(Slip Opinion)

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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re US Wind Inc. – Maryland Offshore Wind Project Maryland Permit-to-Construct No. 047-0248; PSD Approval No. PSD-2024-01; NSR Approval No. NSR-2024-01	OCS Appeal No. 25-01

[Decided December 16, 2025]

ORDER AFFIRMING BOARD JURISDICTION

Before Environmental Appeals Judges Aaron P. Avila and Ammie Roseman-Orr.

IN RE US WIND INC. – MARYLAND OFFSHORE WIND PROJECT

OCS Appeal No. 25-01

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Opinion of the Board by Judge Roseman-Orr:

I. *INTRODUCTION*

The Mayor and City Council of Ocean City and the Commissioners of Worcester County, Maryland (collectively, "Petitioners"), petitioned the Environmental Appeals Board for review of Outer Continental Shelf ("OCS") permits that the Maryland Department of the Environment ("MDE") issued to US Wind, Inc., pursuant to the Clean Air Act ("CAA").[1] Petition for Review of Permit to Construct, PSD Approval, and Nonattainment NSR Approval for US Wind's Maryland Offshore Wind Project (July 7, 2025). MDE issued these permits pursuant to delegated authority from EPA under section 328 of the CAA, 42 U.S.C. § 7627.[2]

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[1] Although titled as Permit-to-Construct, Prevention of Significant Deterioration ("PSD") Approval, and Nonattainment New Source Review ("NSR") Approval, these three permits authorize activity that will occur on the OCS. As such, in this decision, we refer to these authorizations collectively as "OCS permits." OCS permits incorporate various applicable Clean Air Act requirements, including PSD, NSR, and operating requirements. *See, e.g.*, 40 C.F.R. §§ 55.6(b)-(e), .13-.14.

[2] The EPA has delegated authority to implement and enforce air regulations on the OCS to only a few state authorities, including MDE. *See* Delegation of Authority to

In response to the petition, MDE and US Wind each argue that the Board lacks jurisdiction over this matter and that the appropriate forum for review is in Maryland state court. MDE's Response to Petition for Review and Motion for Summary Disposition at 6-10 (July 30, 2025) ("MDE's Resp. Br."); US Wind's Response to Petition for Review at 14-23 (Aug. 1, 2025). In fact, MDE's notice of its permit issuance provided that any petition for review of the OCS permits must be filed in Maryland state court.

To assist the Board in evaluating this jurisdictional issue, the Board directed Petitioners and EPA's Region 3 (in consultation with the EPA's Office of General Counsel) to respond to MDE's and US Wind's arguments concerning the Board's jurisdiction. Order Regarding Briefing Schedule (Aug. 4, 2025). The jurisdictional issue has now been fully briefed.[3]

Based on our consideration of the parties' submissions and for the reasons set forth below, the Board concludes that it has jurisdiction to review the OCS permits issued by MDE to US Wind for its Maryland Offshore Wind Project. Consequently, the Board directs MDE to reissue its permit notification with the correct information regarding the applicable appeal procedures. The Board will consider the current petition for review, and any additional petitions timely filed after MDE's corrected notice of permit issuance.

II. *JURISDICTION*

To determine whether we have jurisdiction to review OCS permits issued by MDE pursuant to CAA section 328, we begin by examining the statutes applicable to the OCS and the context in which these statutes operate. *See In re Shell Gulf of Mex.*, 15 E.A.D. 103, 122 (EAB 2010) ("It is a 'fundamental canon that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" (quoting *Wilderness Soc'y v. U.S. Fish &*

Implement and Enforce Outer Continental Shelf Air Regulations to the Maryland Department of the Environment, 80 Fed. Reg. 43,088, 43,088-89 (July 21, 2015).

[3] The following briefs have been filed with and reviewed by the Board: Brief of Region 3 Addressing the Board's Jurisdiction (Aug. 25, 2025) ("Reg.'s Jurisdiction Br."); Petitioners' Brief Regarding the Board's Jurisdiction (Aug. 25, 2025); MDE Reply to the Brief of Region 3 Addressing the Board's Jurisdiction (Sept. 11, 2025) (MDE's Reply Br."); and US Wind Reply to U.S. EPA Region 3's and Petitioners' Briefs Regarding Jurisdiction (Sept. 12, 2025).

