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Subject Comment- Proposed Shell OCS Permit (as issued 1/8/2010)

I am writing to express a concern on EPA's statutory authority in the above-referenced proposed permit.

My two comments are:

1. The permit (as explained in the statement of basis (SOB), page 18, section 2.3) proposes to implement an Air Quality Control Region (AQCR) in the geographical area of the proposed operation outside of the statutory authority provided under Section 107 of the Clean Air Act. Moreover, it is unclear what statutory authority EPA is using to establish AQCRs on the OCS. A broad reference to EPA's intent for Part 55 is expressed in the SOB but, makes no cross reference to the section of the Clean Air Act that provides the authority for designating a AQCR outside of Section 107. As a matter of fact, the July 2, 2009 Region 10 memo (cross-referenced in the SOB as the basis for the AQCR designation) eludes to the uncertainty of the designation, and the need for legislative action to address this, in the section titled "Sources Located more than 25 miles beyond the State's seaward boundary" .

2. Even if EPA has the authority to designate an AQCR (per an internal EPA memo) on the OCS, the method and procedure for establishing the AQCR is inconsistent with the prescribed procedure under Section 107 and EPA provided no technical basis or air quality control based rationale for the AQCR designation. Therefore, it cannot be ascertained if the proposed AQR is appropriate. In short, the area proposed for the AQCR appears arbitrary in its physical geography. It is illogical that if the Congress intended EPA to designate AQCR's on the OCS and that they would not also expect the same prescribed procedure for designation including public participation in the designation process. Establishment of an AQCR by EPA as part of a individual permit issuance is unprecedented and inconsistent with the legislative intent expressed in Section 107 of the Clean Air Act.

To summarize the key deficiencies in the proposed AQCR designation,

- Congress established the PSD program in CAA Section 161 as a component of an "implementation plan."
- Congress specified in CAA Section 161 that implementation plans will include measure to prevent significant deterioration in each region "designated pursuant to section 107" as attainment or unclassifiable.
- In Section 107 Congress provided for designation by EPA of air quality control regions, but only in consultation with State and local authorities, and only for "any interstate area or major intrastate area . . ."
- In Section 162 Congress designated all areas within the States for purposes of the PSD program as Class I and II areas, and provided a mechanism for a State or Tribe to propose changes in the designation of an area. But Congress provided no mechanism for designation of areas outside of a State.
- The 40 CFR 52.21 definition of "baseline area" (quoted by Bray in his memo)

defines the term to mean “any *intra-state* area (and every part thereof) . . .” So there can be no major or minor source baseline in the OCS.

EPA should retract the AQCR designation for the OCS beyond 2.5 miles from the shoreline established via the internal memo until EPA has proposed and adopted the AQCR on the OCS consistent with the Section 107 or until Congress amends the Clean Air Act. If EPA believes that it was the legislative intent to adopt AQCR's on the OCS than the existing statutory basis for the designation must be clarified and the procedure for the designation should follow the procedures in Section 107 including the public participation review and comment process for the proposal.

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