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July 5, 2007

ENVIR. APPEALS BOARD

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BY HAND DELIVERY

U.S. Environmental Protection Agency
Eurika Durr, Clerk of the Board,
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

Re: Request for Expedited Resolution of Petitions for Review of Shell Offshore Inc.'s
Outer Continental Shelf Air Quality Control Minor Permit Approvals to Construct
R100CS-AK-07-01 and R100CS-AK-07-02

Dear Ms. Durr:

By this letter, Shell Offshore Inc. (SOI) respectfully requests that the Environmental Appeals Board (EAB or the Board) expedite its resolution of any petitions for review that may be filed challenging either of the two SOI Outer Continental Source (OCS) minor source air permits referenced above. These two minor source permits are required for exploration work scheduled to begin in early August off the North Slope of Alaska.

SOI has been working with EPA on matters relating to these approvals to construct since February 2006. SOI submitted formal applications in December 2006. EPA Region 10 issued these two approvals to construct on June 12, 2007, subject to any administrative appeals. See Attachments A, B and C. EPA Region 10 announced that the period for filing an administrative appeal challenging either of those permits expires on July 16, 2007, and that any such appeal would be to the EAB. SOI anticipates that appeals will be filed. As set forth in greater detail below, the exigent circumstances surrounding these permits and SOI's planned project justify emergency expedition of any appeals.

SOI recognizes that seeking expedition prior to an appeal being filed is unusual. However, the timing of these permits and the unique circumstances surrounding oil exploration off the North Slope of Alaska are such that expediting these appeals as soon as possible is critical to SOI's long-planned exploration project. In order for this project to proceed, SOI must have these final minor source air permits. In addition, the project can only proceed during the extremely limited open-water season in the Beaufort Sea. That period lasts approximately 14-16 weeks beginning in late July. Any appeals would therefore coincide with the open-water season. While SOI believes that EPA properly issued these permits and that they would be upheld through summary disposition of

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any appeals, under a standard timetable for the Board's review, SOI's 2007 exploration season could well be completely lost, irrespective of the merits of any such appeals. Accordingly, SOI seeks advance, emergency relief expediting the schedule for any appeals.

I. Under the Unique Circumstances Surrounding These Permits, Delay Would Work Unreasonable, Disproportionate, Irreparable Harm on SOI.

The OCS minor source air permits that are the subject of this request authorize emissions from two drill ships that will attach to the sea floor off the North Slope of Alaska for purposes of oil exploration. Because drill ships can enter the area and operate there only during the brief open water season, SOI's entire 2007 exploratory season is compressed into that 14 to 16 week period. SOI's current schedule provides for beginning operations shortly after the open water season begins, contingent upon EPA's final issuance of the air permits. Thus, unlike most prospective permittees, SOI is not simply in a position where a delay in permit issuance means an equivalent delay in facility construction and startup. Here, any material delay could mean the forfeiture of the entire 2007 exploration program.¹

SOI has undertaken tremendous efforts over the past two years and invested hundreds of millions of dollars and countless other resources to develop a safe, environmentally responsible three-year exploration program.² Because the open-water season in the Beaufort Sea is so short, SOI's logistical preparation and upfront investment in exploratory drilling and support activities are extensive. Further, SOI has dedicated significant resource to its efforts to develop a first-rate spill response plan (or C-Plan). This C-Plan will use the best available drilling and well control procedures and technologies to prevent a spill and employ response personnel and equipment, including a newly built 305' ice-class response vessel, in the immediate vicinity of operations at all times.³ For the 2007 exploration season alone, SOI's estimated costs are more than \$200 million.⁴ SOI's efforts and expenditures thus far include:

- over \$100 million to develop a robust spill response capacity and a comprehensive C-Plan.⁵
- tens of millions of dollars to acquire, update and maintain two technologically-advanced Arctic drilling vessels;⁶

¹ Declaration of Chandler T. Wilhelm (Attachment D) at ¶27 (Wilhelm Decl.).¶

² Wilhelm Decl. at ¶22.

³ Wilhelm Decl. at ¶18.

⁴ Wilhelm Decl. at ¶22.

⁵ Wilhelm Decl. at ¶18.

⁶ Wilhelm Decl. at ¶24.

- background research and data acquisition and analyses in the Beaufort and Chukchi Seas during the 2006 open-water season;⁷
- numerous geological and geophysical analyses of SOI's leases to determine the best location to drill exploratory wells;⁸
- employment of approximately forty technical experts who devoted many months to the engineering of the potential exploratory wells;⁹ and
- millions of dollars and significant company time to retain a contractor and required vessels to conduct seismic activities.

Even a short delay while appeals are processed would materially diminish the available exploration season and would irreparably compromise these investments, resulting in serious, unrecoverable losses to SOI.¹⁰

The harm caused by a delay to the 2007 season is not limited to 2007, nor is it limited to SOI's interests. SOI's leases have limited terms and Arctic oil exploration and development necessarily depend on extended planning horizons. Therefore, any delay resulting in the loss of a season, or even a portion of a season, means the loss of a material portion of the lease term. Such a loss jeopardizes bringing any eventual hydrocarbon discoveries into production and threatens the entirety of SOI's investment in the leases involved.¹¹ These losses would be irreparable, and would injure not only SOI but the public interest as well.¹² If exploration is stopped because of such delays, hundreds of people currently employed by SOI and its contractors could lose their jobs. Further, the nation's interest in promoting domestic oil and gas exploration and development activities to enhance its energy security would suffer. See Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 Fed. Reg. 28355 (May 22, 2001) (giving specific permitting priority to domestic oil and gas exploration and activities and requiring federal agencies to expedite the federal permitting process). For all these reasons, any material delay of EPA's final decision on the permits at issue would work a

⁷ Wilhelm Decl. at ¶23.

