



EAB Document Region 10

Eskimo Whaler to: Julie Vergeront

11/23/2011 03:20 AM

Eurika Durr, Alexander Fidis, "Chris Winter \(\chris@crag.org\)","
Cc: Colin O'Brien, David Coursen, David Hobstetter, 'Duane Siler',
"egrafe@earthjustice.org", "ejorgensen@earthjustice.org", "'Sarah

From: Eskimo Whaler <eskimo.whaler@yahoo.com>
To: Julie Vergeront/R10/USEPA/US@EPA
Cc: Eurika Durr/DC/USEPA/US@EPA, Alexander Fidis/R10/USEPA/US@EPA, "Chris Winter \(\chris@crag.org\)\" <chris@crag.org>, Colin O'Brien <cobrien@earthjustice.org>, David Coursen/DC/USEPA/US@EPA, David Hobstetter <dhobstetter@earthjustice.org>, 'Duane Siler' <dsiler@crowell.com>
Please respond to Eskimo Whaler <eskimo.whaler@yahoo.com>

Attached is my EAB Document "EAB Region 10" Document, in Microsoft Word and PDF Format. I am using this "reply all" format to make sure that all parties involved at the stage I was last involved in, are contacted. I am not clear which parties are still involved, so to be sure I am replying all through an email that I know to contain the most parties that were involved. Please excuse this precaution, but I do not want to exclude any parties in communication as I was excluded, or delayed.

Respectfully,

Daniel Lum.

'I, Daniel Lum, certify that on November 22, 2011, I emailed this document to counsel for all parties.'

From: "Vergeront.Julie@epamail.epa.gov" <Vergeront.Julie@epamail.epa.gov>
To: Eskimo Whaler <eskimo.whaler@yahoo.com>
Cc: durr.eurika@epa.gov; Fidis.Alexander@epamail.epa.gov; "Chris Winter (chris@crag.org)" <chris@crag.org>; Colin O'Brien <cobrien@earthjustice.org>; Coursen.David@epamail.epa.gov; David Hobstetter <dhobstetter@earthjustice.org>; 'Duane Siler' <dsiler@crowell.com>; "egrafe@earthjustice.org" <egrafe@earthjustice.org>; "ejorgensen@earthjustice.org" <ejorgensen@earthjustice.org>; 'Sarah C. Bordelon' <sbordelon@crowell.com>; "Tanya Sanerib (tanya@crag.org)" <tanya@crag.org>; "tmendoza@crowell.com" <tmendoza@crowell.com>
Sent: Tuesday, November 8, 2011 11:56 AM
Subject: Re: Request for Oral Argument

Mr. Lum,

When you called me this morning asking for assistance in understanding the petition process before the Environmental Appeals Board, I recommended that you contact Ms. Eurika Durr, Clerk for the Board, to make sure you understood the Board's requirements for filings and submissions to the Board, including a request for oral argument.

I also explained that the parties in this case (the other petitioners, Shell and EPA Region 10) had agreed to accept electronic service through email. In doing so, however, I emphasized that the Board did not generally accept documents by email and therefore recommended that you call Ms. Durr.

It does not appear that you copied Ms. Durr on your email requesting oral argument. I have copied Ms. Durr here and again encourage you to contact her to make sure you understand the Board's filing and service requirements

Sincerely,

Julie A. Vergeront
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101
Phone (206) 553-1497
Fax (206) 553-0163

From: Eskimo Whaler <eskimo.whaler@yahoo.com>
To: Julie Vergeront/R10/USEPA/US@EPA; "Chris Winter" <(chris@crag.org)>; "Tanva Sanerib" <(lanya@crag.org)>; Lanya Sanerib <lanya@crag.org>; Colin O'Brien <cobrien@earthjustice.org>; "ejorgensen@earthjustice.org" <ejorgensen@earthjustice.org>; David Hobstetter <dhobstetter@earthjustice.org>; "egrafe@earthjustice.org" <egrafe@earthjustice.org>; Duane Siler <dsiler@crowell.com>; "Sarah C. Bordelon" <sbordelon@crowell.com>; "tmendoza@crowell.com" <tmendoza@crowell.com>
Cc: Alexander Fidis/R10/USEPA/US@EPA; David Coursen/DC/USEPA/US@EPA
Date: 11/08/2011 12:03 PM
Subject: Request for Oral Argument

I, Daniel Lum, hereby request an opportunity for oral argument to the Environmental Appeals Board regarding the air permits issued for Lease sale 193.

