

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In re:

Ocean Era, Inc. Modified National Pollution
Discharge Elimination System Permit No.
FL0A00001 for the Velella Epsilon Facility in
the Gulf of Mexico

)
)
) **PETITIONERS' EXPEDITED**
) **MOTION FOR LEAVE TO**
) **EXCEED WORD LIMITATION**
)
)
)
)
)
)

Clay Garside (La. Bar # 29873)
Waltzer Wiygul & Garside, LLC
3201 General Degaulle Dr., Ste 200
New Orleans, LA 70114
clay@wwglaw.com
Art. 1313 Service: service@wwglaw.com
Tele: (504) 340-6300
Fax: (504) 340-6330

Attorney for Petitioners

Date: June 12, 2025

PETITIONERS' EXPEDITED MOTION FOR LEAVE

TO EXCEED WORD LIMITATION

Petitioners, Center for Food Safety (CFS), Recirculating Farms Coalition (Recirculating Farms), Tampa Bay Waterkeeper (TBWK), Suncoast Waterkeeper (SCWK), Healthy Gulf, and Food & Water Watch (FWW), respectfully move for leave to submit an appeal petition that exceeds the word limitations set forth in 40 C.F.R. § 124.19(d)(3). Petitioners acknowledge that such motions must demonstrate a compelling and documented need, and are only granted in unusual circumstances, all of which exist as described below.

This case presents novel issues, as it concerns a National Pollutant Discharge Elimination System (NPDES) permit for what would be the only industrial ocean finfish farm in U.S. federal waters. The case arises from the issuance of a NPDES permit to Ocean Era, Inc. to raise 20,000 fish (55,000 lbs of fish) in an offshore net pen facility off the coast of Sarasota, Florida, an environmentally vulnerable area with various endangered and threatened species and unique conditions, many of which have changed significantly since the issuance of the initial permit(s) in 2020/2022. Novel issues raised by this case include those concerning the Clean Water Act, Endangered Species Act, Marine Mammal Protection Act, National Environmental Policy Act, and the Ocean Dumping Act, as well as inconsistencies and omissions in initial documents as support for the modified permit. Each of these issues requires significant briefing, detailed discussion, legal analysis, and extensive references to the record. Further, this is a unique issue, in that there is a long and relevant history of two prior permits (2020 and 2022) and now a modified permit. Accordingly, there is lengthy, voluminous administrative record pertaining to this permit. The review of the history and still active portions of the original permit, and then the addition of new matters related to the modification, merits granting permission to file a petition

exceeding the normal word limit. Additionally, this is a multi-party petition, which requires each petitioner to explain their relation to the matters at hand, necessitating a longer than normal word limit.

After completing a comprehensive draft of the initial appeal petition, it is clear that confining it to the standard length permitted by 40 C.F.R. § 124.19(d)(3) will require that Petitioners omit important arguments necessary for their appeal, and will so limit their discussion of other complex, nuanced, and novel issues raised on this appeal as to interfere with their clarity and completeness. Accordingly, Petitioners respectfully request leave to file an appeal petition not to exceed 16,500 words. Counsel for EPA has authorized the undersigned to indicate that it is not opposed to the relief requested in this motion.

Petitioners' appeal is due June 14, 2025; as that is a Saturday, it becomes due Monday June 16, 2025. Petitioners have worked diligently to be brief and concise on the petition, but the extenuating circumstances have made it extremely challenging to provide required details and adhere to EAB requirements in the limited number of words. In order to allow Petitioners to effectively utilize any additional length that may be granted, Petitioners respectfully request that the EAB issue a ruling as soon as possible and, in any event, not later than close of business on Friday, June 13, 2025.