Wildlife Serv., 353 F.3d 1051, 1060 (9th Cir. 2003))); *see also Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012).

A. *The Outer Continental Shelf Is Under the Exclusive Jurisdiction of the Federal Government*

The Outer Continental Shelf Lands Act ("OCSLA") governs mineral and energy development activities that take place on the OCS. The OCSLA defines the term OCS in part as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in [the Submerged Lands Act[4]], and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control or within the exclusive economic zone of the United States and adjacent to any territory of the United States." OCSLA § 2(a), 43 U.S.C. § 1331(a). In promulgating the OCSLA, Congress explained that the OCS "is a vital national resource reserve held by the Federal Government," OCSLA § 3(3), 43 U.S.C. § 1332(3), and is an area of exclusive federal jurisdiction, OCSLA § 4(a)(1)(A), 43 U.S.C § 1333(a)(1)(A).[5] Recognizing that there may be gaps in federal laws, Congress authorized adoption by the federal government of the civil and criminal laws of each adjacent State "[t]o the extent that they are applicable and not inconsistent" with federal law. OCSLA § 4(a)(2)(A), 43 U.S.C § 1333(a)(2)(A).

The Supreme Court has stated that state laws can be "applicable and not inconsistent" with federal law only if federal law does not address the relevant issue. *Parker Drilling Mgmt. Servs. v. Newton*, 587 U.S. 601, 609 (2019). The

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[4] Under the Submerged Lands Act, 43 U.S.C. §§ 1301-1315, most coastal states have jurisdiction within three nautical miles from the coastline.

[5] The plain language of the OCSLA makes it clear that the civil and political jurisdiction of the United States extend to the OCS. OCSLA § 4(a)(1)(A), 43 U.S.C § 1333(a)(1)(A) ("The Constitution and laws and civil and political jurisdiction of the United States are * * * extended to * * * the outer Continental Shelf * * * to the same extent as if the outer Continental shelf were an area of exclusive Federal jurisdiction located within a state."). The phrase "civil and political jurisdiction" refers to the authority of a court or legal system to resolve civil disputes (civil) and of governmental bodies to exercise control over a territory and its population (political). *See Gulf Offshore Co., Div. of Pool Co. v. Mobil Oil Corp*., 453 U.S. 473, 482 (1981) (contrasting political and judicial jurisdiction.).

OCSLA makes it "apparent 'that federal law is "exclusive" in its regulation of [the OCS], and that state law is adopted only as surrogate federal law'" to fill in gaps in federal law. *Id.* at 609-610 (quoting *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 357 (1969)).

The OCSLA further states that "[a]ll of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States." OCSLA § 4(a)(2)(A), 43 U.S.C. § 1333(a)(2)(A). As such, "Congress left no doubt that it expected the federal courts to have control over the administration of adopted state laws on the outer Continental Shelf." *Ten Taxpayer Citizens Grp. v. Cape Wind Assocs.*, 373 F.3d 183, 193 (1st Cir. 2004) (citing 43 U.S.C. § 1333(a)(2)).

With this as background we turn to section 328 of the CAA, which governs the permitting activities under challenge here.

B. *CAA Section 328 Does Not Authorize EPA to Grant State Courts Jurisdiction to Review OCS Permits.*

Prior to the 1990 CAA amendments, which added CAA section 328, the U.S. Department of Interior held authority to regulate sources located on the OCS to ensure compliance with the national ambient air quality standards ("NAAQS"). OCSLA § 5(a)(8), 43 U.S.C. § 1334(a)(8) (1978). Section 328 of the CAA transfers authority over OCS CAA regulation from the Department of Interior to EPA and authorizes EPA to "delegate" to onshore states the authority to implement and enforce CAA requirements. CAA § 328, 42 U.S.C. § 7627. The pertinent question with respect to the Board's jurisdiction then becomes whether in enacting CAA section 328 Congress intended to authorize EPA to grant jurisdiction to state courts to review OCS permits in circumstances where a delegated state issues a permit. As discussed below, we conclude Congress did not authorize EPA to do so.

