

ATTACHMENT 3

**IN THE CIRCUIT COURT
FOR WORCESTER COUNTY, MARYLAND**

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PETITION OF MAYOR AND CITY)
COUNCIL OF OCEAN CITY AND)
COUNTY COMMISSIONERS OF)
WORCESTER COUNTY)
)
)
FOR JUDICIAL REVIEW)
OF MARYLAND DEPARTMENT OF)
ENVIRONMENT (MDE) PERMIT TO)
CONSTRUCT, PREVENTION OF)
SIGNIFICANT DETERIORATION)
APPROVAL, AND NEW SOURCE)
REVIEW APPROVAL FOR US WIND,)
INC.'S MARYLAND OFFSHORE WIND)
PROJECT)
)
)
Permit Number: Permit-to-Construct)
047-0248; NSR-2024-01; PSD Approval)
PSD-2024-01)
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Case No.: C-23-CV-25-000184

**MEMORANDUM IN SUPPORT OF MOTION FOR STAY OF PETITIONERS, MAYOR
AND CITY COUNCIL OF OCEAN CITY AND COUNTY COMMISSIONERS OF
WORCESTER COUNTY**

NOW COME Petitioners MAYOR AND CITY COUNCIL OF OCEAN CITY (“Ocean City”) and COUNTY COMMISSIONERS OF WORCESTER COUNTY (“Worcester County”) (Ocean City and Worcester County may be referred to collectively herein as “Petitioners”), by and through their respective undersigned attorneys, and hereby move this Honorable Court to stay this matter in its entirety, pending disposition of parallel proceedings before the Environmental Appeals Board of the Environmental Protection Agency (and any subsequent petition for judicial review in federal court), and in support thereof, state as follows:

BACKGROUND

On June 6, 2025, the Maryland Department of the Environment (“MDE”), acting under delegated authority from the U.S. Environmental Protection Agency (“EPA”), issued a Permit to Construct, a Prevention of Significant Deterioration (“PSD”) Approval, and a Nonattainment New Source Review (“NSR”) Approval authorizing construction and early operations for the Maryland Offshore Wind Project (“the Project”)—an industrial-scale offshore wind facility to be built on the Outer Continental Shelf, ten miles off the Maryland coastline. Thereafter, Petitioners timely filed their Petition in this proceeding, asking the Court to reverse and set aside the MDE’s decision to grant the permit and two approvals because they violate Maryland and federal law in a number of material respects.¹ Petitioners have timely filed their appeal memorandum in this case; and answering memoranda have been filed by Respondent MDE and by U.S. Wind, Inc. (“US Wind”).²

Because the Project is located on the federal Outer Continental Shelf (“OCS”), the permits and approvals authorizing its construction and operation are subject to the federal air quality requirements set forth in 40 C.F.R. Part 55. As parties who participated in the public

¹ MDE’s Notice of Final Determination in this matter (as to the subject permits) directed anyone seeking to challenge the permits to do so by filing a petition for judicial review in this Court, pursuant to section 1-605 of the *Environment Article* of the Maryland Code. Petitioners did so in compliance with MDE’s notice, in order to preserve all appeal rights. As explained below, the EPA then subsequently the EAB (through its December 2025 ruling) have directed MDE to re-issue its Notice of Final Determination, in part, to clarify that appeals of the PSD permits issued by MDE (under delegated authority from EPA) must be timely pursued through a petition for review filed with the EAB.

² As an “Interested Party,” Chesapeake Climate Action Network Action Fund (“CCAN”) has also filed a responding memorandum. Petitioners have moved to strike that memorandum as untimely but (more importantly) as improperly containing purported and uncorroborated facts, belief, opinions, and views that are not part of the administrative record below and not properly included within an appeal memorandum. Petitioners’ Motion to Strike has not yet been ruled on by this Honorable Court.

comment process—through oral and written comments—Ocean City and Worcester County timely sought review of the permitting decisions under 40 C.F.R. § 124.19(a)(3), in the Environmental Appeals Board (“EAB”) of the EPA. They did so contemporaneously with initiating an administrative appeal in this Court, due to uncertainty as to whether the EAB would exercise jurisdiction over the matter – again, this case challenges the propriety of approvals issued by MDE (a State agency acting for and under authority delegated by the EPA), pursuant to and under federal regulations and statutes, for an offshore wind power project located on the OCS. In an abundance of caution, Petitioners initiated appeals in State Court (in the present case) and simultaneously in the EAB, advancing challenges to the permits in both venues.

