



generation projects off the coast of New Jersey—Atlantic Shores Offshore Wind Project 1 and 2, collectively referred to as “the Project.” *See* Region 2, U.S. EPA, *OCS Air Permit Issued to Atlantic Shores Offshore Wind Project 1, LLC for the Atlantic Shores Project 1 and Project 2, EPA Permit No. OCS-EPA-R2 NJ 02*, at 1 (Sept. 30, 2024) (A.R. A.2). The Region and Atlantic Shores each filed a response to the petition on November 5, 2024.

On February 28, 2025, the Region filed a motion for a voluntary remand pursuant to 40 C.F.R. § 124.19(j) requesting that the Board remand the Permit back to the Region so that the Region has the opportunity to reevaluate the Project and its environmental impacts in light of the January 20, 2025 Presidential Memorandum entitled *Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government’s Leasing and Permitting Practices for Wind Projects*. EPA Region 2’s Motion for Voluntary Remand 1 (Feb. 28, 2025) (“Motion”); *see* Presidential Memorandum, 90 Fed. Reg. 8363 (Jan. 29, 2025). The Presidential Memorandum directs an immediate review of Federal wind leasing and permitting practices and provides that the heads of various executive department agencies, including the Administrator of the Environmental Protection Agency, “shall not issue new or renewed approvals, rights of way, permits, leases, or loans for onshore or offshore wind projects pending the completion of a comprehensive assessment and review of Federal wind

---

brief in this matter. Atlantic Shores Offshore Wind, *Outer Continental Shelf Air Permit Application* (Sept. 1, 2022; revised June 2024) (A.R. 2.1.1). The Region issued a draft permit for public comment shortly thereafter on July 11, 2024, and the Region issued its final permit decision on September 30, 2024. Final Permit Letter at 1-2; Region 2, U.S. EPA, *OCS Air Permit Issued to Atlantic Shores Offshore Wind Project 1, LLC for the Atlantic Shores Project 1 and Project 2, EPA Permit No. OCS-EPA-R2 NJ 02*, at 1 (Sept. 30, 2024) (A.R. A.2).

leasing and permitting practices.” Presidential Memorandum, 90 Fed. Reg. at 8363-64. The Region’s Motion states that SLBI does not oppose the Motion but that Atlantic Shores objects to it. *Id.* at 5.

On March 7, 2025, Atlantic Shores filed a response objecting to the Motion, arguing that the Region has not provided “good cause” for its Motion and that the motion is not in the interest of administrative or judicial efficiency. Atlantic Shores Offshore Wind, LLC’s Opposition to EPA Region 2’s Motion for Voluntary Remand 1 (Mar. 7, 2025) (“Opposition”).

It is well established that the Board has broad discretion to grant a voluntary remand, and we have held that “[a] voluntary remand is generally available where the permitting authority has decided to make a substantive change to one or more permit conditions, *or* otherwise wishes to reconsider some element of the permit decision before reissuing the permit.” *In re Desert Rock Energy Co., LLC*, 14 E.A.D. 484, 493 (EAB 2009) (emphasis added) (granting a voluntary remand in a PSD permit where, among other things, the Agency was contemplating changes to the permit). Under 40 C.F.R. part 124, a “permit issuer may unilaterally withdraw a permit that is the subject of a petition for review within a specified time during the review proceeding \* \* \* and may request by motion a voluntary remand of the permit (or a portion thereof) at *any time* after that.” *In re GSP Merrimack, LLC*, 18 E.A.D. 524, 542 (EAB 2021) (emphasis added); *see* 78 Fed. Reg. 5281, 5282 (Jan. 25, 2013) (specifying that “[n]othing in [section 124.19] prevents the Region from seeking to withdraw the permit by motion at any time”).

