



May 1, 2012

Mary L. Schapiro
Chairman
Securities Exchange Commission
100 F Street, NE
Washington, DC 20549
chairmanoffice@sec.gov

Dear Chairman Schapiro:

This letter is to inform you that Royal Dutch Shell [the publicly traded parent company of many wholly owned subsidiaries specializing in offshore oil and gas development including Shell Offshore Inc. and Shell Gulf of Mexico] may have made false or misleading statements and omissions about its Alaska offshore drilling capacity that would tend to mislead investors and the public about its investments and preparedness for drilling. We request that the Security and Exchange Commission (SEC) investigate whether these statements violate U.S. securities disclosure laws, notably SEC Rule 10b(5) – Employment of Manipulative and Deceptive Practices. 17 CFR § 240.10b-5.

As you are probably aware, Shell is currently pushing forward with a controversial proposal to drill for oil in pristine Arctic waters of the coast of Alaska. Shell's drilling plans have been opposed by Alaska Natives and environmental groups. Many Alaska Natives fear that offshore drilling could threaten their subsistence way of life, which depends on healthy, functioning marine ecosystems. The Arctic Ocean provides vital habitat for many unique Arctic species— polar bears, walruses, ice seals, bowhead whales, beluga whales, eiders and more. The Arctic is also extremely vulnerable to climate change and ever more critically, the Arctic helps regulate the planet's rapidly changing weather and climate.

The risks of development in the Arctic have been raised by some concerned about liability, and the United Kingdom's House of Commons Select Committee launched an ongoing inquiry into such issues. As a part of that investigation, on March 14, 2012, members of the British Parliament questioned whether Royal Dutch Shell adequately disclosed to investors the potential liability associated with its plans to drill in the Arctic.¹ Moreover, a report issued by Lloyd's of London, the world's largest insurance market, highlights the complexity and risks of Arctic drilling and identifies key uncertainties that pose the greatest risks to investors.² It notes that an

¹ Terry Macalister, "MPs unimpressed by oil firms' Arctic emergency planning," *The Guardian* (March 14, 2012) ("Zac Goldsmith, the Conservative MP with strong green credentials, said it was 'hugely irresponsible' that Shell and Cairn had not provided investors with guidance on how big any pollution bill might be. 'Your shareholders will be paying for it not you,' he told them.").

² Charles Emmerson, "Arctic Opening; Opportunity and Risk in the High North," *Lloyd's of London* (April 12, 2012).

oil spill would present "multiple obstacles, which together constitute a unique and hard-to-manage risk."³ The report states that the Arctic is a sensitive environment with weak resilience, and that "corporate sensitivity to a disaster is high."⁴

Much of what makes Shell's proposal controversial is the fact that the Arctic is characterized by its harsh environment. There is little to no proven oil spill response capacity in the Arctic and no effective recovery technology for broken ice conditions.⁵ Against this backdrop, Shell has made statements about its investments and technology that appear contradictory to other available information. Potential investors may rely on Shell's statements to assure themselves that Shell is not exposing itself to the huge liability BP faced as a result of the *Deepwater Horizon* disaster following a blowout of one of its exploration wells in the Gulf of Mexico.

Specifically, Shell has made several statements regarding investments in and improvements to the drilling rig *Kulluk* that were called into question by a report prepared by a petroleum engineer who visited the *Kulluk* in March of 2011.⁶ Shell's plans to drill in the Arctic Ocean depend upon the floating drill ship known as the *Kulluk*.⁷ Shell plans to use the *Kulluk* to drill for oil in the Beaufort Sea in the summer of 2012, and simultaneously intends to rely upon the *Kulluk* to drill a relief well in the Chukchi Sea if Shell suffers a loss of well control there.⁸

On May 14, 2010, Shell's president, Marvin Odum, responded to questions from the U.S. Department of the Interior about Shell's oil spill preparedness.⁹ In the letter, Odum indicated that the *Kulluk* would be ready to drill a relief well in the Arctic in the summer of 2010, stating:

In the unlikely event of a blowout resulting in the loss of the Discoverer, Shell would mobilize the Shell owned *Kulluk* drilling vessel that is capable of drilling same season relief wells in the Alaska OCS. Shell has made significant capital improvements to the *Kulluk* and is currently managing rig readiness.

In contrast to Shell's representation that the *Kulluk* was drill ready in 2010, in March of 2011 when petroleum engineer Susan Harvey toured the rig, she concluded that "the *Kulluk* was not in drill-ready condition and most of the major upgrades that were announced were not completed."¹⁰ Ms. Harvey noted that there was no blowout preventer (BOP) currently on the rig and she was told that Shell was working on BOPs in Houston that would be added to the drill rig

³ Id. at 39.

⁴ Id. at 6.

⁵ See National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling* at 302 (Jan. 2011) (warning oil activity "in offshore Arctic Alaska requires the utmost care, given the special challenges and risks associated with this frontier.").

⁶ Harvey Consulting, LLC memorandum to Harold Curran, North Slope Borough Mayor's Office (March 11, 2011) (hereinafter "Harvey Memo").

⁷ Shell 2012 Camden Bay Exploration Plan, Public Information Copy, at 1-15.