I believe the EAB has erred by the issuance of these permits and I believe the Board would benefit greatly by oral argument at this stage of the permitting process. Here is the basis for my request for oral argument

1) The EAB is at a pivotal moment in history the decision made regarding this specific permit will have complete and permanent impacts to an entire coastal subsistence culture.

According to law, the EPA is compelled not to issue air permits that have negative impacts of minority population.

If ever there were a situation where that would occur, it is within these specific air permits. The EAB must discuss the cultural impacts through the contamination/change of diet and the associated cultural impacts through those changes.

The huge amounts of exhaust/particulates to be emitted will have devastating affects to our food chain - our main food source, the Bowhead Whale is a giant filter feeder. When we start getting contamination in our food source, what will the E.P.A. have us eat? Are there studies done to understand the affects of impending food contamination, the cultural affects of a changing diet and what will we replace our marine mammal food source with?

The EPA has not clarified if this impending (and acknowledged) amount of contaminants is acceptable to ingest. How will we eat? How will we know it is safe? Does the EAB understand this?

2) The complete lack of demonstration of oil spill response capability by the air permit applicants is atrocious. The industry has invested heavily in a fleet of spill response vehicles and also touts its ability to effectively respond to various oil spill scenarios in the ocean, in association to these air permits. But they have yet to demonstrate that supposed ability to our Inupiat people, whose food zone they intend to operate in.

Why does the EPA give the industry a "free pass" to avoid forcing them to demonstrate their spill response capability? Wouldn't a clearer understanding of their true response ability be beneficial for all? For a project of this magnitude, spill response demonstration must be a prerequisite!

In other industries, for example the nuclear power industry, there are safeguards and rules and regulations. I am sure that some type of proven containment is required by the EPA in a nuclear reactor, in landfills or in chemical plants. Why are you allowing the oil industry to bypass this important hurdle? If industry has all of the equipment, touts that it is functional - what harm could come of them demonstrating their ability?

After all these years fighting for these permits - why has the industry completely failed to demonstrate, even once, that they have containment ability? I propose to the EAB that the oil industry has not demonstrated their clean up ability because they simply have no ability.

Where are the practice drills?

Where are the reports that show they can respond?

Where is the documentation that shows they actually can do what they say?

It is a giant farce. A lie.

The EPA is being lied to by the industry. They say they can respond. We know it is impossible. Wouldn't it be prudent and logical to at the LEAST ask them to show us their safety net before we expose our food zones to them?

In conclusion, I ask the EAB to hold oral argument. I am not a lawyer. I am not getting paid to do this, but I have a sincere interest in the activities that are going to affect my children and all our future generations.

I urge the EAB to hold oral argument on these issues. They must be addressed. The finality of your decisions will have a permanent impact on my children, our culture and our complete way of life. You must hear oral arguments. You must hear it. If you are a fair and open minded board, you will give me the opportunity to address these issues, and hopefully come to an understanding or conclusion to many open questions.

I am honored as a United States Citizen to be continued in this process.

Daniel James "Inulak" Lum

From: "Vergeront.Julie@epamail.epa.gov"
<Vergeront.Julie@epamail.epa.gov>
To: "'Chris Winter (chris@crag.org)'" <chris@crag.org>; "'Tanya Sanerib
(tanya@crag.org)'" <tanya@crag.org>; Colin O'Brien
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'Duane Siler' <dsiler@crowell.com>; 'Sarah C. Bordelon'
<sbordelon@crowell.com>; tmendoza@crowell.com; Eskimo Whaler
<eskimo.whaler@yahoo.com>
Cc: Fidis Alexander@epamail.epa.gov; Coursen.David@epamail.epa.gov
Sent: Monday, November 7, 2011 3:56 PM
Subject: Fw: Confirmation of Electronic Submission to CDX

Here is the confirmation of the second filing I mentioned.