ARGUMENT

Although extensions of word count limitations are only granted in unusual circumstances, the circumstances here rise to the level of such unusual circumstances necessitating a word limit longer than usual. The record in this case is based on an extensive administrative record built over the course of five-plus years, concerning an initial permit, revised permit, and now the newly issued modified permit. Ocean Era, Inc. Modified National Pollution Discharge

Elimination System Permit No. FL0A00001 for the Velella Epsilon Facility in the Gulf of Mexico. The evidence is integrally related to the legal theories argued by both parties, many of which are novel and complex, and all of which require very fact-intensive inquiries. In order to properly brief these issues in its petition, Petitioners require some additional space to provide a detailed explanation of the legal concepts and supporting factual analysis to give the EAB a full understanding of the critical issues.

In the absence of an extension, Petitioners would be unable to properly address all of the issues with the modified permit, in line with the EAB requirements, and would thus be prejudiced in their ability to appeal the issuance of this modified permit (*see Withrow v. Larkin*, 421 U.S. 35,46-47(1975)(noting that "a fair trial ... is a basic requirement of due process" and "[t]his applies to administrative agencies which adjudicate as well as courts") (quotations and citations omitted)).

Moreover, the EAB has previously granted reasonable requests for word count extensions based on factors similar to those present in this case. *See In re Arizona Public Service Co.*, NPDES Appeal No. 19-06 (Order Granting Motion to Exceed Word Limit and Establishing Deadline for Responsive Materials, Nov. 18, 2019) (*available at* [https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/2BD47B456CE694B8852584B6005EAB5B/\\$File/Order%20Granting%20Motion%20to%20Exceed%20Word%20Limit%20...4.pdf](https://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/2BD47B456CE694B8852584B6005EAB5B/$File/Order%20Granting%20Motion%20to%20Exceed%20Word%20Limit%20...4.pdf)).

1. The Record in This Case is Voluminous

In *Arizona Public Service Co.*, the EAB granted an extension of the word limit based in part on the fact that the NPDES permit had a “‘long and relevant history’ that was important to convey in their petition for review,” as is the case here. *In re Arizona Public Service Co.*, NPDES Appeal No. 19-06, Order Granting Motion to Exceed Word Limit and Establishing

Deadline for Responsive Materials, Nov. 18, 2019, at 2. The record for this case began in September 2020, when the initial permit was issued. That permit was appealed by many of the same Petitioners here, resulting in a revised permit in 2022. The record consists of a 436-page Final Environmental Assessment (EA), 904-P-19-001, September 2020; an 85-page Ocean Discharge Criteria Evaluation; a 36-page Final Biological Evaluation; and a 24-page Final Essential Fish Habitat Assessment, among many other documents, including all the new documents related to the modified permit. There is also an extensive record pertaining to the appeal of the original permit.

Given this lengthy, voluminous record, clear grounds exist to grant an extension of length for Petitioners appeal.

2. The Special Circumstances of This Case Justify an Extension

An additional reason to grant leave to file an appeal brief with additional words is that, in addition to the voluminous record, the special circumstances of this case require a more extensive petition than would be warranted in the typical EAB appeal. The fact that this is a modified permit means that the record in this case contains more evidence than would typically be available in a usual NPDES challenge. Moreover, as discussed above, this case raises various novel issues concerning a raft of environmental laws, including the Clean Water Act, Endangered Species Act, Marine Mammal Protection Act, NEPA, and the Ocean Dumping Act. Additionally, the permit concerns an area with a unique environment, that has changed significantly over the course of the five years that this permit process has taken (including the identification of a new endangered species that only inhabits the Gulf), which necessitates detailed explanation. Finally, the fact that there are multiple petitioners that each must establish standing also gives grounds to grant an extension of length for the petition.

CONCLUSION

For the reasons stated above, the Petitioners respectfully request that they be granted an additional 2,500 words for the initial appeal petition, for a total of 16,500 words. Petitioners believe that any one of the bases set forth above is sufficient to find that Petitioners would face undue prejudice from having to comply with the word limit set forth in 40 C.F.R. § 124.19(d)(3).