⁸ Shell Camden Bay Exploration Plan, Public Information Copy, at 1-15; Shell Chukchi Exploration Plan, Public Information Copy, at 2-14

⁹ May 14, 2010 Letter from Marvin Odum to Elizabeth Birnbaum.

¹⁰ Harvey Memo at 5.

at a later date.¹¹ Ms. Harvey also observed that the Kulluk still had its original control panel, which was twenty eight years old and that the controls had last been calibrated in 2006.¹²

In an article published in *Oil & Gas Journal*, Bob Smith, a Shell drilling adviser, indicated that the *Kulluk* had “very little corrosion or rust”¹³ However, Ms. Harvey found the “amount of surface corrosion and rust present inconsistent with” this statement.¹⁴ Harvey noted that “some equipment was substantially corroded and may require corrosion testing to determine the extent of pipe wall loss.”¹⁵

In addition, Shell has made statements about its oil spill response capability that appear misleading. For instance, in a publication on its website, Shell states “a sub-sea capping system can be installed at the sea floor in the event of a loss of well control and in the event of BOP failure.”¹⁶ The system to which Shell referred, however, was in the design state and had not been built or tested at the time of the statement.

In its oil spill response plan for the Chukchi Sea, Shell assumes it will be able to mechanically recover 95 percent of spilled oil.¹⁷ This assumption bears no resemblance to actual mechanical recovery rates. In the *Deepwater Horizon* spill response, only 3 percent of the spilled oil was mechanically recovered.¹⁸ A similar amount of oil was recovered through mechanical response from the 1979 blowout of the Itox well in the Gulf of Mexico,¹⁹ and after the 1989 *Exxon Valdez* spill in Prince William Sound only 8 percent of spilled oil was recovered mechanically.²⁰

Moreover, while Shell’s response plans envision it having greater success in responding to a spill in Arctic waters than BP has in the Gulf of Mexico, a recent report by the Government Accountability Office (GAO), calls these claims into question. The recent GAO report, “Interior Has Strengthened its Oversight of Subsea Well Containment, but Should Improve its Documentation,” notes that Shell faces unique environmental and logistical risks.²¹ The report noted that while capping capacities have been strengthened in the Gulf of Mexico, Arctic conditions could render Shell’s reliance on similar technology insufficient. In particular, the report pointed to surface ice, which could “pose a challenge to well containment response;” ice scouring caused by ice scraping the seafloor, which could damage the containment system;

¹¹ *Id.* at 6.

¹² *Id.* at 10-11.

¹³ “Shell Alaska readies ice-class drilling units for Beaufort Sea,” *Oil & Gas Journal* at 43 (Oct 1, 2007).

¹⁴ Harvey Memo at 2.

¹⁵ *Id.* at 13.

¹⁶ Shell, Preventing and Responding To Oil Spills in the Alaskan Arctic at 4.

¹⁷ Chukchi Oil Spill Response Plan at 2-42 (basing analysis on assumption 10 percent of a “25,000-bopd discharge escapes the primary offshore recovery efforts” and of the ten percent that heads towards shore, “half of the oil reaching the nearshore environment is recovered by the skimming systems.”).

¹⁸ Federal Interagency Solutions Group, *Oil Budget Calculator: Deepwater Horizon-Technical Documentation* at 40 (November 2010).

¹⁹ *Id.* at 8.

²⁰ National Response Team, *The Exxon Valdez Oil Spill: A Report to the President* at 20, Fig. 13 (May 1989).

²¹ GAO, *Interior Has Strengthened Its Oversight of Subsea Well Containment, but Should Improve Its Documentation* at 24 (Feb. 29, 2012).

Shell's need to deploy additional personnel to respond to a blowout; and the lack of equipment and infrastructure in the region.²²

Shell's apparently inflated claims regarding its technology and readiness to drill in Alaska's Arctic may be misleading to investors. In its publications, Shell often emphasizes the importance of Arctic oil and touts its technological capacity in this area.²³ U.S. investors may rely on statements regarding one of Shell's two U.S. Arctic drill rigs to conclude that Shell is well prepared to explore and develop oil in America's Arctic Ocean.

In fact, risky oil drilling can lead to substantial liability for oil companies and investors. In BP's case, the company has already spent over \$22 billion on the *Deepwater Horizon* disaster, recently proposed a \$7.8 billion civil settlement with residents and businesses, and could face additional civil and criminal penalties of up to \$60 billion.²⁴ It is vital for potential investors and the public to have a realistic assessment of Shell's Arctic oil drilling and response capabilities.

For these reasons, we request the SEC investigate Shell's statements and require Shell to provide accurate and complete information to the public and its investors about its dangerous Arctic proposals.

Sincerely,



Miyoko Sakashita
Oceans Director

²² *Id.* at 24-25.

²³ Shell, *Technology in the Arctic* at 1-2;

http://www.shell.us/home/content/usa/aboutshell/projects_locations/alaska/about/ (stating Alaska's Arctic has an increasingly important role); Shell, *Developing Oil in the Arctic* at 4 ("we now have technology that enable us to explore and develop oil and gas responsibly in the Arctic").

²⁴ Tom Fowler, "BP Spill Saga Far From Over," *Wall Street Journal* (March 5, 2012).