Julie A. Vergeront
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, ORC-158
Seattle, WA 98101
Phone (206) 553-1497
Fax (206) 553-0163

-- Forwarded by Julie Vergeront/R10/USEPA/US on 11/07/2011 04:55 PM

From: DoNotReply@epacdx.net
To: Julie Vergeront/R10/USEPA/US@EPA
Date: 11/07/2011 04:36 PM
Subject: Confirmation of Electronic Submission to CDX

CDX has received your file and will forward it to the Clerk of the Environmental Appeals Board. You need not file any other copies of your document(s) with the Board, except in certain limited circumstances that are explained in the Board's Standing Orders of January 28, 2010. In general, if the length of your document or the combined page length of all your exhibits exceeds 50 pages, you must send by U.S. Mail or deliver by hand, courier, or commercial delivery service to the Board an

identical paper copy of that document or set of exhibits within one business day of the date of electronic filing. If you submit a paper copy of any document or set of exhibits, it must be accompanied by a signed certification stating that the paper copy is identical to the filed electronic copy, and it should be signed in blue ink. For more detailed information, please consult the Standing Order pertinent to your appeal and the Board's website, www.epa.gov/cab, in particular the "Electronic Filing" and "Frequently Asked Questions" web pages.

Received File: F:/WORK/Shell Chuckchi/Shell Discoverer Notice re Submission and Cert. of Service 11-7-11.pdf

Transaction ID: _355cd3eb-79f3-475f-9e4a-8d32b8832102

(See attached file: Shell Discoverer Notice re Submission and Cert. of Service 11-7-11.pdf)



EAB region 10-.docx EAB region 10-.pdf

To the E.P.A., Environmental Appeals Board,

The response I received to my petition for review from the E.P.A. apparently dismisses my petition as not relevant.

I offer you that both arguments I set forth are both relevant and to this very day unresolved:

- 1) The lack of spill response is completely relevant.
 - a) The E.P.A., in my limited understanding, does not issue air permits that have negative impacts on minority populations, yet there is no clearer situation where this is about to occur.
 - b) These air permits, through the industrial activities that they exhaust, complete a project that will threaten or destroy an intact minority subsistence culture through contamination.
 - c) These giant exhaust tubes do not have demonstrated, proven oil spill response surrounding them or supporting them.
 - d) The air permits are the final permitting hurdle for a project that has a gigantic failing – there is no demonstrated spill response. Issuing this air permit, by association, will open massive liability to an intact system to a company with recent worldwide documented environmental failing on the ocean and on land. The spill response is relevant because the operation of such air permitting activities is based within a project lacking any demonstrated containment capability. The base of the permit, the floating project itself, has failed to physically demonstrate in any way they have spill response abilities, and thus the air permit portion is failing by association.
 - e) The only documented spill response drill in our icy waters was a complete failure. The boom failed, and even the workers acknowledge on the video to chalk it up as a failure. This is what I know to be their ability. If industry could actually respond in a drill, wouldn't they have demonstrated that? Shell itself recovered single digit percentages of their recent North Sea spill. That is free of ice. How could they ever respond in our waters? Can we see it first please?

Throughout the entire commenting period I have repeatedly asked why the E.P.A. does not, in the very least, require a demonstration of their response.

-I ask the Environmental Appeal Board again:

Why do you not require them to show us their true response ability? WHY? You ask us to tolerate their presence and to trust their spill response, yet, even though you know of their history internationally, you do NOT require them to show us their response capability!

A simple request that logically and morally the board MUST address!

The industry must demonstrate their response and THEN model industrial activity according to their true capabilities (isn't this standard throughout industry?!). Yet the EAB, through its issuance of this air permit, trusts the oil industry on paper, and not from proven physical demonstrations. We must see their response ability!

The United States Coast Guard, government experts on the subject, is saying publicly the industry has no containment ability.

Does the EAB want to remain ignorant of the true physical oil spill response abilities of the exhaust tube platforms from which you are about to give air permits?

In the nuclear industry there are so many layers of containment, and they must have been proven. Proven safety in an energy industry. Simple. A basic moral imperative must compel the EAB board to understand the TRUE abilities of the industry in all of the various ocean conditions, and this can only be accomplished through tests and drills.

Test drills simply would end the debate over whether they can or cannot respond to a large oil spill. What more real, undeniable data could be then test drills?