In its Opposition, Atlantic Shores argues that the Region has failed to show “good cause” for a voluntary remand because “it has not identified any condition in the Final Permit it is seeking to substantively change, nor any element of the Final Permit decision it wishes to

reconsider before reissuing the permit.” Opposition at 5. Atlantic Shores misstates the Board’s precedent when it states that the Board will “only” grant a motion for voluntary remand in specific circumstances. *Id.* at 4. This reading is far too restrictive. *Id.* at 4. The applicable regulation, its history, and Board precedent is the opposite of restrictive. The Board treats requests for voluntary remand liberally and is not limited to circumstances where the Region provides specific substantive changes to the final permit or specific elements of the permit decision it seeks to reconsider. *See Desert Rock*, 14 E.A.D. at 498 (“Similarly, the federal courts tend to liberally grant agency motions for remand where an agency seeks to reconsider its prior decision.”). The Board has generally exercised its broad discretion to grant a permit issuer’s voluntary remand request where the permitting authority is reevaluating its permit decision, because in this situation “it would be highly inefficient for the Board to issue a final ruling on a permit.” *Id.* at 497; *see also In re City of Nezperce*, NPDES Appeal No. 19-02, at 2 (EAB Sept. 30, 2019) (Order Granting Unopposed Motion for Voluntary Remand and Dismissing Petition for Review) (granting motion for voluntary remand where the Region “clearly expressed its intent to reconsider its final permit decision”). Granting a permitting authority’s request for a voluntary remand also furthers the Agency policy of ensuring that “most permit conditions should be finally determined at the Regional level.” Consolidated Permit Regulations, 45 Fed. Reg. 33,290, 33,412 (May 19, 1980); *GSP Merrimack*, 18 E.A.D. at 543; *see also Desert Rock*, 14 E.A.D. at 495. Furthermore, the Board typically grants a motion for remand where it “makes sense from an administrative or judicial efficiency standpoint.” *In re Peabody W. Coal Co.*, 14 E.A.D. 712, 718 (EAB 2010) (quoting *Desert Rock*, 14 E.A.D. at 497). The Board has done so in cases even after the parties have filed briefs. *See, e.g., GSP Merrimack*, 18 E.A.D. at 526; *Desert Rock*, 14 E.A.D. at 486-87.

The circumstances here support a voluntary remand. In this case, the Region has clearly stated its intent to reconsider the Project and permit decision in light of the Presidential Memorandum. As the Region explained, it seeks remand of the Permit to include it and the permit application “in the comprehensive review of permitting practices called for in the Memorandum.” Motion at 4. As part of this review, the Region plans to “confer with other executive branch agencies regarding further evaluation of various impacts that may result from the Project, *including* impacts on birds, wildlife, fishing, and other relevant environmental concerns described in the Presidential Memorandum.” *Id.* (emphasis added). The Presidential Memorandum’s scope and direction is broad, and the Region’s Motion offered an example of part of the permit decision it seeks to reconsider. *Id.* This example is not an exclusive list. The overall intent expressed by the Region is to reevaluate the Project and its environmental impacts, something called for in issuing CAA PSD permits and grounded in applicable law.<sup>3</sup> As

---

<sup>3</sup> Atlantic Shores argues that the Presidential Memorandum “calls for assessment of impacts [that are] outside the scope of EPA’s air permitting decision” such as “wildlife, fishing, navigational safety, national security, and economic and commercial issues.” Opposition at 10. To the contrary, the scope of EPA’s permitting decision includes an evaluation of the impact of the project’s air emissions on the environment, and it appears this would be part of the environmental impact review Region 2 seeks to undertake and is grounded in the applicable law. In addition, one of the examples of the review the Region intends to conduct involves impacts to fish, wildlife, and other species and habitat which is required by the Region’s obligations to comply with the Endangered Species Act (the “ESA”) in issuing CAA PSD permits. Motion at 4; *see also* ESA § 7(a)(2), 16 U.S.C. § 1536 (requiring each federal agency “to insure that action authorized by \* \* \* [the] agency \* \* \* is not likely to jeopardize the continued existence of any endangered [] or threatened species” or destroy critical habitat). The cases relied on by Atlantic Shores do not change this analysis. Both *In re Shell Offshore, Inc.*, and *In re Knauf Fiber Glass, GmbH* involved issues the Board found to be beyond the scope of Board review because they were not “requirements of the PSD provisions of the CAA or EPA’s implementing regulations and have not been otherwise linked to the federal PSD program in the context of this case.” 8 E.A.D. 121, 162 (EAB 1999); 13 E.A.D. 357, 405-06 n.66 (EAB 2007). However, the issues raised here, including air emissions and the ESA, are linked to the federal PSD program. With

discussed above, and contrary to Atlantic Shores' argument, the Board's broad discretion to grant a voluntary remand is not limited to circumstances where the Region provides specific substantive changes to the final permit it wishes to make or specific elements of the permit decision it seeks to reconsider.