1. *CAA Section 328*

When Congress transferred the authority to issue regulations for the OCS from the Department of Interior to EPA, Congress provided that section 328(a)(1) "shall supersede section 5(a)(8) of the [OCSLA, 43 U.S.C. § 1334(a)(8)], but shall not repeal or modify any other Federal, State, or local authorities with respect to air quality." CAA § 328(a)(1), 42 U.S.C. § 7627(a)(1). Section 5(a)(8) of OCSLA required the Secretary of Interior to develop regulations pertaining to compliance with the CAA national ambient air quality standards. 43 U.S.C. § 1334. Section 328 of the CAA does not alter section 4(a) of OCSLA (extending civil jurisdiction

to U.S. courts) or section 3(1) (declaring the OCS to be subject to U.S. jurisdiction). *Compare* CAA § 328(a)(1), 42 U.S.C. § 7627(a)(1) *with* OCSLA §§ 3(1), 4(a), 43 U.S.C. §§ 1332(1), 1333(a). Thus, the only aspect of the OCSLA that was superseded by CAA section 328 was the provision granting the Department of Interior authority to develop regulations to control air pollution on certain parts of the OCS.

In addition to transferring authority to EPA from the Department of the Interior, Congress established the air pollution control requirements to be applied to sources located on the OCS. It directed EPA to issue regulations to "attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C" of title I of the CAA. CAA § 328(a)(1), 42 U.S.C. § 7627(a)(1) (Part C of the CAA addresses the Prevention of Significant Deterioration ("PSD") of Air Quality). Congress provided that air pollution requirements for sources located within 25 miles seaward from an onshore boundary, "shall be the same as would be applicable if the source were located in the corresponding onshore area,[6] and * * * include, * * *, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting." *Id.* With these requirements Congress sought to (1) extend federal air pollution control requirements, including the CAA's PSD requirements, to sources located on the OCS; (2) protect ambient air quality standards onshore; and (3) provide a more equitable regulatory environment between onshore sources and OCS sources located within 25 miles of state seaward boundaries. *See id.*; Proposed Rule Outer Continental Shelf Regulations, 56 Fed. Reg. 63,774, 63,775 (Dec. 5, 1991). Congress also directed EPA to update those incorporated state law requirements as necessary to maintain consistency with onshore regulations and the CAA.[7] CAA § 328(a)(1), 42 U.S.C. § 7627(a)(1). These provisions are consistent with the OCSLA's incorporation of state law into

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[6] The term "corresponding onshore area" is defined as "the onshore attainment or nonattainment area that is closest to the [OCS] source," unless EPA "determines that another area with more stringent requirements * * * may reasonably be expected to be affected by [] emissions [from the OCS source]." CAA § 328 (a)(4)(B), 42 U.S.C. § 7627(a)(4)(B).

[7] To fulfill its rule development responsibilities EPA promulgated the OCS Air Regulations, which are codified in 40 C.F.R. part 55. The OCS Air Regulations contain a provision, referred to as the consistency rule, that provides the mechanism by which EPA updates and maintains consistency with the regulations of onshore areas. 40 C.F.R. § 55.12.

federal law to "fill gaps" where appropriate federal law does not exist. *See id.*; *see also* OCSLA § 4(a)(2)(A), 43 U.S.C. § 1333(a)(2)(A).

In section 328(a)(3), Congress authorized EPA to "delegate" to states its authority to implement and enforce CAA regulations on the OCS, including issuing permits to appropriate sources for activity that is planned to take place on the OCS. CAA § 328(a)(3), 42 U.S.C. § 7627(a)(3). The relevant provision provides: "Each State adjacent to an OCS source * * * may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of [section 328]" and "if the Administrator finds that the State regulations are adequate, the Administrator shall *delegate* to that State *any authority the Administrator has under [the CAA]* to implement and enforce such requirements." *Id.* (emphasis added).

As explained below, we find nothing in section 328 suggesting that, by authorizing delegation to appropriate states the authority to implement and enforce CAA regulations on the OCS, Congress vested the EPA Administrator with authority to grant state courts jurisdiction to review OCS permits.

