



4. Plaintiff's five FOIA requests, submitted on October 10, October 12, October 16, October 31, and November 2, 2012, seek records related to the Royal Dutch Shell PLC ("Shell") exploration and development in the Beaufort and Chukchi Seas' Outer Continental Shelf ("OCS"). To date, Plaintiff has not received any records responsive to any of the five requests.
5. These requests serve to help the public because the records sought detail the drilling operation's sea ice interruptions, the risks of potential oil spills, and the effectiveness of safety measures designed to contain or mitigate the risks. The requested information also addresses recent highly-publicized delays in drilling operations caused by sea ice. Disclosure of the records will greatly enhance public understanding of how BSEE is, or is not, fulfilling its core mission of ensuring safety and environmental enforcement. Additionally, the requested records will shed light on the extent and severity of risk posed by moving surface and subsurface Arctic sea ice in waters previously closed to all oil and gas exploration and development. These records will help the public understand if sea and scour ice will greatly limit oil and gas operations in Arctic waters. Furthermore, a large contingent of the general public is interested in knowing whether surface and scour ice could cause accidents leading to spills and, if so, what effective countermeasures are in place. PEER believes that disclosure of the requested information will offer the general public a clear picture of the rigor, prudence, and efficacy of BSEE's actions and policies on the single greatest challenge facing the agency since its creation.
6. BSEE's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. BSEE's conduct frustrates Plaintiff's efforts to educate the public regarding BSEE's oversight of Shell's exploration and development in the Beaufort and Chukchi OCS.

7. Plaintiff constructively exhausted its administrative remedies under FOIA, 5 U.S.C. § 552(a)(6)(C), and seeks a court order requiring BSEE to immediately produce the records sought in its FOIA requests as well as other appropriate relief.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action under FOIA, 5 U.S.C. § 552(a)(4)(B). This Court also has federal question jurisdiction over this action under 28 U.S.C. § 1331.
9. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
10. This Court is a proper venue because Plaintiff resides in this district. 28 U.S.C. § 1391(e)(1)(C) (where defendant is the government or a government agent, a civil action may be brought in the district where the plaintiff resides if there is no real property at issue). Venue is also proper under 5 U.S.C. § 552(a)(4)(B).
11. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2414 and 5 U.S.C. § 552(a)(4)(E).

### **PARTIES**

12. Plaintiff PEER is a non-profit public interest organization, with its main office located in Washington, D.C., and field offices located in California, Colorado, Florida, Massachusetts, New Mexico, New Jersey, and Tennessee.
13. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues. PEER focuses on the

environment, public lands and natural resource management, public funding of environmental and natural resource agencies, and ethics in government.

14. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, its web site, [www.peer.org](http://www.peer.org), which draws between 1,000 and 10,000 viewers per day, and its newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.
15. Defendant BSEE is an agency of the United States as defined by 5 U.S.C. § 552(f)(1). BSEE is charged with the duty to provide public access to records in its possession consistent with the requirements of the FOIA. Here, BSEE is denying Plaintiff access to its records in contravention of federal law.

### **FACTS**

16. Plaintiff's FOIA requests were submitted to the Agency on October 10 (request numbers 2013-00004 and 2013-00005), October 12 (request number 2013-00007), October 16 (request number 2013-00008), October 31 (request number 2013-00019), and November 2, 2012 (request number 2013-00020).
17. Plaintiff's requests seek information and records from the BSEE pertaining to oil and gas development in the Beaufort and Chukchi Seas OCS
18. Plaintiff's first request, dated and submitted to BSEE on October 10, 2012, seeks information concerning Shell's announcement that its containment dome, said to incorporate all the lessons learned from capping the Deepwater Horizon spill, was severely damaged while being tested on Puget Sound. BSEE assigned two BSEE request numbers to this single request. First, in a letter dated October 11, 2012, BSEE acknowledged receipt on October 10, 2012, assigned it request number 2013-00004, and granted Plaintiff's request for a fee