In the EAB proceeding, MDE and US Wind took the position that the EAB lacked jurisdiction over any aspect of Petitioners’ challenge to the subject approvals, as issued by the MDE. The jurisdictional issue was fully briefed in the EAB proceeding and on December 16, 2025, in OCS Appeal No. 25-01, the EAB issued its “Order Affirming Board Jurisdiction,” 1) holding that the EAB “has jurisdiction to review the OCS permits issued by MDE to US Wind for its Maryland Offshore Wind Project,” 2) directing MDE to “reissue its permit notification with the correct information regarding the applicable appeal procedures,” and 3) making clear that the EAB “will consider the current petition for judicial review, and any additional petitions timely filed after MDE’s corrected notice of permits issuance.” *See Exhibit A* (December 16, 2025, Order Affirming Board Jurisdiction).³

³ By letter dated July 7, 2025, the Region 3 Administrator of the EPA – finding error in the manner in which MDE had issued its permit decision, in particular as to how it described the way any appeal should be pursued – directed the MDE Secretary to:

“reissue the final permit decision for US Wind to:

1. Clarify that Maryland issued the permit under federal authority pursuant to 40 CFR Part 55;

This Honorable Court should stay this case, pending resolution of the EAB appeal (and any subsequent petition for judicial review at the federal level), because: 1) the EAB is (properly) exercising jurisdiction over Petitioners' challenge to the Project approvals; 2) it has directed MDE to re-issue its permit decision clarifying that an appeal of the PSD must be pursued in the EAB (rather than the MDE); and 3) in any event, the issues in the EAB appeal overlap considerably if not completely with those presented in this parallel proceeding. In the interests of substantial justice and judicial economy, a stay is warranted, even necessary.

ARGUMENT

I. THIS COURT HAS BROAD DISCRETION TO GRANT THE REQUESTED STAY.

This Court's discretion to stay proceedings is broad and is inherent in and incidental to its authority to control its docket; and stays are appropriate pending resolution of other issues and matters that may bear upon the (stayed) case. *Moser v. Heffington*, 465 Md. 381, 398-399 (2019) ("a court may exercise its discretion and grant a stay to protect parties involved in parallel proceedings"); *Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 460 (2011); *Vaughn v. Vaughn*, 146 Md. App. 264, 280 (2002); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936);

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2. Remove erroneous text regarding the Maryland appeal process (including reference to the state process on the website);
 3. Include the following text as part of the final permit decision:
 'The final determination 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 United States Environmental Protection Agency's Environmental Appeals Board within the time prescribed in paragraph 124.19(a)(3).'; and
 4. Identify, in accordance with 40 CFR § 124.15 requirements, the deadline to file a petition for review as within 30 days after MDE serves notice of the reissuance as required under 40 CFR §124.19(a)(3) for parties eligible to file an appeal under 40 CFR Part 124.

The EPA's letter to MDE stated further that "[f]ailure to rectify this error could result in invalidation of the permit on appeal and confusion among relevant stakeholders with respect to where to bring such an appeal." See **Exhibit B**.

Maryland v. Universal Elections, Inc., 729 F.3d 370, 379 (4th Cir. 2013); *Coppage v. Orlove*, 262 Md. 665, 666 (1971); *Waters v. Smith*, 27 Md. App. 642, 651 (1975) (“the granting or refusing of a stay rests in the discretion of the court”).

Under §6-104(a) of the *Courts and Judicial Proceedings* Article of the Maryland Code: “If a court finds that in the interest of substantial justice an action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any conditions it considers just.” *See also* Md. Rule 2-508(a) (“on motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require”).