2. *Delegated OCS Permits, Like Delegated PSD Permits, Are Federal Permits*

Congress's use of the term "delegate" in CAA section 328 is instructive. The term "delegate" holds distinct meaning in the context of a State's authority to issue permits under the CAA section 110. Section 110(c) authorizes EPA to delegate the authority to implement and enforce parts of an EPA-issued implementation plan. CAA § 110(c)(3), 42 U.S.C. § 7410(c)(3). Pursuant to this provision and implementing regulations, EPA has delegated authority to implement and enforce PSD programs for regulated activities that take place within a state's borders. *See id.*; 40 C.F.R. § 52.21(u). In the context of CAA section 110, the term "delegate" is used often in contrast to the term "approved program," as both terms refer to the capacity in which a state can manage federal environmental programs. *See, e.g.*, *Greater Detroit Res. Recovery Auth. v. U.S. EPA*, 916 F.2d 317, 320-21 (6th Cir. 1990).[8]

[8] For context, CAA section 110(a), as opposed to section 110(c), establishes the framework for states to take primary responsibility for achieving and maintaining NAAQS. CAA § 110(a)(1), 42 U.S.C. § 7410(a)(1). In promulgating section 110(a), Congress mandated states to develop and submit to EPA an implementation plan, referred to as a State Implementation Plan or SIP, detailing how the state would achieve, maintain, and

The Board has not previously considered the role of a "delegated" state in the context of the OCS and CAA section 328. In the context of considering PSD permits for activities within a state's border, however, the Board has explained that the role of the state depends on whether the state is acting under "delegated" authority or an "approved program." *See In re Seminole Elec. Coop., Inc*., 14 E.A.D. 468, 474 (EAB 2009). Depending on the capacity in which a state is operating—as a delegate of the EPA Administrator or under an EPA-approved state program—a state will have greater or lesser independence from EPA. *Id*. Also in this context, the Board has established that the authority under which a state is acting is determinative of whether a state-issued PSD permit is a federal permit reviewable in federal court or a state permit reviewable in state court. *See id.* at 475; *see also id.* at 482-83 (determining that the Board did not have jurisdiction over a final permit that was issued pursuant to an EPA-approved state permitting program as the final permit was no longer considered a federal permit, even though the draft permit had been issued pursuant to an EPA delegation before the program had been authorized). States delegated to issue PSD permits stand "in the shoes" of EPA and operate on EPA's behalf. *Id*. at 473 (quoting Consolidated Permit Regulations, 45 Fed. Reg. 33,290, 33,413 (May 19, 1980)). A PSD permit issued by a delegate state is considered a federal, or EPA-issued, permit. *Id.* at 474. The Board has consistently determined that it has jurisdiction to review PSD permits issued pursuant to an EPA delegation. *See, e.g.*, *id.* at 475; *In re Hillman Power Co., LLC*, 10 E.A.D. 673, 675 (EAB 2002); *In re Milford Power Plant*, 8 E.A.D. 670, 673 (EAB 1999).[9]

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enforce the NAAQS. *Id*. EPA may approve all or portions of a submitted SIP. *See, e.g.*, CAA § 110(c)(1), (k)(3), 42 U.S.C. § 7410(c)(1), (k)(3). If approved by EPA, the state implements and enforces only the approved environmental programs under state law (generally referred to as an "approved program"). Under CAA section 110(c), Congress provides that where EPA has disapproved a portion or all of a state's SIP, EPA must promulgate a Federal Implementation Plan or FIP, and EPA may "delegate" its "authority to implement and enforce" the FIP to a state if it concludes that the state has adequate authority to implement and enforce it. CAA § 110(c)(1), (3), 42 U.S.C. § 7410(c)(1), (3).

[9] The Board has recognized the distinction between state-issued permits under approved programs versus delegation in the context of CAA new source review permits as well. *See, e.g.*, *In re Carlton, Inc.*, 9 E.A.D. 690, 693-94 (EAB 2001) (declining to review a permit that was issued pursuant to a state's minor NSR program, rather than the delegated federal PSD program).

In contrast, PSD permits issued pursuant to "approved" state implementation plans ("SIP") are state permits. *Seminole,* 14 E.A.D. at 473-74. Following a lengthy approval process, states can obtain EPA approval of their proposed SIP. *Id.* at 483 n.11. Upon EPA approval, the state or local air pollution control agency is authorized to implement its approved plan and/or program under its own state or local laws. *See id.* at 474; *Milford*, 8 E.A.D. at 673. It is this transfer of authority—from federal to state hands—that fundamentally sets apart an EPA delegation from an approved state program. *Seminole*, 14 E.A.D. at 474. "[A] permit issued by a transferee [s]tate is a '[s]tate-issued permit.'" *Id.* (quoting 45 Fed. Reg. at 33,413); *see In re Desert Rock Energy Co., LLC*, 14 E.A.D. 484, 526 (EAB 2009) (citing cases). The Board does not have jurisdiction to review state-issued permit provisions where the state is operating within a permitting program that falls under its "approved" SIP. *See, e.g.*, *Seminole*, 14 E.A.D. at 475; *In re Carlton, Inc*., 9 E.A.D. 690, 693 (EAB 2001) (stating that state permits issued under an approved program "are regarded as creatures of state law that can be challenged only under the state system of review").

