10840 Glazanof Drive
Anchorage, Alaska 99507

July 15, 2008

Mr. Stephen Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Ms. Eurika Durr
Clerk of the Board
Environmental Appeals Board (MC 11038)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Re: Public Petition of a Title V Air Quality Permit, Shell Offshore Inc.'s Alaska Outer Continental Shelf (OCS) Air Quality Control Minor Permit No. R10OCS-AK-07-01 (Revised) – OCS Source: Kulluk Drilling Unit

Dear Administrator and Clerk of the Environmental Appeals Board:

Under the provisions of 40 C.F.R. § 70.8(d), I hereby petition the Administrator to make an objection to the issuance of Air Quality Control Minor Permit No. R10OCS-AK-07-01 (Revised) Shell Offshore Inc.'s Kulluk Drilling Unit.

The June 18, 2008 transmittal letter for this permit makes reference to an appeal of this permit being allowed under 40 C.F.R. §124.19 pursuant to the Environmental Appeals Board Remand Order issue September 14, 2007. I am filing this petition with the Clerk of the Environmental Appeals Board for consideration under these provisions as well.

On March 27, 2008, I submitted public comments on this proposed permit to the Environmental Protection Agency (EPA). I was concerned because it appeared that EPA was disaggregating the Shell OCS lease in this permit thus allowing concurrent exploratory activities within separate portions of the lease without

considering impacts in total. This is not in accordance with the Clean Air Act, which defines "facility" or "stationary source" as "all contiguous or adjacent activities occurring under common control or ownership."

EPA's defense of their decision to disaggregate the Shell OCS lease is presented under "Category 13: Definition of a Separate Stationary Source" of the "Response to Public Comments" document contained in the June 18, 2008 permit transmittal material. The defense is entirely based on the January 2, 2007 Oil and Gas Memorandum from EPA Acting Assistant Administrator William Wehrum (Wehrum Oil and Gas Memo), primarily on the basis of "proximity." I am appealing this permit because I believe the Wehrum Oil and Gas Memo to be:

1) A violation of Section 504 of the Clean Air Act, since the provisions of Prevention of Significant Deterioration, National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards are all based on aggregated impact of air emissions, and
2) A definite show of favoritism to the Oil and Gas Industry since no other industry is allowed to disaggregate pieces and portions of their operations in their facility simply because of proximity. In every other case, only the three basic principles of common ownership, common control and co-dependency serve as the rationale for defining a "facility."

The intent of the Clean Air Act was to reduce air pollution by the use of a standardized all-inclusive definition of "facility," which in turn standardizes "de minimis" levels of allowable air pollution. In fact, the vast majority of *all* of EPA's regulatory programs share a common need for a workable definition of "facility" for the same reason – to have an effective rational methodology for environmental protection.

The Wehrum Oil and Gas Memo represents a significant departure from more than 30 years of precedent following the 1972 Clean Air Act and is a serious abrogation of the public trust. For EPA to base their disaggregation decision solely on this Memo without further justification is an egregious act.

Furthermore, there are several other "Responses to Public Comments" from EPA that are solely based on the application of the Wehrum Oil and Gas Memo:

1) Under "Category 3: General Comments Requesting Permit Denial," "Category 4: EPA Application Process," "Category 5: Major Source General Comments" and "Category 6: BACT Analysis Requested," EPA admits that

the only reason a BACT analysis or any other kind of air pollutant evaluation has not been performed is because "EPA has determined that each Exploratory Operation is a separate stationary source." As discussed above under "Category 13: Definition of a Separate Stationary Source," this determination was based solely on the Wehrum Oil and Gas Memo. Because of this disaggregation determination, EPA is able to claim that "EPA has no evidence to support, or deny, any commenter's claim that there could be a net increase, or decrease, in emissions if a major permit was issued to Shell instead of a minor permit." This is a total abrogation of EPA's mandate to protect the public's air quality.

2) Under "Category 12: National Ambient Air Quality Standards and Cumulative Effects," EPA states that all other air pollutant activities will be controlled based on the fact that Shell's application came first. The fact is that most of the major oil and gas activities on the North Slope have been disaggregated inappropriately. If all facilities had been permitted correctly by proper aggregation, air pollution would be substantially lower because emission controls would have been required.
3) Under "Category 23: Global Warming/Climate Change," EPA asserts that "these (Global Warming/Climate Change) concerns do not arise from the changes in the single stationary source determination." This is an erroneous assertion. If the Wehrum Oil and Gas Memo was not applied to this and all other oil and gas facilities, a workable strategy for reducing greenhouse gas emissions from these facilities could be developed. Again, the effectiveness of this or any other regulatory control program hinges primarily on the definition of "facility."

