

FILED

Jan 13, 2026

Clerk, Environmental Appeals Board
INITIALS TJM

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;) OCS Appeal No. 25-01
PSD Approval No. PSD-2024-01;)
NSR Approval No. NSR-2024-01)

**ORDER ON MOTION FOR CLARIFICATION AND SETTING DEADLINE
TO RE-ISSUE NOTICE AND BRIEFING SCHEDULE**

January 13, 2026

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

Per Curiam:

Previously, the Environmental Appeals Board issued an Order Affirming Board Jurisdiction which set a deadline of January 9, 2026, for (1) Respondent Maryland Department of the Environment (“MDE”) to re-issue its notice of permit issuance; (2) EPA Region 3, in consultation with the Office of General Counsel, to file any brief addressing the substantive matters raised in the petition; and (3) Petitioners to file a reply brief addressing MDE’s and US Wind’s substantive responses to the petition. *In re US Wind Inc. – Maryland Offshore Wind Project*, OCS Appeal No. 25-01, slip op. at 14 (EAB Dec. 16, 2025), 19 E.A.D. ___. In response to subsequent motions filed by MDE (for clarification and extension of the deadline) and the Region (for an extension of time), the Board stayed that deadline pending further order

of the Board. *In re US Wind Inc. – Maryland Offshore Wind Project*, OCS Appeal No. 25-01, at 2 (EAB Dec. 30, 2025) (Order Staying Deadline to Re-Issue Notice and File Briefs). The Board now resolves the pending motions and establishes new deadlines for this matter.

In its pending motion, MDE requests clarification from the Board on whether MDE should follow “federal notice procedures” or its “normal state procedures, incorporated by 40 C.F.R. § 55.14(d)(10)(i)” when re-issuing notice of its final permit decision. MDE’s Motion for Clarification and Reconsideration on Deadline at 2 (Dec. 23, 2025) (“MDE Motion”). MDE states that if federal notice procedures apply, it would need guidance on how to comply with the 40 C.F.R. § 124.19(l)(3) requirement that the Regional Administrator “promptly publish notice of any final agency action in the Federal Register” concerning outer continental shelf (“OCS”) Clean Air Act (“CAA”) permits issued under 40 C.F.R. part 55. *Id.*

The Board clarifies that MDE must follow 40 C.F.R. § 124.15 when re-issuing notice of its final permit decision.¹ In its Order Affirming Board Jurisdiction the Board explained:

Based on the language and construction of the [Outer Continental Shelf Lands Act (“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.

In re US Wind Inc. – Maryland Offshore Wind Project, OCS Appeal No. 25-01, slip op. at 11 (EAB Dec. 16, 2025), 19 E.A.D. ___. As such, the Board concluded that an appeal to the

¹ Section 124.15 requires the permit issuer to “notify the applicant and each person who has submitted written comments or requested notice of the final permit decision” and that such notice “shall include reference to the procedures for appealing a decision on a * * * PSD * * * permit under § 124.19 of this part.” 40 C.F.R. § 124.15(a); *see also id.* § 55.6(a)(3).

Board is *required* to exhaust administrative remedies for the purpose of judicial review in federal court and the Board has jurisdiction to review the OCS permits MDE issued pursuant to MDE’s delegation under the CAA. *Id.* at 12. From those conclusions it follows that final permit issuance and notification requirements under 40 C.F.R. § 124.15 apply. Indeed, the requirement of Board review to exhaust administrative remedies and section 124.15 are inextricably intertwined. For example, under section 124.15, a final permit decision becomes effective 30 days after service of notice of the decision *unless* Board review is sought. 40 C.F.R. § 124.15(b)(2); *see also In re Atl. Shores Offshore Wind*, OCS Appeal No. 24-01, at 7-8 (EAB Mar. 14, 2025) (Order Granting Motion for Voluntary Remand). And it is section 124.15(a) that specifies that the notice shall include reference to the procedures for appealing a permit decision—the very notice that the Board said MDE must re-issue. *US Wind Inc.*, slip op. at 12-14. The Board’s conclusion is also consistent with part 55. *See* 40 C.F.R. § 55.6(a)(3) (applying the procedural provisions in part 124 to OCS permits). In sum, MDE must comply with the procedures in section 124.15 as well as any applicable procedures that are part of MDE’s delegation to issue OCS permits under the CAA. If any of those applicable procedures conflict with federal notice requirements, and MDE cannot comply with both, the more stringent requirements apply. *See id.* §§ 55.13(a), .14(a).