The Board has also explained that, when a state is approved to administer one CAA program under its SIP, it does not necessarily follow that the state is approved to administer all CAA programs. *See, e.g., Carlton*, 9 E.A.D. at 691 (observing that the Illinois Environmental Protection Agency implements the federal PSD program pursuant to a delegation, but issues new source review permits through an EPA-approved program as a component of Illinois' SIP). Thus, a state can operate concurrently as both an EPA delegate and an "approved" state, depending on the EPA-approved authority under which it is operating.[10]

MDE and US Wind argue that the term "delegate" in CAA section 328 should not be read consistently with the term "delegate" under CAA section 110(c), but rather that it should be equated with the term "approved" under section 110(a). *See* MDE's Reply Br. at 6-10; MDE's Resp. Br. at 9; US Wind Reply 13-18. Under section 110(a), MDE has EPA's approval to implement the PSD and NSR permit programs for sources located within the State pursuant to its approved SIP. *See* 40 C.F.R. § 52.1070. Permits that MDE issues pursuant to this authority are considered state permits. MDE and US Wind contend that Congress intended that

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[10] Where a permit includes pollution control requirements pursuant to both an approved program and delegated authority, the Board will review only the portion of the permit that is based on EPA's delegation of the Administrator's authority. *In re West Suburban Recycling and Energy Ctr.*, 6 E.A.D. 692, 704 (EAB 1996); *In re Am. Ref-Fuel Co*., 2 E.A.D. 280, 283 (Adm'r 1986).

Maryland exercise its delegated authority over the OCS pursuant to Maryland's approved SIP.[11] *See, e.g.*, MDE's Resp. Br. at 9; MDE's Reply Br. at 5-7; US Wind Reply Br. at 2, 13-18. If so, MDE and US Wind conclude, the OCS permits would also be considered state permits, not federal permits. For the following reasons, we disagree.

To begin, principles of statutory and textual interpretation do not support the conclusion that by enacting section 328 Congress intended for OCS permits to become state permits. Our interpretation of the term "delegate" in section 328 is consistent with the plain meaning of the word. *See Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021) ("When called on to resolve a dispute over a statute's meaning, [the court] normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them."); *see In re Odessa Union Warehouse Co-op, Inc.*, 4 E.A.D. 550, 557 (EAB 1993) ("In the absence of a statutory or regulatory definition, it is appropriate to use the common meaning of the terms in question."). The ordinary meaning of this term is "to entrust another," "to appoint as one's representative." Merriam-Websters Collegiate Dictionary 305 (10th Ed. 1999). A representative is one who acts on behalf of another, not on its own behalf. *Id*. at 993 (defining representative as "standing or acting for another esp[ecially] through delegated authority").

Additionally, nothing in section 328 indicates that Congress intended for the term delegate to authorize EPA to grant state courts jurisdiction to review permits issued pursuant to section 328. Absent evidence to the contrary, we presume that Congress intentionally drafted CAA sections 110 and 328 and that the word delegate as used in these two provisions is intended to have the same meaning. *See Util. Air. Regul. Grp. v. EPA*, 573 U.S. 302, 319-320 (2014) ("One ordinarily assumes 'that identical words used in different parts of the same act are intended to have the same meaning.'") (quoting *Env't Defense v. Duke Energy Corp*., 549 U.S. 561, 574 (2007)). Of note, the language in section 110(c) with respect to "delegation" of authority is similar to the language Congress used in section 328. *Compare* CAA § 328(a)(3), 42 U.S.C. § 7627(a)(3) *with* CAA § 110(c), 42 U.S.C. § 7410(c). And section 110(c)(3) distinguishes a "delegation" of authority to implement a program from an "approved" program under section 110(a). *Compare* CAA § 110(c)(3), 42 U.S.C. § 7410(c)(3) *with* CAA § 110(c)(1), 42 U.S.C. § 7410(c)(1). Given the similar use of the term delegate and the lack of any

[11] We observe that Maryland's approved SIP is silent with respect to air permitting for activities to be located on the OCS.

reference to "approval" of a program in section 328, we read Congress's use of the term "delegate" in section 328 to be consistent with its use of the term "delegate" in section 110(c)(3).