A stay is proper when “the parties, the facts, and the essential basis of the relief” of the two parallel proceedings are “so much the same that if [one] case had already been disposed of it could be pleaded in bar as” an adjudication of the other parallel case. *Coppage v. Orlove*, 262 Md. at 666. *See also* *Lizzi v. Wash. Metro. Area Transit Auth.*, 384 Md. 199 (2004) (in which there were parallel proceedings between the same parties in federal court and Maryland Circuit Court, and the Maryland case was stayed pending resolution of the federal action).

II. THIS STATE COURT ADMINISTRATIVE APPEAL SHOULD BE STAYED PENDING OUTCOME OF THE PARALLEL EAB PROCEEDING AND ANY SUBSEQUENT PETITION FOR JUDICIAL REVIEW IN FEDERAL COURT.

As the EAB points out in its December 16, 2025, “Order Affirming Board Jurisdiction,” when (as in this case) a State Agency is issuing a permit under the Clean Air Act (“CAA”) in the context of the Outer Continental Shelf (“OCS”), and is acting “as a delegate of the EPA Administrator” rather than under an EPA-approved state program, the permit is regarded as a federal permit (reviewable at the federal level) rather than a state permit reviewable at the state level. *See Exhibit A* (December 16, 2025, Order Affirming Board Jurisdiction), at p. 7. “States delegated to issue PSD permits stand ‘in the shoes’ of EPA and operate on EPA’s behalf . . . [and

a] PSD permit issued by a delegate state is considered a federal, or EPA-issued, permit.” *Id.*
Under that circumstance, the EAB “has consistently determined [as it did here] that it has jurisdiction to review PSD permits issued pursuant to an EPA delegation.” *Id.*

In this instance, the EAB determined that Maryland “operates as . . . [an] EPA delegate (in connection to CAA-regulated activities that take place on the OCS),” and also operates as “an approved state (in connection to CAA-regulated activities that take place within the boundaries of the state)”; and it further determined that “both federal and Maryland law . . . require an appeal to [the EAB] as a prerequisite to federal judicial review.” *Id.* at pp. 10-11. The EAB concluded based on the language and construction of the CAA and the Outer Continental Shelf Lands Act (“OCSLA”) that: “when Congress provided EPA with the authority to ‘delegate’ its authority under section 328 [of the CAA] 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. . . Given that an OCS permit issued by a delegated state is a federal action by the EPA Administrator, an appeal to the [EAB] is required to exhaust administrative remedies for the purpose of judicial review in federal court.” *Id.* at pp. 11-12.

Certainly, there may be appeal issues which this Honorable Court must resolve even after the EAB rules on the merits in that proceeding. Indeed, Petitioners have raised a number of issues with the permit approvals under applicable Maryland law as well as federal law, some of which will be resolved by the EAB and some of which may remain unresolved after the EAB issues its ruling. Accordingly, the interests of judicial economy and substantial justice will be served if this state court proceeding is stayed until the EAB proceeding and any subsequent petition for judicial review in the federal court are resolved. Indeed, Petitioners respectfully

submit that, given the delegated authority under which MDE was acting in issuing permits for the subject Project, rulings in the EAB and in any subsequent petition for judicial review in the federal court are necessary to establish and narrow the issues to be decided by this Court, if any, and to avoid potential inconsistencies that may arise from appeals proceeding simultaneously at both the state and federal levels. There is a strong and compelling basis for the requested stay, which will not result in any undue prejudice to any party, since disposition of the EAB proceeding (and any subsequent petition for judicial review at the federal level) will be necessary in any event before the subject approvals could be fully sustained in the face of Petitioners' challenges.

CONCLUSION

WHEREFORE, Petitioners hereby respectfully request that this Honorable Court enter an Order 1) staying this case until disposition of the related EAB appeal and any subsequent petition for judicial review in the federal court, and 2) directing the parties to report to the Court every sixty (60) days as to the status of the related EAB appeal and any subsequent petition for judicial review in the federal court.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I HEREBY CERTIFY that the attached submission does not contain any restricted information, or if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to Rule 20-201(h).

/s/ Bruce F. Bright
Bruce F. Bright

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2026, a copy of the foregoing Memorandum in Support of Motion for Stay of Petitioners (with Exhibits A and B) was served via the Court's electronic filing system on all counsel of record.

/s/ Bruce F. Bright
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