waiver. In a letter dated November 15, 2012, BSEE informed Plaintiff of a delay in processing request 2013-00004. These letters were signed by Natasha Y. Alcantara, Acting BSEE FOIA Officer in the Alaska OCS Region. Then, in a letter dated October 15, 2012, BSEE again acknowledged receipt of the October 10, 2012 request, assigned it an addition request number, 2013-00005, and granted Plaintiff's request for a fee waiver.<sup>1</sup> In a letter dated November 20, 2012, BSEE informed Plaintiff of a delay in processing request 2013-00005. These letters were signed by Dorothy Tinker of the BSEE FOIA Office in Washington, DC.

19. To date, Plaintiff has not received any records responsive to its October 10, 2012 request. Defendant has given no indication that production is imminent and has not engaged in a rolling production schedule.

20. Plaintiff's second request, dated and submitted to BSEE on October 12, 2012, seeks information related to: (1) the risk posed by ice scour and surface sea ice; (2) risks posed to permitted activities by Shell; (3) Shell's proposed mitigation of this risk; (4) any analysis assessing the adequacy of the Shell mitigation plans to address this risk; and (5) any information concerning delays or shutdowns caused by ice scour or sea ice during 2012. In a letter dated October 15, 2012, BSEE acknowledged receipt on October 12, 2012, assigned it request number 2013-00007, and granted Plaintiff's request for a fee waiver. In a letter dated November 15, 2012, BSEE informed Plaintiff of a delay in processing the request. These letters were signed by Natasha Y. Alcantara, Acting BSEE FOIA Officer for the Alaska OCS Region.

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<sup>1</sup> Plaintiff submitted one FOIA request to BSEE on October 10, 2012. BSEE gave this single request two different request numbers. Request numbers 2013-00004 and 2013-00005 refer to the same singular request submitted on October 10, 2012.

21. To date, Plaintiff has not received any records responsive to its October 12, 2012 request.

Defendant has given no indication that production is imminent and has not engaged in a rolling production schedule.

22. Plaintiff's third request, dated and submitted to BSEE on October 16, 2012, seeks information on well design and well integrity control for Shell's Beaufort and Chukchi Sea exploratory OCS wells, all risk assessments done on the well design and well integrity for the Shell Arctic OCS wells, and any records relating to the compliance, or lack thereof, of Shell's well design and integrity control with standards of the American Association of Drilling Engineers, the American Petroleum Institute, and the American Society of Mechanical Engineers. In a letter dated October 16, 2012, BSEE acknowledged receipt on October 16, 2012, assigned it Request Number 2013-00008, and granted Plaintiff's request for a fee waiver. In a letter dated November 15, 2012, BSEE informed Plaintiff of a delay in processing the request. These letters were signed by Natasha Y. Alcantara, Acting BSEE FOIA Officer for the Alaska OCS Region.

23. To date, Plaintiff has not received any records responsive to its October 16, 2012 request.

Defendant has given no indication that production is imminent and has not engaged in a rolling production schedule.

24. Plaintiff's fourth request, dated and submitted to BSEE on October 31, 2012, seeks

information describing the BOP systems to be deployed on Shell Arctic OCS exploratory wells, including design features, names of manufacturers, catalog of maintenance responsibilities, and any testing results concerning BOP efficacy or reliability. Additionally, the request seeks any analysis concerning these Shell BOP systems relative to the BOP deployed by BP and/or Transocean in the 2010 Macando well in the Gulf of Mexico. In a

letter dated November 1, 2012, BSEE acknowledged receipt on November 1, 2012, assigned it Request Number 2013-00019, and granted Plaintiff's request for a fee waiver. This letter was signed by Natasha Y. Alcantara, Acting BSEE FOIA Officer for the Alaska OCS Region.

25. To date, Plaintiff has not received any records responsive to its October 31, 2012 request.

Defendant has given no indication that production is imminent and has not engaged in a rolling production schedule.