In its motion, MDE focuses on section 124.19(l)(3). That regulation provides that “[t]he Regional Administrator must promptly publish notice of any final agency action in the Federal Register.” *Id.* § 124.19(l)(3). MDE states, “[i]f MDE must notice in accordance with that regulation, MDE requires guidance as to how to effectuate publication in the federal register through the Regional Administrator.” MDE Motion at 2. In the current context,

MDE’s focus on section 124.19(l)(3) is misplaced. The section 124.19(l)(3) Federal Register notice occurs *after* administrative remedies have been exhausted, *see* 78 Fed. Reg. 5281, 5284-85 (Jan. 25, 2013). In cases involving challenges to federal permits issued by delegate states, the Board has addressed the Regional Administrator’s publication of notice in the Board’s decision resolving the petition for review. *See, e.g., In re Christian Cnty. Generation*, 13 E.A.D. 449, 463 (EAB 2008); *In re Prairie State Generating Co.*, 13 E.A.D. 1, 125 (EAB 2006), *pet. for review denied sub nom. Sierra Club v. EPA*, 499 F.3d 653 (7th Cir. 2007). Thus, the Board will address this requirement in its final decision on the merits of this matter to the extent necessary.

MDE also seeks an extension of the deadline to re-issue notice “by 30 days from the date of [the Board’s] clarification on the proper procedures.” MDE Motion at 2. In support of this request, MDE states that an extension of time is necessary “for practical compliance (e.g. advance submission; advance payment; etc.)” and to account for the leave schedules of MDE staff and managers. *Id.* MDE represents that it contacted counsel for Petitioners, US Wind, and EPA, and that “US Wind consents to an extension of time to re-issue the notice, EPA does not oppose the [Motion], and Petitioners take no position on the Motion.” *Id.* MDE argues that Petitioners would not be prejudiced by the Board granting MDE’s Motion. *Id.*

The Region also requests that the Board extend the deadline for the Region to file a brief to “60 days from the time that MDE re-issues its notice of permit issuance.” Region 3’s Unopposed Motion for Extension of Time at 1 (Dec. 23, 2025). The Region maintains that for it to determine whether to file a brief it is “critical to know whether additional petitions raising substantive concerns are filed following MDE’s re-issuance of notice” and notes that this will

not be known until 30 days after MDE re-issues notice. *Id.* at 2. In support of its request, the Region also notes governmental efficiency and accommodation of leave schedules. *Id.* at 1-2. The Region indicates that it conferred with counsel for MDE, US Wind, and Petitioners and represents that MDE consents to the Motion for Extension of Time and that Petitioners and US Wind do not oppose it. *Id.* at 2.

Based on the above representations by MDE and the Region, the Board grants their requests for extension of time. *See* 40 C.F.R. § 124.19(n). Accordingly, MDE must re-issue notice of its final permit decision no later than **Thursday, February 12, 2026**. The Region's brief and Petitioner's reply may be filed no later than 60 days after MDE re-issues notice of its final permit decision.

So ordered.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order on Motion for Clarification and Setting Deadline to Re-Issue Notice and Briefing Schedule* in the matter of US Wind Inc. – Maryland Offshore Wind Project, OCS Appeal No. 25-01, were sent to the following persons on January 13, 2026, in the manner indicated:

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