

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

_____)	
In re:)	
)	
SHELL GULF OF MEXICO, INC)	
Frontier Discoverer Drilling Unit)	OCS Appeal Nos. OCS 10-01,
OCS Permit No. R10 OCS/PSD-AK-09-01)	10-02, 10-03, and 10-4
)	
and)	
)	
SHELL OFFSHORE, INC.,)	
Frontier Discoverer Drilling Unit)	
OCS Permit No. R10 OCS/PSD-AK-10-01)	
_____)	

**EPA REGION 10 UNOPPOSED
MOTION TO RESCHEDULE ORAL ARGUMENT**

EPA Region 10 hereby moves the Environmental Appeals Board (Board) to reschedule the oral argument currently scheduled for Tuesday, August 17, 2010, in the above matter. In support of this motion, EPA Region 10 states the following:

1. On July 19, 2010, the Board issued an Order Scheduling Oral Argument in this matter. In that Order, the Board set oral argument on Tuesday, August 17, 2010, and requested argument from the parties regarding three specific issues: “1) the Permits’ conditions defining when the Frontier Discoverer is an OCS source; 2) the Region’s determination that [BACT] is not required for ships supporting the Frontier Discoverer; and 3) the impact of the new 1-hour NO₂ [NAAQS] on the environmental justice analyses.” Order at 4.

2. The attorney from EPA that is the national expert in OCS matters will be away from the office on vacation August 14-29. In addition, the Region 10 attorney that could serve as his back-up to address the OCS issues before the Board also has a conflict the week of August 16th.
3. Moreover, EPA anticipates that it will need more than 3 weeks to fully vet a response to the specific issues the Board has raised regarding the environmental justice analyses. EPA's preparation of a response to those issues will require coordination across a number of EPA program offices and their accompanying management, and it is our experience that such coordination will take more time than allowed by the current schedule, especially given that it will have to occur at the height of summer vacation schedules.
4. The Board has requested this argument to assist in its deliberations on these matters, and we believe it would be most prudent to have our experts in these areas present argument to and answer questions from the Board. Likewise, we believe the Board would benefit from arguments that have been fully vetted with the appropriate EPA program offices and management.
5. As the Board has not yet made a decision as to whether to issue a decision on the merits of these issues, to continue to hold them in abeyance, or to remand them, *see* Order at 4, this reschedule request will not affect the overall schedule for resolving this case. In fact, the recent decision in *Native Village of Point Hope v. Salazar*, No. 1:08-cv- 0004 (D. Alaska July 21, 2010), which enjoined all activity under the Department of Interior lease in which Shell acquired its leases for the operations being addressed by the Chukchi permit at issue in this case, means that

- it is unlikely that Shell will have a final determination as to the overall status of their Chukchi Sea operations in the near future. *See* Shell Gulf of Mexico Inc.'s and Shell Offshore Inc.'s Notice of Related Decision (filed July 22, 2010).
6. EPA Region 10 has conferred with the other parties in this matter regarding rescheduling the oral argument to the first full week in September. Counsel for Center for Biological Diversity, Counsel for Alaska Eskimo Whaling Commission and the Inupiat Community of the Arctic Slope, and Counsel from Earthjustice (representing several conservation group Petitioners), had no objection to our request, although Counsel for Alaska Eskimo Whaling Commission and the Inupiat Community of the Arctic Slope indicated that Thursday, September 9 was the only day that week on which they were available for argument.
 7. Counsel for Shell indicated that they would support the request to reschedule if EPA would express its support to the Board for deciding these three issues instead of continuing to hold a decision on these issues in abeyance.
 8. Accordingly, after considering the positions of counsel for the other parties, EPA Region 10 asks that oral argument be rescheduled to Thursday, September 9, 2010.
 9. In addition, we note our position that after hearing argument on the three issues identified in Board's Order, the Board should issue its decision on those issues instead of holding them in abeyance or remanding them pursuant to the motions previously filed by Region 10 and Petitioners. EPA Region 10 takes this position after considering our interest in rescheduling the oral argument, the Board's interest in these three issues, and the Agency resources devoted to the full briefing

of and upcoming argument on the issues. In so doing, we note that the timing and substance of any future work by the Agency on these permits (if necessary) will be influenced by any decision the Board may issue, as well as the overall situation regarding OCS drilling and the availability of Agency resources.

WHEREFORE, for the reasons set forward above, EPA Region 10 requests that the Board grant this Unopposed Motion and issue an order rescheduling the oral argument to Thursday, September 9, 2010.

Dated this 28th day of July, 2010

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the EPA Region 10 Unopposed Motion to Reschedule Oral Argument to be served by electronic mail upon the counsel listed below.

7/28/2010
Date

/s/
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