

On May 3, 2010, Petitioners Natural Resources Defense Council, *et al.* filed a Petition for Review with this Environmental Appeals Board (the Board) of Region 10 of the Environmental Protection Agency's ("Region 10") issuance of Prevention of Significant Deterioration Permit Nos. R10OCS/PSD-AK-09-01 and R10OCS/PSD-AK-2010-01 ("PSD permits") to Shell Gulf of Mexico, Inc. and Shell Offshore, Inc. (referred to herein collectively as "Shell"), respectively, for oil and gas operations in the Chukchi and Beaufort seas. On May 4, 2010, Shell filed with the Board an urgent request for leave to participate and motion for expedited and combined review ("Shell's Urgent Request"). Shell asks that the Board grant Shell's request to participate in this appeal and to consolidate the review of the Chukchi Sea and Beaufort Sea PSD permits. Shell also requests that the Board expedite review of the PSD permits and adopt a provisional schedule under which Petitioners would not have an opportunity to file a reply brief.

Petitioners do not oppose Shell's participation in this appeal or Shell's request for combined review. Petitioners also do not oppose expedited consideration of this appeal, but request that the Board provide a reasonable opportunity for Petitioners to reply to Region 10's and Shell's response briefs. Although the Board often reaches decisions without reply briefs, it may permit a reply if it determines further briefing would assist the Board. The Environmental Appeals Board Practice Manual (June 2004) at 36. In the context of expedited review, rather than wait to determine on the basis of response briefs whether a reply brief would be helpful to the Board, it may foster a more rapid resolution if the Board establishes a reasonable reply period at the outset. This is what the Board did in a previous appeal of Shell OCS permits for the Arctic. *See In re Shell Offshore, Inc.*, OCS Appeals Nos. 07-01 & 07-02, Order Setting Briefing Schedule (July 20, 2007) at 3 & n.8 (setting schedule including reply briefs at the outset of

expedited review “in light of the Petitioners’ requests and the need for proceeding expeditiously”). The Board should do so here.

Reply briefs will likely be helpful to the Board for a number of reasons. Region 10’s response to comments on the PSD permits provided some legal justification for failing to require BACT for emissions from Shell’s associated vessels, and but it may provide additional argument in response to Petitioners’ Petition for Review. *See* U.S. Environmental Protection Agency Region 10, Response to Comments for Outer Continental Shelf Prevention of Significant Deterioration Permit No. R10OCS/PSD-AK-09-01 (March 31, 2010) at 22-23; U.S. Environmental Protection Agency Region 10, Response to Comments for Outer Continental Shelf Prevention of Significant Deterioration Permit No. R10OCS/PSD-AK-2010-01 (April 9, 2010) at 13-15. Additionally, Shell’s request for participation in this appeal is premised on its expectation that it will “present information and perspectives that might otherwise not be presented” by EPA. Shell’s Urgent Request at 9. Allowing Petitioners to reply to potential additional arguments beyond those already presented by EPA may assist the Board in reaching a determination on this appeal.

Shell must still obtain a number of permits from various different agencies before it can commence drilling under the exploration plan. *See* Minerals Management Service, Letter from Jeff Walker, Minerals Management Service, to Susan Childs, Shell Offshore Inc. (Oct. 16, 2009), http://www.mms.gov/alaska/ref/ProjectHistory/Shell_BF/2009_1016_EPapproval.pdf (last visited May 7, 2010) (Minerals Management Service (“MMS”) approval of Shell’s Beaufort Sea exploration plan, noting need to obtain, among other permits and requirements, MMS permit to drill, Marine Mammal Protection Act (“MMPA”) authorizations from Fish and Wildlife Service (“FWS”) and National Marine Fisheries Service (“NMFS”) before drilling can commence);

Minerals Management Service, Letter from Jeffrey Walker, Minerals Management Service, to Susan Childs, Shell Offshore Inc. (Dec. 7, 2009), http://www.mms.gov/alaska/ref/ProjectHistory/2009_Chukchi_Shell/2009_1207.pdf (last visited May 7, 2010) (same for Chukchi Sea). Many of these permits have yet to issue. *See* 75 Fed. Reg. 25,729 (May 7, 2010) (requesting comments through June 7, 2010, for a proposed NMFS MMPA incidental harassment authorization for Shell's operations in the Chukchi Sea); 75 Fed. Reg. 20,482 (Apr. 19, 2010) (same for the Beaufort Sea, with comments accepted through May 19, 2010); U.S. Fish & Wildlife Service, Marine Mammals Management, Incidental Take Regulations, <http://alaska.fws.gov/fisheries/mmm/itr.htm> (last visited May 7, 2010) (listing no permits issued under MMPA to Shell for its drilling in either sea); U.S. Department of the Interior, Salazar Meets with BP Officials and Engineers at Houston Command Center to Review Response Efforts, Activities (May 6, 2010), <http://www.doi.gov/news/pressreleases/Salazar-Meets-with-BP-Officials-and-Engineers-at-Houston-Command-Center-to-Review-Response-Efforts-Activities.cfm#> (last visited May 7, 2010) (stating the MMS will not issue drilling permits to Shell until a Department of Interior report reviewing the Deepwater Horizon spill, due May 28, has been submitted and evaluated); *see also* Dec. 7, 2010, Letter of Approval from Jeffrey Walker to Susan Childs, http://www.mms.gov/alaska/ref/ProjectHistory/2009_Chukchi_Shell/2009_1207.pdf (Chukchi exploration plan approval noting that drilling will not be allowed to commence until the Secretary reconsiders the revisions to the 2007-12 Five Year Outer Continental Shelf Leasing Program, pursuant to which the lease sale of the leases on which Shell proposes to drill were held); 75 Fed. Reg. 16,833 (Apr. 2, 2010) (notice of availability soliciting comments on revisions of the Five Year Plan with comment period ending May 3, 2010). Thus, the slight delay caused

by permitting petitioners a reasonable time to reply will not materially prejudice Shell or interfere with an expedited decision from the Board.

s/ David R. Hobstetter

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Date: May 7, 2010.

CERTIFICATE OF SERVICE

I hereby certify that on May 7th, 2010, a copy of foregoing 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 in the matter of *In re: Shell Gulf of Mexico, Inc., Permit No. R10OCS/PSD-AK-09-01 and Shell Offshore, Inc., Permit No. R10OCS/PSD-AK-2010-01*, OCS Appeal Nos. 10-01 and 10-02, was served by U.S First Class Mail on the following persons:

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