

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

IN THE MATTER OF:)	
CAPE WIND ASSOCIATES, LLC)	Appeal No. OCS 11- 01
)	EPA Permit No. OCS-R1-01
_____)	
)	

PETITIONERS’ MOTION TO SUPPLEMENT THE RECORD

The Alliance to Protect Nantucket Sound and the Wampanoag Tribe of Gay Head/Aquinnah (“Petitioners”) hereby move to supplement the record in the above-captioned proceeding to include a document highly relevant to the issues before the Environmental Appeals Board (Board) in this appeal.

In their Petition for Review, Petitioners state that the air permit granted by Region 1 should be remanded on the basis of clear error, in that the entire air quality analysis was based on assuming that the construction activities, the most polluting aspect of the Cape Wind project, would be staged from Quonset Point, Rhode Island. In fact, the Petition asserts, Cape Wind plans to stage construction activities from New Bedford Harbor, Massachusetts, not Quonset Point. Petitioners noted that Region 1 put a “hold” on further processing of the Cape Wind permit application after a press conference held in October 2010 announced that construction would be staged from New Bedford. Then, in January, *after* Cape Wind requested that the Region continue processing its permit on the assumption that construction would be staged from Quonset Point, Cape Wind issued a press release saying that it would stage construction from New Bedford.

Now Petitioners have obtained a document through a Massachusetts Freedom of Information Act request that demonstrates unequivocally that Cape Wind intends to stage the project's construction from New Bedford. This document reveals that Cape Wind has been deliberately misleading the federal government in order to avoid the new air quality analysis that will be required if the construction staging is moved to a different state.

These facts are revealed in an e-mail sent on February 24, 2011, which Petitioners request be added to the record before the Board. The e-mail was sent by Kristin Decas, the Executive Director of the New Bedford Harbor Development Commission, to the Mayor of New Bedford and the Executive Director of the New Bedford Economic Development Council. E-mail Communication from Kristin Decas to Mayor Scott W. Lang and Mathew Morrissey (February 24, 2011) re: Cape Cod Wind Operations Plan. The e-mail relates a conversation between Decas and Mark Rogers, the spokesperson and Director of Communications for Cape Wind, in which Rogers admitted Cape Wind's attempt to deceive the government with respect to the location of construction staging.

Decas states that:

Mark wants us to know that their NEPA attorneys advise them to not change documented plans to avoid a full blown EIS for changes. He indicated that this [Construction and Operation] plan names Quonsett [sic] as the hub for staging, but it also notes that New Bedford is building a terminal that will be used if construction is complete in time. Being a public document, he wanted to give us the heads up, but *assured me once the operations plan is approved by NEPA [sic], they will file for a formal project change to name New Bedford as the staging hub.* His attorneys feel this is the best tact [sic] and are confident the project change should be seamless. (Emphasis added).

Petitioners were unable to seek inclusion of this document in the record previously because it was discovered only a few days ago. In an effort to determine

where Cape Wind intended to stage the construction of the wind farm, the Alliance filed a Freedom of Information Act request with the City of New Bedford on February 24, 2011, requesting all documents regarding the location of any facility associated with the Cape Wind project in New Bedford. The City did not make the requested documents available until March 30, 2011. The Alliance obtained the documents the next day, March 31, and reviewed them as rapidly as possible.

CONCLUSION

Petitioners respectfully request that the Board supplement the record in this proceeding with the attached e-mail sent on February 24, 2011 from the Executive Director of the New Bedford Harbor Development Commission, to the Mayor of New Bedford and the Executive Director of the New Bedford Economic Development Council.

Respectfully submitted April 5, 2011,

/s/ Richard E. Ayres

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the Rules of the Environmental Appeals Board of the U.S. Environmental Protection Agency, that on April 5, 2011, a copy of the foregoing Petitioners' Motion to Supplement the Record and accompanying Exhibit 1 were filed electronically with the Environmental Appeals Board via the Central Data Exchange system. I further certify that copies of the foregoing documents were served via U.S. mail on counsel of record today.

/s/ Richard E. Ayres

Richard E. Ayres