



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 10 2011

ENVIRONMENTAL APPEALS BOARD

Carl Dierker, Regional Counsel
Regional Counsel Office
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Boston, MA 02109

Re: Cape Wind Associates, LLC
Permit Number: OCS-R1-01
Appeal Number: OCS 11-01

Dear Mr. Dierker:

This is to advise you that the Environmental Appeals Board (the "Board" or "EAB") received on February 9, 2011, a petition dated February 9, 2011, filed by Richard E. Ayres, on behalf of the Alliance to Protect Nantucket Sound, and the Wampanoag Tribe of Gay Head/Aquinnah asking the Board to review a PSD determination by U.S. Environmental Protection Agency, Region 1.

A copy of the petition and exhibits can be found on the Board's website at www.epa.gov/eab. Click on "EAB Dockets" in the left-hand menu, and click on the "Active Dockets" link, and then click on the appropriate case name. If you have any difficulty accessing this document, please let me know.

To assist the Board in deciding whether the matters raised by Petitioners should be reviewed, please have your staff prepare a response that addresses Petitioners' contentions and whether Petitioners have satisfied the requirements for obtaining review under 40 C.F.R. section 124.19.

Response Seeking Summary Disposition. If you believe that the petition in its entirety may be appropriate for summary disposition, either because the Board does not have jurisdiction to consider the petition, the appeal is untimely, Petitioners lacks standing to file an appeal, or none of the issues raised in the petition were preserved for review, file a response to that effect by no later than February 28, 2011. Include relevant portions of the administrative record with your response.

Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010.¹ Alternatively, filing may be accomplished by filing a paper original (signed in blue ink) and two copies of these materials with the Board (at the address shown below) by the date specified above. A copy must be sent to Petitioners, and a certificate of service showing the date and method of service should be included with the filing. Petitioners shall have 10 days from the date of service of a response seeking summary disposition to file a reply with the Board, unless the Board determines otherwise.

If the Board determines that summary disposition is appropriate, the Board will issue an order to that effect. If the Board determines that summary disposition is not appropriate, or that the issue of summary disposition should be reserved until after a response to the merits of the petition is filed, the Board will issue an order directing that a response to the merits of the petition be filed within 15 days of the Board's order.

Response not Seeking Summary Disposition. If you do not file a response seeking summary disposition, file a response to the merits of the petition by not later than March 15, 2011. Include with your response relevant portions of the administrative record, together with a certified index of the entire administrative record.

Filing may be accomplished electronically pursuant to the Board's Order of January 28, 2010² or by filing an original (signed in blue ink) and two of these materials with the Board. In addition, a copy of the filing must be sent to Petitioners, and a certificate of service showing the date and method of service should be included with the filing.

All documents that are sent through the U.S. Postal Service, Express Mail, hand-delivered, via Courier must include the name of the organization, address, facsimile

¹ The Board has issued an Order authorizing the electronic filing of documents in cases involving permit appeals. See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22 (Jan. 28, 2010), available at <http://www.epa.gov/eab> (click "Standing Orders" on sidebar). Instructions on registration and document filing are available by using the "Electronic Filing" link on the Board's website. Documents containing confidential business information should not be filed electronically as the Board considers business confidentiality claims waived when a document is electronically filed. *Id.* at 5-6. Please note that if a party, or its attorney or other representative, electronically files any document, such as a notice of appeal, brief, or motion, that exceeds fifty (50) pages in length, inclusive of the certificate of service, table of contents, and table of authorities, but exclusive of exhibits or attachments, it must also send one paper copy of that document to the Board by U.S. Mail, hand, courier, or commercial delivery service within one business day of the date of the electronic filing. See *id.* at 4-5. Such paper copy must be accompanied by a signed certification stating that it is identical to the electronically filed document. *Id.* at 5. If the combined page length of all of the exhibits or attachments submitted in support of a brief or motion exceeds fifty (50) pages, the requirement to submit a paper copy, and its timing, applies to the entire set of exhibits or attachments. *Id.* Anyone electronically filing exhibits or attachments in support of a brief, motion, or other document should submit them separately from the associated brief or motion. *Id.* at 3.

² See *supra* note 1 regarding procedures for electronically filing documents with the Board.

number, telephone number, and an email address, if available.³

Documents that are sent through the U.S. Postal Service (except by Express Mail) **MUST** be addressed to the Environmental Appeals Board's mailing address which is:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board 1103B
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Documents that are sent to the Environmental Appeals Board's hand-delivery address through the U.S. Postal Service (except by Express Mail) will be returned to the sender and shall not be considered as filed.

Hand Delivery Address

Documents that are **hand-carried** in person, delivered via Courier or mailed by Express Mail or delivered by a non-U.S. Postal Service carrier (e.g., Federal Express or UPS) **MUST** be delivered to:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
Ronald Reagan Building, EPA Mail Room
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Documents that are hand-carried may be delivered to the Ronald Reagan Building, EPA Mail Room, from 8:30 a.m. to 4:00 p.m., Monday through Friday (excluding federal holidays). Documents filed electronically may be filed at any time up to 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.

Filing Requirements

IMPORTANT: All documents, including the materials due February 28, 2011 and March 15, 2011 must reference the appeal number. In addition, any envelope or other packaging

³ All mail sent to the Environmental Protection Agency may be delayed by a random sterilization procedure. Parties are encouraged to utilize the Board's e-filing system or hand or courier delivery when filing pleadings with the Board. Additional information regarding mail delivery to the Board is available on the Environmental Appeals Board website (www.epa.gov/eab) at the Clerk of the Board or Frequently Asked Questions links.

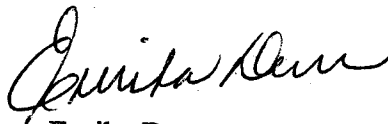
containing documents sent to the address, as prescribed above, must bear a complete and accurate return address in the upper left hand corner. The envelope or packaging must also clearly state the case name and case identifier in the lower left hand corner.

No further briefing will be allowed except by order of the Board.

A copy of this letter is being sent to the Petitioners as notification of these filing requirements.

Thank you for your attention to this matter.

Sincerely,



Eurika Durr
Clerk of the Board

cc: Richard E. Ayres
Kristin L. Hines
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1615 L Street, N.W., Suite 650
Washington, D.C. 20036

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75 Arlington Street, Suite 704
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