indigenous Lands ("REDOIL"), Alaska Wilderness League, Audubon Alaska, Center for Biological Diversity, Northern Alaska Environmental Center, Ocean Conservancy, Oceana, Pacific Environment, and Sierra Club.

³ AEWC's Petition for Review is designated as OCS Appeal No. 10-03. See Petition for Review (May 3, 2010) ("AEWC Petition").

Prevention of Significant Deterioration Permit to Construct, Permit Number R10OCS/PSD-AK-2010-01 (“Beaufort Permit”), that the Region issued on April 9, 2010 to Shell Offshore, Inc. (“SOI”).⁴ Outer Continental Shelf (“OCS”) permits are governed by 40 C.F.R. part 55 and the procedural rules set forth in 40 C.F.R. part 124. *See* 40 C.F.R. § 55.6(a)(3).

SGOMI and SOI (collectively “Shell”) filed a motion requesting leave to participate and to expedite and combine review of the Chukchi and Beaufort Permits. *See* Urgent Request of Shell Gulf of Mexico, Inc., and Shell Offshore, Inc., for Leave to Participate and Motion for Expedited and Combined Review (May 5, 2010) (“Shell Motion”). Shell asserts that it should be allowed to participate because it has a significant protectable interest in its Chukchi Sea and Beaufort Sea exploratory drilling operations, and that Shell’s interests differ from, and therefore would not be adequately represented by, EPA. Shell Motion at 6-9.

With respect to expedited review, Shell avers that any delay in the commencement of operations during the upcoming Arctic open-water season will result in irreparable harm because it has already invested billions of dollars obtaining OCS leases and the equipment necessary to operate its exploration programs, and because many of the costs associated with such exploration would be unrecoverable if drilling were delayed. Shell Motion at 10-12. Shell further requests that the Board forego replies from Petitioners in favor of scheduling oral argument as soon as response briefs are filed. Shell Motion at 17.

Both CBD and EJ Petitioners filed responses to Shell’s motion. *See* Response by Center for Biological Diversity to Request by Shell Gulf of Mexico, Inc., and Shell Offshore, Inc., for

⁴ Petitions for review of the Beaufort Permit may be timely filed before the Board until May 12, 2010.

Leave to Participate and Motion for Expedited and Combined Review (May 5, 2010) (“CBD Response”); EJ Petitioners’ Response to Urgent Request of Shell Gulf of Mexico, Inc., and Shell Offshore, Inc., for Leave to Participate and Motion for Expedited and Combined Review (May 7, 2010) (EJ Petitioners’ Response). Both Petitioners indicate that while they do not object to Shell’s participation or to combining review of the two permits, they do object to a briefing schedule that would preclude a response to Shell’s arguments. *See* CBD Response at 1; EJ Petitioners’ Response at 1.

Based on the foregoing information, the Board hereby GRANTS Shell’s motion to participate, and reserves judgment on whether to combine the two permit appeals. In addition, the Board sets a scheduling conference for the purpose of establishing a briefing schedule and addressing related matters in this case. The conference will be held on Thursday, May 13, 2010, beginning at 2:00 p.m. Eastern Daylight Savings Time, in the Administrative Courtroom, U.S. Environmental Protection Agency, EPA East Building, Room 1152, 1201 Constitution Avenue NW, Washington, D.C. 20005. Counsel for any of the participants who wish to participate in the conference via video-conferencing equipment shall contact the Clerk of the Board, at (202) 233-0122, to make arrangements for the use of such equipment.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 5/10/2010

By: Charles J. Neenan (for ALW)
Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Granting Shell Gulf of Mexico, Inc., and Shell Offshore, Inc., Leave to Participate and Scheduling Conference, in the matter of Shell Gulf of Mexico, Inc., OCS Appeal Nos. 10-01, 10-02 & 10-03, were sent to the following persons in the manner indicated:

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Dated: **MAY 10 2010**



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