⁸ Wilhelm Decl. at ¶¶23-25.

⁹ Wilhelm Decl. at ¶24.

¹⁰ Wilhelm Decl. at ¶26.

¹¹ Wilhelm Decl. at ¶27.

¹² See *Amoco Production Co. v. Gambell*, 480 U.S. 531, 545 (1987) (in evaluating preliminary injunctive relief, the Supreme Court observed that resources committed to an exploration plan would be unrecoverably lost were exploration enjoined and that the public interest in oil and gas exploration supported allowing exploration to continue.)

disproportionate and irreparable harm justifying expedition of the EAB appeal process in these limited circumstances.

II. EAB's Standard Schedule Would Delay Final Issuance of the Permits Until Well Into - or After -- the Brief Open Water Season, Irreparably Injuring SOI Irrespective of the Merits of Any Appeal.

Given the unique circumstances of oil exploration in the Beaufort Sea, the timing of these permits and the significance of the investments at stake, the EAB appeals process as currently anticipated is likely to impose disproportionately serious harm on SOI. A delay of even a few days in the EAB's review of any appeal filed would be significant. A delay of a few weeks would be devastating and could eliminate the 2007 exploratory season altogether. By contrast, expedition of any appeal would not prejudice the rights of prospective appellants.

The deadline for filing a petition for review of the Kulluk or Discoverer minor source air permits is July 16, 2007. The EAB Practice Manual provides that upon receipt of any petition for review, the EAB will send a letter to the permit issuer (here, Region 10) requesting a response to the petition.¹³ The permit applicant (here, SOI) is also generally allowed to file a response upon request.¹⁴ EAB's Practice Manual indicates that EAB's request normally provides the permitting authority 15 days to file its response where a PSD¹⁵ permit is involved.¹⁶ EAB's Manual further explains "After the permitting authority's response has been filed, the EAB normally does not require further briefing before issuing a decision."¹⁷

In this case, the permit issuer, Region 10, and the permit applicant, SOI, should be able to respond to any petition within a few days of the close of the appeal period.¹⁸ SOI therefore respectfully requests that in anticipation of receiving appeals on the two SOI permits, the EAB request, in advance of July 16, 2007, that the permit issuer and SOI be prepared to respond to any timely-filed petitions and submit requests for summary disposition within 10 days of any petitions for review being filed. SOI further respectfully requests that EAB then expedite review and resolution of any such appeals to the maximum extent possible. We understand that, because these permits would be reviewed as if they are Prevention of Significant Deterioration (PSD) permits, EAB would expedite

¹³ Practice Manual at 30. *See also* Practice Manual at 35-36.

¹⁴ *Id.* at 30.

¹⁵ SOI understands that EPA will treat this OCS minor source appeal as a PSD appeal for purposes of the regulatory appeal procedures in Part 124. *See* 40 C.F.R. §55.6(a)(3).

¹⁶ *See* Practice Manual at 36, n.43.

¹⁷ *Id.* at 30

¹⁸ EPA has prepared a thorough analysis of, and response to, the comments filed on the permits, which delineate the universe of possible bases for appeal.

them ahead of other types of appeals. SOI respectfully requests that, for the reasons set out in this letter, EAB treat any appeals of SOI's permits as an emergency and accord them the highest priority among PSD appeals. Unlike PSD permits for land-based industrial sources, a delay of mere weeks in the resolution of these OCS permits could place an entire multi-year project at risk.

Any such expedition could not prejudice any prospective appellant. EAB practice requires a petitioner to present all of its evidence and arguments in its petition and reply briefing is not ordinarily taken.¹⁹ Obviously, having the permitting authority (Region 10) and SOI file their response to petitions for review under an expedited schedule will not harm petitioners. By contrast, as discussed above, any material extension of the time line to EAB review is likely to severely and irreparably injure SOI.

For the reasons discussed above, the extraordinary circumstances surrounding any appeals of the SOI minor source air permits justify emergency expedition of any appeals of those permits. SOI therefore respectfully requests that the Board anticipatorily expedite any such appeals by requesting that EPA and SOI respond on or before July 26, 2007 and by issuing a decision as quickly as possible after those responses.

SOI would be happy to provide EAB any further information or filings that would assist the Board in evaluating this request. Please contact the undersigned with any such requests. Thank you for your assistance.

Sincerely,



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¹⁹ See, e.g., Practice Manual at 30 ("The regulations further contemplate that, based on the EAB's review of the petition alone, the EAB will then issue a decision either granting or declining review."); *id.* at 31 ("Since the EAB frequently issues a decision that is dispositive of the matter based on the petitioner's brief and the responses thereto, [footnote omitted] petitioners are advised that a petition for review should set forth, in detail, all of the issues and all of the arguments in their favor.") *id.* at 36.