For the Board to adjudicate the challenge to a permit decision that the permit issuer intends to reconsider would be the height of administrative inefficiency. The Board "cannot predict what the Region may, or may not, do on remand nor is it appropriate for the Board to provide a legal opinion on the merits of these theoretical outcomes." *Desert Rock*, 14 E.A.D. at 507. In fact, issuing an opinion on the merits before the Region's reevaluation of its permit decision would essentially be offering an advisory opinion, which the Board does not do. *Id.*; *see also GSP Merrimack*, 18 E.A.D. at 544. Given the Region's expressed intent to review and reconsider the permit decision, we find that granting the Motion is in the interest of administrative and judicial efficiency. *See In re Peabody W. Coal Co.*, 14 E.A.D. 712, 716 (EAB 2010) ("In the part 124 context, \* \* \* the Board has exercised broad discretion to manage its permit appeal docket by ruling on motions presented to it for various purposes, including motions for voluntary remand."); 78 Fed. Reg. at 5282-83 (noting the Board's "inherent

---

respect to the ESA, and as appropriate, the Region explained in its response to comments that it relied on other agencies' analyses related to many of these impacts when issuing the Permit. *See* Region 2, U.S. EPA, *Response to Public Comments*, OCS Air Permit EPA Permit No. OCS-EPA-R2 NJ 02, at 13, 27-28, 34 (Sept. 29, 2024) (A.R. A.3) (Responses 4.1, 4.39, and 4.55); Fact Sheet at 63-66 (summarizing the interrelated roles of various agencies in approving the Project). Importantly, a Region may choose *not* to rely on those other agencies' analyses. *See In re Ariz. Pub. Serv. Co.*, 18 E.A.D. 245, 319 (EAB 2020); *In re Phelps Dodge Corp.*, 10 E.A.D. 460, 487 (EAB 2002). The Presidential Memorandum contemplates coordination across executive branch agencies during the review process, which could impact the Region's reliance on the analysis related to the above issues it considered in issuing PSD permits.

authority to manage its docket” and that nothing in part 124 prevents a motion for voluntary remand at any time).

Atlantic Shores further contends that the Presidential Memorandum “does not require or even allow Region 2 to withdraw or reconsider the Final Permit” because the Permit was final and issued on September 30, 2024, and therefore any action after this would not be the issuance of a new permit.<sup>4</sup> Opposition at 7-8. Apparently, Atlantic Shores bases this argument on its view that the Region has already issued a “final permit.” *Id.* at 8. Here, a petition was filed challenging the Region’s permit decision and the Region has now filed its Motion to reconsider the permit application and permit decision in light of the Presidential Memorandum before the Permit becomes final agency action. The Agency’s final action does not occur “until the Regional Administrator issues a subsequent ‘final permit decision’ under section 124.19 *after* administrative review proceedings are exhausted.” 78 Fed. Reg. at 5284-85; *see also* 40 C.F.R. § 124.19(*I*)(2). As noted above, the scope of the Presidential Memorandum is broad, and the Region has indicated that it plans to include the permit application and permit decision in the review of permitting practices under the Presidential Memorandum. Motion at 4. The Board finds that granting remand is appropriate because no final decision on the permit decision has

---

<sup>4</sup> Atlantic Shores cites to Agency guidance for the proposition that a permit is “issued” when the Region “makes a final decision to grant the application.” Opposition at 8. However, the cited guidance is inapposite and relates to when permits that are issued, but not yet effective, should address new regulatory requirements. Office of Air Quality Planning & Standards, U.S. EPA, *PSD and Title V Permitting Guidance for Greenhouse Gases*, at 3 n.6 (March 2011). As the Board has held, “the Agency has the discretion to remand permit conditions for reconsideration in light of legal requirements that change before the permit becomes final agency action.” *In re Dominion Energy Brayton Point, LLC, Brayton Point Station*, 12 E.A.D. 490, 618 (EAB 2006).

taken place and no final agency action has yet occurred. *See* 40 C.F.R. § 124.19(*I*). Atlantic Shores does not at this time have a PSD permit to construct or operate its project. In fact, the definition of permit does not include “any permit which has not yet been the subject of final agency action.” *Id.* § 124.2; *see also id.* §§ 124.15(b), .16(a). Moreover, the regulations provide that when a permit involves a new source review permit, “the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action.” *Id.* § 124.16(a). Thus, Atlantic Shores is incorrect when they assert the permit has already been issued. This may occur only after the completion of any remand proceedings and the Regional Administrator issues a final permit decision.

