

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

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In re:	)	
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Shell Gulf of Mexico, Inc.	)	OCS Appeal Nos. 10-01, 10-02, 10-03 &
Permit No. R10OCS/PSD-AK-09-01	)	10-12
	)	
and	)	
	)	
	)	
Shell Offshore, Inc.	)	
Permit No. R10OCS/PSD-AK-2010-01	)	
	)	
	)	

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**PETITIONERS NATURAL RESOURCES DEFENSE COUNCIL, et al., ALASKA  
ESKIMO WHALING COMMISSION, et al., and CENTER FOR BIOLOGICAL  
DIVERSITY’S MOTION TO VACATE AND REMAND THE AIR PERMITS, AND  
RESPONSE TO THE ENVIRONMENTAL PROTECTION AGENCY’S MOTION TO  
HOLD THESE PROCEEDINGS IN ABEYANCE**

Petitioners Natural Resources Defense Council, *et al.*, Center for Biological Diversity, and Alaska Eskimo Whaling Commission, *et al.* (collectively, Petitioners) hereby move that the Board vacate and remand the Outer Continental Shelf / Prevention of Significant Deterioration Permits (Nos. R10OCS/PSD-AK-09-01 and R10OCS/PSD-AK-2010-01) at issue in this appeal to the Environmental Protection Agency (EPA) for reconsideration in light of the government's May 27 decision to suspend and reexamine exploratory drilling operations proposed by Shell Gulf of Mexico, Inc. and Shell Offshore, Inc. (Shell).

The May 27 decision directed a suspension of Shell's drilling until at least 2011 in order to gather further information, evaluate proposed drilling technologies, and evaluate oil spill response capabilities for Arctic waters. As described below, the government is conducting a far-reaching and comprehensive review of Shell's drilling plans, and this review is likely to result in substantial changes to the operations, their emissions, and any future air permits, and may curtail Arctic drilling permanently. Vacating and remanding the permits now would facilitate EPA's review and revision of air permits for Shell's future drilling, if any. In the unlikely event that the air permits do not change as a result of the review, EPA could issue a new final decision, and these proceedings could be efficiently reinitiated.

Alternatively, in the event the Board does not vacate and remand the air permits, Petitioners support EPA's request that these proceedings be held in abeyance. Although Petitioners believe that an order vacating and remanding the permits is the more appropriate course, Petitioners nonetheless agree with EPA that adjudicating these petitions now in the face of likely substantial changes to the permits is not appropriate, and in particular on the current, expedited schedule given that no operations could proceed until 2011, even if there were no required changes to the current permits. The continuing uncertainty about the exact contours of

the moratorium, its duration and final effect on Arctic drilling, the scope of the various reviews and their effect on these permits demonstrate that the issues raised are now hypothetical, and the permits are not a proper subject for review.

## **ARGUMENT**

These petitions concern EPA's issuance of air permits to Shell for exploration drilling in the Chukchi and Beaufort seas. On May 27, President Obama announced the suspension of this exploration drilling in light of the tragic events of the *Deepwater Horizon* exploration oil spill in the Gulf of Mexico. See Exhibit 1 at 2 (Remarks by the President on the Gulf Oil Spill (May 27, 2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-gulf-oil-spill>). The Department of the Interior explained that "in light of the need for additional information about spill risks and spill response capabilities, [the Department] will postpone consideration of Shell's proposal to drill up to five exploration wells in the Arctic this summer." See Exhibit 2 at 1 (Press Release, U.S. Department of Interior, Salazar Calls for New Safety Measures for Offshore Oil and Gas Operations; Orders Six Month Moratorium on Deepwater Drilling (May 27, 2010) and accompanying Fact Sheet, available at <http://www.doi.gov/news/pressreleases/Salazar-Calls-for-New-Safety-Measures-for-Offshore-Oil-and-Gas-Operations-Orders-Six-Month-Moratorium-on-Deepwater-Drilling.cfm>). Accordingly, "Applications for Permits to Drill [Shell's 5 wells in the Chukchi and Beaufort seas] will not be considered until 2011 because of the need for further information-gathering, evaluation of proposed drilling technology, and evaluation of oil spill response capabilities for Arctic waters." *Id.* at 4. As the Department explained further, the Department will establish working groups to further develop measures and recommendations around issues associated with the safety of offshore drilling. *Id.* at 2. Acknowledging that "[t]hese issues involve highly technical and complex evaluations that

must be undertaken with due care,” the working groups “will present recommendations for further safety and environmental protection measures within 6 months, with implementation of the new recommendations . . . within one year.” *Id.* These efforts may inform the work of a newly established bipartisan National Commission investigating the *Deepwater Horizon* spill. *Id.*