If you, the EAB, believe that they can safely operate in our waters, then issue this air permit – but for the sake of thousands of Inupiat subsistence users, you **MUST** have them show us their true response levels in clear, windy, broken ice and sheet ice conditions.

After this entire process, after all these years, surely there must be at least one test?

There was – it was a failure!

And that was it.

And now you, a group of people in Washington D.C., are going to make permanent cultural changing decisions for us based on PAPER studies from a mega-corporation.

If you are a logical thinking board, you will acknowledge the fact that the response is unproven and thus unknown. You must ask them to show their touted spill response, for an entire ocean culture will hang on your decision.

The truth is within the drills. EAB must know the truth.

- 2) The contamination of toxins through the air permits via exhaust and/or other methods of byproduct release are physiologically threatening and culture changing. Again, the EAB through the EPA does not (or is compelled not to) issue permits that have negative impacts on minority population, yet there is a direct large release of hundreds of thousands of pounds of fine or small particulate into our ocean via the exhaust that settles down onto it.

Through the process of biomagnification (the concentration of toxins up the food chain), seemingly small amounts of toxins manifest in higher and higher amounts at each level of the food chain. The immense amount of exhaust through this air permit will introduce unprecedented levels of toxins. These toxins will manifest in our bodies through our consistent consumption of marine mammals and fish from the ocean.

From a logical perspective, is the introduction of 600,000 lbs of emissions in our subsistence zone acceptable? Introducing emissions into our subsistence zones means introducing it into our bodies. Period.

I ask the board to consider that our main food source, the Bowhead Whale, swims while it opens its giant mouth filled with baleen and filters out the ocean. Filters it. And then we eat them. So whatever they filter we end up ingesting through consumption. These are facts – they will pollute, the animals will absorb it, and we will ingest it.

What amounts are acceptable?

What levels in our food blubber will cause illness?

Where are the specific studies of chronic toxic effects of those specific toxins in blubber?

What are the long term effects of this amount of toxins to an indigenous marine mammal diet?

What are the long term effects of breathing this amount of toxins in our cold climate?

What are the long term effects?

Simple questions that deserves simple clear answers.

I imagine that a single pound of particulate exhaust, solidified, might fill a grocery bag. Imagine dumping that whole bag of exhaust particulates in a lake or a pond – it would pollute it and create an unsafe eating environment to that body of water. The industry asks permission to dump 600,000 lbs into our food zone.

600,000 lbs.

Without a clear and long term understanding of toxin concentrations in humans consuming marine mammals from a contaminated area, how are we to really know the health effects? The reality is that we do not.

We do not understand the long term effects. The industry does not understand the long term effects. The EAB cannot presume to know the long term effects as they have not occurred.

The speculative outcome of these permits is perilous to our minority population – it can only get worse, not better. To clarify – the EAB must choose between:

- a) An intact cultural society, through the protection of their breathing and the integrity of marine food source that has remain intact for millenia
- b) Industrial activity with several unknowns – specifically an unproven response system and immense projected pollution in an active subsistence zone

It is understandable, in the perilous economic times we exist in, that our country looks towards new energy sources. But the economic pressures of mega corporations and the political pressures of a chaotic administration cannot force the EPA, and by extension the EAB, to overlook basic principles that founded the EPA – the long term protection of environment for future use.

I want an equal voice in this process. I have not had equal time to adequately research and respond as other parties have. I want to have an equal voice. I concede that I do not possess the legal skills and writing skills of the other parties. I do not have a legal team or office to assist me. I do not have the financial backing of billionaire corporations. I do have a conviction that forces me to ask the questions that must be asked of the same two questions that I have always asked the EPA:

- 1) What are the industry's real response abilities (and why is it unproven)?
- 2) Can we get a better understanding of the exhaust we will ingest?

These are two very simple questions from an Inupiaq whose children will be forced to literally eat your decision.

I humbly beg the Environmental Appeals Board grant me oral argument. I missed out on a few communications that would have made a large difference in my ability to respond effectively.

I appreciate your consideration and again beg the EAB to hear my comments in oral argument. A decision of this magnitude warrants a small amount of time from your Board. Please allow my argument.

The truth is in the drills.

In complete respect,

Daniel James Lum

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