Finally, Atlantic Shores argues that moving for a voluntary remand “without good cause” has the effect of circumventing the statutory timeframe provided in section 165(c) of the Clean Air Act and contravening the terms of Atlantic Shores’ lease. *See* CAA § 165(c), 42 U.S.C. § 7475(c). “As an initial matter, nothing in section 165(c) prohibits the Board from granting a motion for voluntary remand.” *Desert Rock*, 14 E.A.D. at 501. Whether any challenges to the timeframes in this permit proceeding are now or in the future valid, particularly considering the revised permit application, such claims are outside the scope of Board review. *See* CAA § 304(a)(2), 42 U.S.C. § 7604(a)(2) (granting district courts of the United States the jurisdiction to compel nondiscretionary agency action unreasonably delayed); *see also* note 2, above. Nor are the terms of Atlantic Shores’ lease or lease rights within the scope of Board review. In any event, we find that neither issue prevents the Region from requesting a remand, or the Board from granting it under the circumstances.

For the reasons provided above, the Board hereby **GRANTS** the Region’s Motion for Voluntary Remand. Accordingly, OCS Appeal No. 24-01 is dismissed. Upon completion of the




remand proceedings, the final permit decision becomes the final agency action subject to judicial review. 40 C.F.R. § 124.19(l)(2). Following a Board remand of a permit decision, an appeal to the Board is not required unless the Board “specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.” *Id.* § 124.19(l)(2)(iii). Under the circumstances of this case and to expedite consideration of the permit decision the Board is not requiring, and will not accept, an appeal to the Board on the final permit decision following remand in this case.

So ordered.<sup>5</sup>

**ENVIRONMENTAL APPEALS BOARD**

Dated: March 14, 2025

By:   
Mary Kay Lynch  
Environmental Appeals Judge

---

<sup>5</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Aaron P. Avila, Ammie Roseman-Orr, and Mary Kay Lynch.

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing *Order Granting Motion for Voluntary Remand* in the matter of Atlantic Shores Offshore Wind, LLC, OCS Appeal No. 24-01, were sent to the following persons in the manner indicated:

**By Email:**

**For Petitioner:**

Thomas Stavola Jr. Esq.  
Law Office of Thomas Stavola, Jr., LLC  
[tstavolajr@stavolalaw.com](mailto:tstavolajr@stavolalaw.com)

**For Atlantic Shores Offshore Wind, LLC:**

Hilary Tompkins  
Hogan Lovells US LLP  
[hilary.tompkins@hoganlovells.com](mailto:hilary.tompkins@hoganlovells.com)

Brian Malat  
Hogan Lovells US LLP  
[brian.malat@hoganlovells.com](mailto:brian.malat@hoganlovells.com)

Hayley Fink  
Hogan Lovells US LLP  
[hayley.fink@hoganlovells.com](mailto:hayley.fink@hoganlovells.com)

**For EPA Region 2:**

Liliana Villatora  
Air Branch Manager  
Office of Regional Counsel  
U.S. EPA Region 2  
[Villatora.Liliana@epa.gov](mailto:Villatora.Liliana@epa.gov)

Sara Froikin  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region 2  
[Froikin.Sara@epa.gov](mailto:Froikin.Sara@epa.gov)

Robert DeLay  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region 2  
[Delay.Robert@epa.gov](mailto:Delay.Robert@epa.gov)

Brian Doster  
Air and Radiation Law Office  
EPA Office of General Counsel  
[Doster.Brian@epa.gov](mailto:Doster.Brian@epa.gov)

Dated: Mar 14, 2025

*Tommie Madison*

\_\_\_\_\_  
Tommie Madison  
Clerk of the Board