

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL APPEALS BOARD

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In Re: Ocean Era, Inc., Permit Applicant)
Permitted Facility: Velella Epsilon Facility) NPDES Appeal No. 20-09
)
NPDES Permit No. FLOA00001)
_____)

Status Report

The Environmental Protection Agency, Region 4 (the Region), files this Status Report in accordance with the Environmental Appeals Board’s (the Board) Order Requiring Status Report issued on February 17, 2021 (Order). The Board’s Order in this NPDES Permit Appeal notes that the permitted facility is novel, and that the permit appears to present “issues of national significance concerning the application of the CWA, NEPA, ESA and the MMPA to offshore aquaculture facilities.” The Order further states that the Appeal raises several issues of first impression for the Board, and cites to the Biden Administration’s Executive Order requiring review of past actions. Based on these circumstances, the Order provides:

Thus, preparation and filing of a status report, reflecting consultation with the Office of General Counsel and the Office of Water (including incoming Agency officials as appropriate) will provide the Agency with an opportunity to review this first-of-its-kind permit in light of the above-referenced Executive Order and ensure that the Region’s positions in this proceeding reflect the Agency’s coordinated views. [citations to recent abeyance requests in other EPA permit appeals omitted]...Accordingly, the Region shall file a status report no later than March 31, 2021, informing the Board whether the Board should proceed with deliberations on this matter, including whether to set this matter for oral argument.

After receiving the Board’s Order, the Region has, as directed, consulted with the Agency’s Office of General Counsel and Office of Water (including incoming Agency officials)

and confirmed that the Agency's positions reflected in the Permit and the Region's Response to the Petition reflect the Agency's coordinated views.

With respect to oral argument, the Agency notes that, because of the small size of the permitted facility and the short duration of its permitted operation, it does not find that this matter raises difficult issues or issues of national significance. Accordingly, the Agency continues to believe that oral argument is not necessary. However, the Agency supports the scheduling of oral argument to the extent that the Board has questions and/or finds that oral argument will aid in its decision-making.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I, Paul Schwartz, hereby certify that on May 28, 2021, I caused to be served a true and correct copy of the foregoing Status Report, via the EAB's electronic filing system, and by sending a true and correct copy, via e-mail, to the following:

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