Finally, our reading of section 328—that delegated states issue federal permits on behalf of the EPA and are reviewable in federal court—is also consistent with the plain meaning of the OCSLA and Supreme Court precedent. As noted earlier in this decision, the OCS is under the exclusive jurisdiction of the federal government. The Supreme Court has stated that "OCSLA gives the Federal Government complete 'jurisdiction, control, and power of disposition' over the OCS." *Parker,* 587 U.S. at 609 (quoting OCSLA § 3(1), 43 U.S.C. § 1332(1)). Further, "[t]he OCS is not, and never was, part of a state * * *." *Id.* at 610. In other words, judicial jurisdiction over the OCS belongs exclusively to the courts of the United States. To hold otherwise would contradict the OCSLA and the Supreme Court of the United States.

Read in context with a view toward section 328's place in the overall scheme of the CAA and that of the OCSLA, we are not persuaded by MDE's and US Wind's arguments and reject the notion that Congress intended for delegated authority under section 328 to be implemented and enforced pursuant to Maryland's approved SIP under section 110(a).[12] Rather, Maryland operates as both an EPA delegate (in connection to CAA-regulated activities that take place on the OCS),

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[12] MDE's and US Wind's arguments also ignore important distinctions between CAA sections 328 and 110(a). First, the location of the regulated activity differs. Section 110 addresses air pollution control from sources located "within [the geographical boundaries of] the state." CAA § 110(a)(1), 42 U.S.C. § 7410(a)(1). Section 328 addresses air pollution control from sources located within the OCS. CAA § 328(a)(1), 42 U.S.C. § 7627(a)(1). Second, Congress placed primary responsibility for regulating air pollution control on either states or federal government based on location of regulated activity. Section 328 grants EPA the primary responsibility for regulating source activity on the OCS but explicitly assigns states "the primary responsibility for assuring air quality within the entire geographic area" of the state. *Compare* CAA § 328(a)(3), 42 U.S.C. § 7627(a)(3) *with* CAA § 107(a), 42 U.S.C. § 7407(a). Third, as already explained, Congress was clear in the OCSLA that federal courts have judicial jurisdiction over the OCS. OCSLA, § 4(a)(2)(A), 43 U.S.C. § 1333(a)(2)(A). Without explicit statutory authority from Congress in section 328 or elsewhere, EPA does not have the authority to grant state courts jurisdiction to review OCS permits. *See Mader v. United States*, 654 F.3d 794, 815 (9th Cir. 2011) ("[A]n administrative agency is not at liberty to contract or expand the scope of [federal] courts' jurisdiction; only Congress can do so.") (citing *Kontrick v. Ryan*, 540 U.S. 443, 452 (2004)).

and as an approved state (in connection to CAA-regulated activities that take place within the boundaries of the state).

We also observe that our conclusion is consistent with Maryland law. Among other federal OCS regulations in part 55, Maryland incorporated 40 C.F.R. § 55.6 into Maryland's OCS regulations. Section 55.6 provides that the permit review provisions of 40 C.F.R. part 124 apply to OCS permits. Part 124 includes the federal requirement that OCS permits must be appealed to the Board as a prerequisite to judicial review in federal court. *See* 40 C.F.R. § 124.19(*l*); *see also* 5 U.S.C. § 704; CAA § 307, 42 U.S.C. § 7607. Thus, both federal and Maryland law (by virtue of incorporating by reference 40 C.F.R. § 55.6) require an appeal to the Board as a prerequisite to federal judicial review. MDE points to section 1-601 of the Environment Article, Annotated Code of Maryland, as evidence that Maryland law requires an appeal to Maryland state circuit court. That statute, however, by its own terms, applies to MDE-issued air permits "*[u]nless otherwise required by statute*." Md. Code Ann., Env't § 1-601 (emphasis added). As we have discussed above, the OCSLA requires that air permits issued for activity on the OCS are under the exclusive jurisdiction of the federal courts, rendering section 1-601 inapplicable to permits issued for activity on the OCS.[13] Thus, MDE is incorrect in its reliance on Maryland law for jurisdiction in state court. To conclude otherwise would be to defer to state law in lieu of federal law, which both the Maryland legislature and Congress clearly sought to avoid. *See* Md. Code Ann., Env't § 1-601; OCSLA § 4(a)(2)(A), (a)(3), 43 U.S.C. § 1333(a)(2)(A), (a)(3); *see also Parker*, 587 U.S. at 609-610.

