From: "Thomas, Brad C" <Brad.C.Thomas@conocophillips.com>
To: Brendan Mccahill/R1/USEPA/US@EPA
Date: 07/17/2010 01:03 AM
Subject: Cape Wind Energy Project Air Permit Comments

Mr. McCahill:

Attached are our comments on the Cape Wind Energy Project OCS air permit that were also postmarked and mailed today. I'm sending this email so you also have an electronic version. Thanks for the opportunity to comment and we look forward to your response as well as the successful completion of this project in Massachusetts.

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[attachment "20100716 ConocoPhillips Comment.pdf" deleted by Brendan Mccahill/R1/USEPA/US]

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July 16, 2010

**Via email and US Mail**

Brendan McCahill, Environmental Engineer
USEPA, Region 1
5 Post Office Square
Suite 100, Attn: OEP-5-2
Boston, MA 02109-3912

Subject: EPA Region I Draft OCS Permit Number OCS-R1-01; **Comments**

Dear Mr. McCahill:

ConocoPhillips Company (ConocoPhillips) submits these comments on the above referenced proposed permit for the Cape Wind project. ConocoPhillips does not oppose the Cape Wind project or the EPA's issuance of the above mentioned permit. We offer these comments solely to protect our Outer Continental Shelf (OCS) leasehold interests, and in particular, our interest in the Chukchi Sea. ConocoPhillips has submitted a permit application in Region 10 for its own exploratory drilling program to be conducted in ConocoPhillips' lease blocks in the Chukchi Sea. We respectfully request that EPA clarify in the Cape Wind permit that the OCS source initiation determination is a fact and source-specific determination, and that different definitions of OCS source initiation could be used in permitting other OCS operations (e.g., oil and gas exploration and production). We also request that EPA correct two errors in the associated Fact Sheet.

**1. EPA's definition of when a jack-up unit becomes an OCS source does not take into consideration the importance of the clause "erected thereon" in the §55.2 definition.**

When describing when the jack-up becomes an OCS source subject to the conditions of the permit, EPA states:

> *As explained above, the jack-up units will likely be equipped with three or more legs equipped with "spuds" that will rest on the seafloor. Once three of the legs have attached to the seafloor, the jack-up unit has become stationary and is no longer operating as a vessel or barge. From that point forward (which, for brevity, we refer to as the unit's "attachment"), the unit's operations and emissions involve OCS source activities, namely jack-up system stabilization and subsequent construction. Therefore, EPA proposes (and solicits comment on alternatives to its proposal) that a jack-up unit (including the construction equipment on it) becomes an OCS source as soon as three legs have attached to the seafloor. Once three legs have attached to the seafloor, the jack-up unit is sufficiently attached (and erected) to constitute an OCS source, and is subject to the terms and conditions of this permit.*[1]

This approach is carried into the permit via the definitions of OCS Source, OCS Activity, OCS Attachment, and OCS Detachment. ConocoPhillips acknowledges and supports EPA's declaration in footnote 8 on page 21 of the Fact Sheet that the above definition is project-specific and a different definition could apply to other projects. However, the clause "erected thereon" receives only limited treatment. ConocoPhillips is concerned because this Region 1 definition for determining OCS source initiation potentially conflicts with a EPA Region 10's definition for OCS source initiation. For this reason, we submit the following comment.

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[1] Fact Sheet, page 21

EPA Region 10, when issuing an OCS permit to Shell Gulf of Mexico, Inc. (Shell) for exploration work in the Chukchi Sea, [2] contended with this very issue, and sought and received comments on the definition of OCS source initiation. EPA Region 10 concluded the matter with the following statement in their response to comments:

> ***Response:*** *The point in time at which a particular vessel or drilling rig becomes an OCS source within the definition of OCS source in 40 C.F.R. § 55.2 is a fact specific determination. In this case, the drilling rig, the Frontier Discoverer, is a turret-moored drilling vessel which is propelled by a 7,200 hp diesel-fired engine and is anchored to the seabed with a number of individual anchors. See Statement of Basis (pp. 19-22) for a further description of the Discoverer and its anchoring process.*
>
> *After careful consideration of the definition of OCS source in 40 C.F.R. § 55.2, EPA concludes that the Discoverer will be an "OCS source" from the time the Discoverer is sufficiently secure and stable to commence exploratory activity at the drill site, which in the case of the Discoverer, is a determination made for other operational purposes by the Shell on-site representative and is an event that is recorded in the Discoverer's logs. In reaching this conclusion, EPA relies on the fact that the regulatory definition of OCS source requires more than just attachment to the seabed. Specifically, the definition provides, in part, that vessels are OCS sources only when they are "[p]ermanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. § 1331 et seq.)." 40 C.F.R. 55.2 (defining "OCS source") (emphasis added). The Agency interprets this provision to require that vessels be permanently or temporarily attached to the seabed and in a position to begin exploring, developing or producing resources from the OCS. The preamble to the final 40 C.F.R. part 55 regulations4 supports this interpretation:*
>
> > *The definition of "OCS source" has been modified to clarify when EPA will consider vessels to be OCS sources. Section 328(a)(4)(C)(ii) defines an OCS source as a source that is, among other things, regulated or authorized under the OCSLA. The OCSLA in turn provides that the Department of Interior ("DOI") may regulate "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing or producing resources therefrom, or any such installation 17 or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. § [4(a)(1)]. Vessels therefore will be included in the definition of "OCS source" when they are "permanently or temporarily attached to the seabed" and are being used "for the purpose of exploring, developing or producing resources therefrom." This would include, for example, drill ships on the OCS.*
>
> *57 Fed. Reg. 40792, 40793 (September 4, 1992)(emphasis added).*
>
> *For Shell's permit, although connection of the Discoverer to the seabed by a single anchor may be considered to meet the requirement of "permanently or temporarily attached to the seabed," EPA does not agree that the Discoverer is sufficiently secure and stable at this point to be in a position to explore for resources on the OCS. When attached by a single anchor, the Discoverer could be over a location other than the drill site or in the process of moving. Instead, EPA believes that, until*

[2] Permit number R10OCS/PSD-AK-09-01 issued March 31, 2010 to Shell Gulf of Mexico, Inc.

*the Discoverer is sufficiently attached by its anchors to begin exploratory operations, the Discoverer is not an OCS source within the meaning of 40 C.F.R. § 55.2.*[3] **[emphasis added]**

EPA Region 10 finalized the permit by including within it this definition of OCS source:

*For the purpose of this permit, the Discoverer is an "OCS Source" between the time the Discoverer is declared by the Discoverer's on-site company representative to be secure and stable in a position to commence exploratory activity at the drill site until the Discoverer's on-site company representative declares that, due to retrieval of anchors or disconnection of its anchors, it is no longer sufficiently stable to conduct exploratory activity at the drill site, as documented by the records maintained pursuant to Condition B.2.2.*

Defining the OCS source as one in existence when the legs are simply attached to the seabed creates scenarios where equipment not being "used for the purpose of exploring, developing, or producing resources" is subject to 40 CFR Part 55. We do not believe this was the intent of that rule for vessels like a jack-up rig, or any other mobile and temporary OCS exploration-related equipment. A jack-up can be staged at an offshore location as preparations are made to relocate it to the site of primary activity. It may also be moved from a work site for reasons of safety (storms, ice, etc.) and staged in a different offshore locale. In neither of these cases is the jack-up rig "*erected thereon and used for the purpose of exploring, developing, or producing resources [from the seabed]*." Unfortunately, EPA's definitions for the Cape Wind project do not account for these possibilities. Rather, the permit declares that a jack-up unit is a regulated OCS source any time three of its legs make contact with the seabed. We do not believe EPA intends to regulate even the Cape Wind jack-up units when they are staged for deployment or temporarily moved for reasons that may be unforeseeable. A jack-up unit engaged in oil and gas exploration activity should not be considered an OCS source unless it is fully erected and ready to engage in exploration (drilling) activity.

Finally, we note in the Fact Sheet that EPA forces together the actions of attaching the jack-up unit's legs to the seafloor and it being erected with the statement, "*...the jack-up unit is sufficiently attached (and erected) to constitute an OCS source...*".[4] This is an unexplained merging into a single action two obviously separate and discrete actions. Jacking down three legs of a jack-up unit until they reach the seafloor does not complete the process of being "erected thereon", particularly if there are more legs to be jacked down, and when the unit still must be jacked up for minimum sea surface clearance. In the case of some jack-up units, cantilevers must also be extended in order to complete the "erected thereon" process. As such, we request that, if EPA determines the jack-up unit will become an OCS source at some point in this project, that the jack-up unit not be considered an OCS source until it is completely "erected thereon" as determined by the vessel operator consistent with the Region 10 view in the Shell permits. Alternatively, EPA could modify its definition of OCS source within the permit to state the jack-up unit becomes an OCS source only after all of its legs are attached to the seabed and the unit is fully erected and ready to commence construction. At a minimum, we request that EPA clarify that the definitions employed in the Cape Wind permit are specific to that project.