26. Plaintiff's fifth request, dated and submitted to BSEE on November 2, 2012, seeks

information concerning testing on the reliability or efficacy of equipment or systems which Shell plans to deploy in the Beaufort and Chukchi Seas exploratory OCS wells and which have permits issued by BSEE. Specifically, Plaintiff requests the following: (1) any results of testing or monitoring of equipment to be deployed by Shell in its Arctic OCS operations whether conducted by BSEE, sister agencies, Shell or third parties; and (2) any schedule or plans for future (from 9/1/2012, forward) testing of any equipment to be used by Shell in its Arctic OCS drilling. In a letter dated November 2, 2012, BSEE acknowledged receipt on November 2, 2012, assigned it Request Number 2013-00020, and granted Plaintiff's request for a fee waiver. This letter was signed by Natasha Y. Alcantara, Acting BSEE FOIA Officer for the Alaska OCS Region.

27. To date, Plaintiff has not received any records responsive to its November 2, 2012 request.

Defendant has given no indication that production is imminent and has not engaged in a rolling production schedule.

28. In secondary responses to Plaintiff's October 10, 2012 request (2013-00004 and 2013-00005), October 12, 2012 request (2013-00007), and October, 16, 2012 request (2013-

00008), BSEE sent form letters requesting extra processing time on November 15, November 20, November 15, and November 15, 2012 respectively. Each form letter stated:

“The Bureau of Safety and Environmental Enforcement (BSEE) Alaska OCS has located documents that re responsive to your request. BSEE is currently processing these documents and determining whether exemptions apply. Based on the volume of documents request, complexity of the issues, this office’s overall workload and the large backlog of FOIA requests received by this office, there will be a delay in processing your request. Please be assured that our office will respond to your request as expeditiously as possible. We appreciation your patience as we proceed with your request.”

29. BSEE has not contacted Plaintiff to address Request 2013-00019 since sending its initial confirmation of receipt letter on November 1, 2012.
30. BSEE has not contacted Plaintiff to address Request 2013-00020 since sending its initial confirmation of receipt letter on November 2, 2012.
31. To date, Plaintiff has received no additional communications or records responsive to these requests.
32. Plaintiff has afforded BSEE ample time beyond that which is legally required to respond to the requests. Plaintiff has reason to believe that at least some of the records requested in its October 10, 2012 request are readily available.
33. More than sixty days have passed since Plaintiff submitted its first FOIA request to BSEE. More than forty seven days have passed since Plaintiff submitted its most recent request to BSEE.
34. Plaintiff has fully exhausted its administrative remedies for each of its five request submitted on October 10 (request numbers 2013-00004 and 2013-00005), October 12 (2013-00007), October 16 (2013-00008), October 31 (2013-00019), and November 2, 2012 (2013-00020). Administrative remedies are deemed exhausted whenever an agency fails to comply with the

applicable time limits, as stated by 5 U.S.C. § 552(a)(6)(C). Plaintiff now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

### **CAUSES OF ACTION**

#### **I. Count 1: Violation of the Freedom of Information Act**

35. Plaintiff incorporates the allegations in paragraphs 1 through 31.

36. BSEE's failure to disclose the requested records in response to the October 10 (request numbers 2013-00004 & 2013-00005), October 12 (2013-00007), October 16 (2013-00008), October 31 (2013-00019), and November 2, 2012 (2013-00020) requests is a constructive denial and wrongful withholding of records in violation of FOIA, 5 U.S.C. § 552, and the Agency's own regulations promulgated thereunder.

#### **Relief Requested**

WHEREFORE, Plaintiff respectfully requests that this Court:

- i. Enter an Order declaring that BSEE has wrongfully withheld the requested Agency records;
- ii. Issue a permanent injunction directing BSEE to disclose to Plaintiff all wrongfully withheld records;
- iii. Maintain jurisdiction over this action until BSEE is in compliance with FOIA, the Administrative Procedure Act, and every order of this Court;
- iv. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant such additional and further relief to which the Plaintiff may be entitled.

Dated: December 20, 2012

Respectfully submitted,

/s/ Kathryn Douglass  
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