Based on the language and construction of the OCSLA and the CAA, we conclude that when Congress provided EPA with the authority to "delegate" its authority under section 328 to implement and enforce the CAA requirements on the OCS, it intended for states to "stand in the shoes" of the EPA Administrator and issue a federal permit on EPA's behalf that is reviewable in federal courts. *See*

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[13] MDE is not incorrect that Maryland law was also incorporated into federal law. Among other Maryland regulations, 40 C.F.R. pt. 55 Appendix A incorporated COMAR 26.11.02 into federal law. That regulation applies to any permits for new construction. COMAR 26.11.02.11(A)(1)-(2). COMAR 26.11.02.11(M) provides that air permits to construct are subject to judicial review under Md. Code Ann., Env't § 1-601(c). Section 1-601 provides for judicial review in state circuit court unless otherwise required by statute. Md. Code Ann., Env't § 1-601(e)(1). Thus, although federal regulations incorporate state regulations, the OCSLA renders section 1-601 inapplicable to an OCS permit.

CAA § 307(b)(1), 42 U.S.C. § 7607(b)(1) (a petition seeking review of a "final action of the Administrator under [the CAA] * * * which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit.").

C. *The Board Has Jurisdiction to Review Federal OCS Permits Issued by Delegated States*

Given that an OCS permit issued by a delegated state is a federal action by the EPA Administrator, an appeal to the Board is required to exhaust administrative remedies for the purpose of judicial review in federal court. *See* 40 C.F.R. § 124.19(*l*) (establishing that a petition to the Board is a prerequisite to seeking judicial review of a final agency action under the Administrative Procedures Act, 5 U.S.C. § 704). *See also id*. § 55.6(a)(3) (directing the EPA Administrator, in the OCS permitting context, to follow the procedures used to issue PSD permits). Based on the foregoing, we conclude the Board has jurisdiction to review the OCS permits MDE issued pursuant to MDE's delegation under the CAA.

III. *NOTICE OF PERMIT ISSUANCE*

Having determined that jurisdiction to review the OCS permits issued by MDE lies with the Board, we now turn to MDE's public statements concerning the forum for appeal of the MDE-issued OCS permits to US Wind. MDE published notice of its permit decisions in the Worcester County Times on June 5, 2025, and June 12, 2025. MDE Notice of Final Determination (filed with MDE's Resp. Br. as attach. 10) ("Final Public Notice"); Reg.'s Jurisdiction Br. attach. 8 (identifying the dates of publication). The notice contained the following statement regarding appeal procedures:

> Pursuant to Section 1-601 of the Environment Article, Annotated Code of Maryland, a final determination by the Department is subject to judicial review * * *.
>
> Any petition for judicial review must be filed pursuant to Section 1-605 of the Environment Article, Annotated Code of Maryland. The petition shall be filed by July 14, 2025[,] in the circuit court for the county where the application for the permit states that the proposed activity will occur and otherwise conform to the requirements of Title 1, Subtitle 6 of the Environment Article, Annotated Code of Maryland.

Final Public Notice at 1. Around the same time the notice was published in the newspaper, MDE's website provided that same information and also stated that "[t]he final determination of the NSR and PSD Approvals may be appealed through

the process set forth at 40 CFR 124.19 for appeals of PSD permits, by filing a petition for review with the Clerk of the [Board] within the time prescribed in paragraph 124.19(a)(3)." Reg.'s Jurisdiction Br. attach. 6.