Respectfully submitted this 12th day of June, 2025,

Clay Garside (La. Bar # 29873)
Waltzer Wiygul & Garside, LLC
3201 General Degaulle Dr., Ste 200
New Orleans, LA 70114
clay@wwglaw.com
Art. 1313 Service: service@wwglaw.com
Tele: (504) 340-6300
Fax: (504) 340-6330

Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Expedited Motion for Leave to Exceed Word Limitation attached hereto in the matter of Ocean Era, Inc.'s NPDES permit for Velella Epsilon were served by electronic mail, pursuant to the Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals dated September, 21, 2020, on the following persons, this 12th day of June, 2025:

Kevin J. McOmber
Administrator
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
Phone: (404) 562-9900
Email: McOber.Kevin@epa.gov
tyler.kip@epa.gov

Ocean Era, Inc.
c/o Neil Anthony Sims
PO Box 4239
Kailua-Kona, HI 96745
Phone: (808) 989-2438
Email: neil@ocean-era.com

Clay Garside (La. Bar # 29873)
Waltzer Wiygul & Garside, LLC
3201 General Degaulle Dr., Ste 200
New Orleans, LA 70114
clay@wwglaw.com
Art. 1313 Service: service@wwglaw.com
Tele: (504) 340-6300
Fax: (504) 340-6330

Attorney for Petitioners

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

In re:)	
)	
Ocean Era, Inc. Modified National Pollution)	ORDER GRANTING PETITIONERS'
Discharge Elimination System Permit No.)	EXPEDITED MOTION FOR LEAVE
FL0A00001 for the Velella Epsilon Facility in the)	TO EXCEED WORD LIMITATION
Gulf of Mexico)	
)	
)	
)	
)	
)	
)	

**ORDER GRANTING PETITIONERS' EXPEDITED MOTION
FOR LEAVE TO EXCEED WORD LIMITATION**

On June 12, 2025, the Center for Food Safety (CFS), Recirculating Farms Coalition (Recirculating Farms), Tampa Bay Waterkeeper (TBWK), Suncoast Waterkeeper (SCWK), Healthy Gulf, and Food & Water Watch (FWW) (collectively “Petitioners”) filed an expedited motion with the Environmental Appeals Board (“Board”) seeking leave to exceed the 14,000-word limit for their petition for review set forth in 40 C.F.R. § 124.19(d)(3). *See* Petitioners’ Expedited Motion for Leave to Exceed Word Limitation (June 12, 2025) (“Motion”).

Petitioners state in their motion that as there are multiple petitioners, “novel legal issues” and a “lengthy, voluminous administrative record” pertaining to the permit which “require[d] significant briefing.” Motion at 1. They explain that this NPDES permit has a “long and relevant history” that was important to convey in their petition for review. *Id.* Petitioners consulted with EPA prior to filing their motion and reported that EPA is not opposed to the relief requested. *Id.* Petitioners request that the Board grant them leave to exceed the word limit

by 2,500 words, for a total of 16,500 words.

Upon consideration of Petitioners' Motion seeking leave to exceed the word limit and the representations therein, the Board GRANTS Petitioners' Motion to exceed the word limit in its petition for review.

Responsive materials under 40 C.F.R. § 124.19(b) are due on or before **June 16, 2025**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: _____

By: _____

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Granting Petitioners' Expedited Motion to Exceed Word Limit and Establishing Deadline for Responsive Materials* in the matter of NPDES Permit FL0A00001, were sent to the following persons in the manner indicated:

By Electronic Mail:

Kevin J. McOmber
Administrator
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
Phone: (404) 562-9900
Email: McOber.Kevin@epa.gov
tyler.kip@epa.gov

Ocean Era, Inc.
c/o Neil Anthony Sims
PO Box 4239
Kailua-Kona, HI 96745
Phone: (808) 989-2438
Email: neil@ocean-era.com

Dated: _____