I have no objection to the issuance of this permit as long as there is not an exception granted to the provisions of the Clean Air Act based on an illegal disaggregation of the Shell Offshore Inc.'s facility.

I have attached seven examples of EPA Policy Memorandums that are in direct opposition to the Wehrum Oil and Gas Memo, particularly in terms of the issue of "proximity" concerning facility aggregation. These are:

1) November 12, 1998 Letter from Richard R. Long, Director, Air Program to Julie Wrend, Legal Administrator, Air Pollution Control Division, Colorado Department of Public Health and Environment Re: Single Source Determination for Coors *[EPA has established several mechanisms by which sources and permitting authorities can determine whether there may be "common control" over a group of stationary sources. First, common*

control can be established through ownership of multiple sources by the same parent corporation or by a parent and a subsidiary of the parent corporation. Second, common control can be established if an entity such as a corporation has the power to direct the management and policies of a second entity, thus controlling its operations, through a contractual agreement or a voting interest. If common control is not established by the first two mechanisms, then one should consider whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists between the two companies in order to determine whether a common control relationship exists]
http://www.epa.gov/Region7/programs/artd/air/nsr/nsrmemos/coorstri.pdf

2) December 6, 2004 Letter from JoAnn Heiman, Chief, Air Permitting and Compliance Branch to James Pray, Brown, Winick, Graves, Gross. Baskerville and Schoenebaum, P.L.C. *[two sources are found to be contiguous or adjacent by virtue of their proximity and interaction with one another, the existence of a dedicated pipeline or transportation link for moving materials between two facilities may also be relevant]*
http://www.epa.gov/Region7/programs/artd/air/nsr/nsrmemos/lincoln.pdf

3) January 15, 1999, EPA Region 3 letter to John Slade, Pennsylvania DEP *[whether two facilities are "adjacent" is based on the "common sense" notion of a source and the functional inter relationship of the facilities, and is not simply a matter of the physical distance between two facilities]*
http://www.epa.gov/region7/programs/artd/air/nsr/nsrmemos/amersoda.pdf

4) May 21, 1998, EPA Region 8 letter to Lynn Menlove, Utah DAQ *[a determination of "adjacent" should include an evaluation of whether the distance between two facilities is sufficiently small that it enables them to operate as a single "source."]*
http://www.epa.gov/Region7/programs/artd/air/nsr/nsrmemos/util-trl.pdf

5) August 7, 1997, EPA Region 10 letter to Andy Ginsberg, Oregon DEQ *[The definition of "major stationary source" requires a tripartite test for determining the geographic extent of a single stationary source. Specifically, a major stationary source is defined as all of the pollutant emitting activities that are (1) located on one or more contiguous or adjacent properties; (2) are under common control of the same person (or persons under common control); and (3) belong to a single major industrial grouping or are supporting the major industrial group (as determined by the Major Group codes in the Standard Industrial Classification Manual)]*
http://www.epa.gov/Region7/programs/artd/air/nsr/nsrmemos/util-at2.pdf

6) August 27, 1996, memo from Robert Kellam, OAQPS/ITPID to Richard Long, Region 8 *[This is an analysis of the Applicability of Prevention of*

Significant Deterioration (PSD) to the Anheuser-Busch, Incorporated Brewery and Nutri-Turf, Incorporated Landfarm at Fort Collins, Colorado. The memorandum establishes EPA criteria for "PSD Definition of Source," "Contiguous or Adjacent," "SIC Code" and "Common Control"]
http://www.epa.gov/region7/programs/artd/air/title5/t5memos/abnt.pdf

7) March 13, 1998, EPA Region 5 letter to Donald Sutton, Illinois EPA *[the PSD regulations in 40 CFR 52.21(b)(5) and (6) and the Title V operating permit regulations in 40 CFR 70.2 define a stationary source as any building, structure, facility, or installation whose pollutant-emitting activities belong to the same industrial grouping, are located on contiguous or adjacent properties, and are under the control of the same person or entity (or entities under common control)]*
http://www.epa.gov/region7/programs/artd/air/nsr/nsrmemos/acme.pdf

I wish to reiterate that the sole purpose of this appeal is to object to EPA's use of the Wehrum Oil and Gas Memo in this permit decision. I believe the Wehrum Oil and Gas Memo to be unlawful for the reasons outlined herein.

Respectfully submitted,

BILL MacCLARENCE, P.E.

Enclosures: EPA Policy Memoranda