In response to MDE's notice of permit issuance, the Region sent MDE a letter requesting that MDE reissue its final permit decision and, among other things, clarify that the final decision can be appealed to the Board through the part 124 appeal process and that the deadline to file a petition for review is within 30 days after MDE serves notice of the reissuance. Reg.'s Jurisdiction Br. at 14; Letter from Amy Van Blarcom-Lackey, Reg'l Adm'r, EPA to Serena McIlwain, Sec'y, MDE (July 7, 2025) (filed with Reg.'s Jurisdiction Brief as attach. 7).[14] MDE did not comply with the Region's request and instead informed the Region that it had "removed the description of the opportunity to appeal under part 124 from MDE's website." Reg.'s Jurisdiction Br. at 15. MDE also revised its website to address the previously posted appeal procedures, stating:

> Note: A previous version of this webpage also described a separate permit appeals process through the U.S. EPA. The appeals process for this permit is through the State of Maryland only, and the language describing the U.S. EPA appeals process has been removed.

Id. attach. 8; *see also id.* at 15.

Given that the Board is the appropriate forum for appeal of the OCS permits that MDE issued, the Public Notice published in the newspaper and MDE's website announcement provided incorrect and at sometimes conflicting information regarding appeals. *See, e.g.*, *In re Penneco Env't. Sols.*, 19 E.A.D. 13 (EAB 2024) (discussing the importance of proper notice). Consequently, the Board directs MDE to reissue its public notice with the correct information regarding appeal procedures, including a statement that any appeal of the OCS permit decisions pursuant to the CAA must be filed with the Environmental Appeals Board within 30 days after MDE serves the corrected notice of permit issuance. *See* 40 C.F.R.

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[14] This was not the first time the Region had clarified this requirement for MDE. Prior to the final permit determination, the Region had communicated to MDE that that any appeal of a final permit must be submitted to the Board pursuant to part 124 regulations. Email from Gwendolyn Supplee, Senior Permit Specialist, U.S. EPA Region 3, to Suna Sariscak, Manager, Air Quality Permits Program, MDE (Dec. 20, 2024) (filed with Reg.'s Jurisdiction Br. as attach. 5).

§ 124.19(a)(3). The Board will consider the instant petition on its merits, and any other petitions timely filed after the reissued public notice of permit issuance.

IV. *CONCLUSION*

For the reasons stated above, the Board concludes that it has jurisdiction to review the OCS permits that MDE issued to US Wind for its Maryland Offshore Wind Project. MDE must re-issue its notice of permit issuance and provide the correct procedures for appeal pursuant to 40 C.F.R. § 124.19 by no later than Friday, January 9, 2026. Any new appeals resulting from the re-issued notice may be filed pursuant to the requirements of 40 C.F.R. § 124.19. If Petitioners wish to file a reply brief in response to MDE's and US Wind's substantive responses to the Petition, they may do so. If the Region, in consultation with the Office of General Counsel, wishes to file a brief addressing the substantive matters raised in the petition, it may also do so. Petitioners' reply and the Region's brief may be filed by no later than Friday, January 9, 2026.

So ordered.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Affirming Board Jurisdiction* in the matter of US Wind Inc. – Maryland Offshore Wind Project, OCS Appeal No. 25-01, were sent to the following persons in the manner indicated:

By Email:

For: Petitioners
Nancie G. Marzulla
Marzulla Law, LLC
nancie@marzulla.com

Roger J. Marzulla
Marzulla Law, LLC
roger@marzulla.com

For: US Wind Inc.
Toyja E. Kelley, Sr.
Troutman Pepper Locke LLP
toyja.kelley@troutman.com

Joshua M. Kaplowitz
Troutman Pepper Locke LLP
josh.kaplowitz@troutman.com

Morgan M. Gerard
Troutman Pepper Locke LLP
morgan.gerard@troutman.com

Carroll Wade McGuffey III
Troutman Pepper Locke LLP
mack.mcguffey@troutman.com

For: Maryland Department of the Environment
Kara A. Dorr
Assistant Attorney General, MDE
kara.dorr@maryland.gov

Michael F. Strande
Assistant Attorney General, MDE
michael.strande@maryland.gov

For: EPA
Ryan Stephens
Office of Regional Counsel
U.S. EPA Region 3
stephens.ryan@epa.gov

Jeanhee Hong
Air and Radiation Law Office
U.S. EPA OGC
Hong.Jeanhee@epa.gov

Brian L. Doster
Air and Radiation Law Office
U.S. EPA OGC
Doster.Brian@epa.gov

Digitally signed by TOMMIE MADISON
Date: 2025.12.16 15:37:16 -05'00'

Tommie Madison
Clerk of the Board