As EPA acknowledges, the suspension and reexamination of Shell’s drilling “raises a number of complex issues potentially related to the status of the CAA [Clean Air Act] permits at issue here.” Docket No. 29 at 3. The review conducted during the suspension could “lead to events that could affect the CAA permitting in this case—*e.g.*, the addition of extra emergency response vessels to Shell’s proposed operations, the emissions for which EPA Region 10 would need to analyze in light of the CAA permitting requirements.” *Id.*

President Obama’s announcement of the suspension also illustrates the types of changes that may be required to Shell’s drilling plans. While discussing the *Deepwater Horizon* spill, the President repeatedly stressed the need to improve oil spill response capabilities, including improving the ability to stop a blowout oil spill and the ability to drill two relief wells in the event of such a spill. *See* Exhibit 1 at 4 (“The experience has been that when you drill one relief well, potentially you keep on missing the mark. And so it’s important to have two to maximize the speed and effectiveness of a relief well.”); *see also id.* at 8 (“we have to have confidence that even if it’s just a one-in-a-million shot, that we’ve got enough technology know-how that we can shut something like this down not in a month, not in six weeks, but in two or three or four days. And I don’t have that confidence right now”); *id.* at 6 (“we can’t do this stuff if we don’t have confidence that we can prevent crises like this from happening again”).

EPA itself acknowledges that the changes imposed on any eventual drilling could require “a remand and/or withdrawal of the Shell permits.” Docket No. 29 at 4. In fact, however, the crucial and wide-ranging review of all safety procedures, drilling and spill-response equipment, practices and policies that must be in place before Shell’s proposed exploration drilling in the Arctic can proceed, if it can at all, makes it likely that there will be substantial changes to Shell’s operations that will affect the air permits. Indeed, Shell has already made preliminary changes to its plans. In response to a request by the Minerals Management Service, the company described changes to its operations in light of the *Deepwater Horizon* spill to include the use of a second drillship, the *Kulluk*, to drill a relief well in the event of a blowout oil spill that disabled Shell’s primary drillship. Exhibit 3 at 4 (Letter from Marvin E. Odum, Shell Oil Company to S. Elizabeth Birnbaum, Minerals Management Service, dated May 14, 2010). This second ship is nowhere contemplated in the air permits at issue here. Should the ongoing review announced on May 27 require further substantial changes to Shell’s operations, Shell would have to re-submit air permit applications to EPA for its approval, and EPA would have to make new decisions—including a new public notice and comment period—regarding the issuance of air permits to Shell. Of course, in the event that there are substantial changes, the issues that are the subject of an appeal may change.

Even in the unlikely event that Shell is not required to change its operations in light of federal agency review, certain factual and legal issues could be different if Shell’s current permits are vacated and remanded to the agency. For example, a more complete data set could be relied upon to provide the background levels of particulate matter along the North Slope, and, if permits were issued after January 2, 2011, best available control technology will be applied to the drilling fleet’s carbon dioxide emissions, circumstances which could render certain claims of

petitioners moot. Thus, there is no advantage to holding the current appeals in abeyance over vacating and remanding the permits to the agency in light of the uncertainties about the nature of future permits, should Shell's operations proceed at all. Surely, it would be a waste of resources to resolve the current petitions, and certainly to do so on an expedited basis, as Shell requests, now that the Shell's operations have been suspended until at least 2011, and the finality of the permits has been called into serious question.

Accordingly, Petitioners respectfully request that the Board vacate the air permits and remand them to EPA to fully consider any changes to Shell's operations that result from the ongoing government review of Shell's offshore drilling plans and incorporate those changes as necessary in any future air permits. Alternatively, if the Board does not vacate and remand the permits, Petitioners support EPA's request to hold these proceedings in abeyance pending the government's review of Shell's offshore drilling plans.

*s/ Tanya Sanerib*

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Date: June 1, 2010.

## CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2010, a copy of foregoing PETITIONERS NATURAL RESOURCES DEFENSE COUNCIL, et al., ALASKA ESKIMO WHALING COMMISSION, et al., and CENTER FOR BIOLOGICAL DIVERSITY'S MOTION TO VACATE AND REMAND THE AIR PERMITS, AND RESPONSE TO THE ENVIRONMENTAL PROTECTION AGENCY'S MOTION TO HOLD THESE PROCEEDINGS IN ABEYANCE 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, 10-02, & 10-03 was served by electronic mail on the following persons:

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