**2. The Fact Sheet contains a significant typographical error requiring comment and correction**

On page 13 of the Fact Sheet, EPA states:

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[3] http://yosemite.epa.gov/R10/AIRPAGE.NSF/permits/chukchiap/$FILE/chukchi_permit_rtc_033110.pdf

[4] Fact Sheet, page 21

*In the case of the Cape Wind project, the OCS source activities are not the wind turbines themselves, but rather certain construction and maintenance activities, including emissions from vessels and equipment on them. As explained in more detail in Section VI below, the OCS source will include any vessel, barge, or equipment on a vessel or barge, when the vessel or barge is anchored within the project's area or tethered to a piece of equipment that is attached to the seafloor, and is performing any activity that supports the construction or operation of the project.* **[emphasis added]**

Given the definitions EPA provides on pages 3-5 of the proposed permit, ConocoPhillips does not believe that anchored vessels were intended to be considered as OCS sources. Specifically, the permit definitions state:

*OCS Source* means any equipment, activity, or facility, including vessels, that emits or has the potential to emit any air pollutant and is or will be used to conduct an OCS Activity as part of the permitted project. A vessel or equipment on a vessel becomes an OCS Source each time the vessel completes an OCS Attachment, and ceases to be an OCS Source each time the vessel completes an OCS Detachment. **[emphasis added]**

*OCS Activity* means activity relating to the construction, operation, or maintenance or any other pollutant-emitting activity conducted by a vessel, or equipment on a vessel, from the time of the vessel's OCS Attachment to the time of the vessel's OCS Detachment. **[emphasis added]**

*OCS Attachment* means the moment when at least three legs from a Jack-up Unit have attached to the seafloor.

*OCS Detachment* means the moment when a Jack-up Unit has retracted enough of its legs so that fewer than three legs remain attached to the seafloor.

OCS Attachment and OCS Detachment are limited to the jack-up unit. As such, OCS Activity and OCS Source do not have vessels in view, so merely anchored vessels are rightly precluded from consideration as OCS sources by the permit. For this reason, we believe the Fact Sheet contains an error and conflicts with the permit. We request that the statement in the Fact Sheet be clarified to reflect the definitions contained in the permit and reflect that anchored vessels lie outside the definition of an OCS source. Not doing so opens up the possibility of many anchored vessels being considered OCS sources – far beyond any statutory or regulatory intent.

**3. The Fact Sheet may contain a substantive error requiring comment and correction**

On page 13 of the Fact Sheet is the statement:

*..the OCS source will include any vessel, barge, or equipment on a vessel or barge, when the vessel or barge is anchored within the project's area or tethered to a piece of equipment that is attached to the seafloor, and is performing any activity that supports the construction or operation of the project*. **[emphasis added]**

The regulatory definition behind this statement does not state, "and is performing any activity that supports the construction or operation of the project." Below is the 40 CFR §55.2 definition of OCS source:

*any equipment, activity, or facility which:*

*(1) Emits or has the potential to emit any air pollutant;*
*(2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. §1331 et seq.); and*
*(3) Is located on the OCS or in or on waters above the OCS.*

*This definition shall include vessels only when they are:*

*(1) Permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. §1331 et seq.); or*
*(2) Physically attached to an OCS facility, in which case only the stationary source aspects of the vessels will be regulated.* **[emphasis added]**

"Performing any activity that supports the construction or operation of the project" is substantially different than "in which case only the stationary source aspects of the vessels will be regulated." It is not clear what EPA means by "performing any activity that supports the construction or operation of the project" but this language could cause supply vessels to fall within the "OCS source" category, as defined by this permit. This sets up a conflict within the permit. Specifically, EPA states on page 15 of the Fact Sheet:

*As noted above, the definition of "OCS source" in 40 CFR §55.2 only includes vessels when they are attached to the seabed or an OCS facility. However, a vessel that is servicing or associated with an OCS source and is either at, or en route within 25 miles of, the OCS source will nevertheless have its emissions counted towards the OCS source's potential emissions.* **[emphasis added]**

The word "however" indicates EPA's intent to draw a distinction between support vessels and true OCS sources by explaining how non-OCS source emissions are handled. But support vessels, such as a supply ship, could temporarily tie up to an OCS source in order to offload crew, food, etc. Such vessels will not be performing stationary source activities.[5] We do not believe EPA intends this as an outcome. We therefore request that EPA clarify its statement of "performing any activity that supports the construction or operation of the project" to ensure it comports with the regulatory language.

We thank EPA Region 1 for taking the time to review and re-examine its approach to OCS air permitting, and to respond to these comments. Please do not hesitate to contact me if you have questions.

Sincerely,

Bradley C. Thomas

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[5] 57 FR 40793-94, September 4, 1992

Only the vessel's stationary source activities may be regulated, since when vessels are in transit, they are specifically excluded from the definition of OCS source by statute. In addition, only the stationary source activities of the vessels at dockside will be regulated under title I of the Act (which contains NSR and PSD requirements), since EPA is prohibited from directly regulating mobile sources under that title. See *NRDC v. EPA*, 725 F.2d 761 (D.C. Cir. 1984). Part 55 thus will not regulate vessels en route to or from an OCS facility as "OCS sources," nor will it regulate any of the non-stationary source activities of vessels at dockside.