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ENVIR. APPEALS BOARD

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

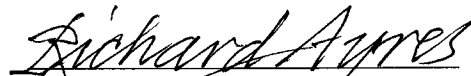
Re: In the Matter of Cape Wind Associates, LLC, OCS 11-01

March 21, 2011

Dear Clerk of the Board:

Please find enclosed a Notice of Supplemental Authority and the accompanying Exhibit A, Cape Wind's Construction and Operations Plan, submitted on behalf of The Alliance to Protect Nantucket Sound ("Alliance") in the Matter of Cape Wind Associates, LLC, OCS 11-01. These documents have also been submitted to counsel of record today.

Respectfully submitted,



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Counsel for The Alliance to
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Cc: Ronald A. Fein, U.S. EPA Region 1
Geraldine E. Edens, McKenna Long & Aldridge LLP

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

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ENVIR. APPEALS BOARD

IN THE MATTER OF:
 CAPE WIND ASSOCIATES, LLC

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Appeal No. OCS 11-01
 EPA Permit No. OCS-R1-01

NOTICE OF SUPPLEMENTAL AUTHORITY

The Alliance to Protect Nantucket Sound (“Alliance”) hereby respectfully requests the Environmental Appeals Board (“EAB” or “Board”) to take notice in the above-captioned matter of Cape Wind’s revised Construction and Operations Plan (“COP”) for its proposed wind energy facility, dated February 4, 2011. Statements in the COP are relevant to the Board’s review of an Outer Continental Shelf (OCS) Air Permit issued by EPA Region 1 to Cape Wind for the Cape Wind Energy Project (“project”). A copy of the COP is submitted with this Motion as Exhibit A.

The COP is required by, and was submitted to, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). However, the COP contains statements by Cape Wind concerning 1) the project’s construction staging location, a factual issue relevant to the permit decision before the EAB; and 2) information on the status of outstanding permits for the project as of February, 2011.

I. STAGING LOCATION

Statements in the COP pertain to the issue of where the staging location for construction activities for the proposed project will be, a point of contention between the parties to this petition – whether Quonset Point, Rhode Island, or New Bedford, Massachusetts. This issue is relevant to the permit now before the EAB because Region 1's Air Permit relates to emissions from the project's construction, operations, maintenance, and repair activities.

The COP avoids a commitment to one construction staging location. In relevant part, the COP states:

[T]his COP is submitted with Quonset Point serving as the Project's staging area, and BOEMRE should review this filing on that basis. In the event, however, that the New Bedford terminal does become available and CWA proposes its utilization for all or a substantial portion of the Project's staging requirements, CWA would submit a notice of project change and seek an appropriate and corresponding COP modification at that time.

COP at 98; see also Appendix E to the COP, Safety Management System, Section 4.1 (discussing the construction staging area located at Quonset Point, Rhode Island, *or* New Bedford Harbor, New Bedford, Massachusetts). The COP thus reiterates the ambiguous statements in the declaration of Cape Wind President James Gordon, contained in Exhibit 1 of Cape Wind's Response to Petition for Review, which Cape Wind erroneously cites to show that the company is committed to the Quonset Point site.

EPA's Air Permit was based upon an analysis done by BOEMRE that assumed the construction support was to be located in Rhode Island. Based on this assumption, the BOEMRE analysis projected that the emissions of NO_x into Rhode Island's air would exceed 100 tons in year one, triggering a requirement to perform an air quality analysis.

No such analysis was done for Massachusetts, as BOEMRE had concluded that neither total emissions of nitrogen oxides (NOx) nor those of volatile organic compounds (VOC) into Massachusetts's air would exceed the 100 tons per year threshold triggering review. These conclusions are no longer tenable, however, if the staging location is located in Massachusetts rather than Rhode Island.

If the staging location for construction activities—the greatest source of emissions associated with the project— were located in Massachusetts, rather than Rhode Island, it would require new air quality modeling and significant changes to the State Implementation Plans of both states that would no doubt require the applicant to obtain offsets from Massachusetts sources rather than sources in Rhode Island – essentially a duplication of the permit process.

II. OUTSTANDING PERMITS

The COP also contains information on the status of federal and state permits as of February 2011, which Cape Wind referred to in its Motion for Expedited Review. Motion at 2. In its Motion for Expedited Review, Cape Wind stated that it “has received all the state permits and approvals necessary to begin construction,” and that expedited review is therefore necessary to keep the project on schedule. *Id.* The COP, however, shows that there are still a number of outstanding permits and approvals Cape Wind must obtain prior to proceeding with construction, contrary to Cape Wind's statements otherwise. *See* COP, Table 1.4-1.

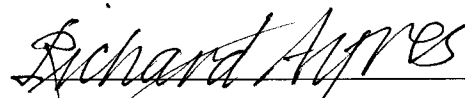
Regarding state permitting, which Cape Wind claims to be complete, the project has yet to receive a Massachusetts Bird Banding permit and State Scientific Collection permit from the Massachusetts Division of Fisheries and Wildlife. *Id.* On the federal

level, the COP identifies six outstanding permits from the following agencies: the U.S. EPA for stormwater; U.S. Coast Guard; National Marine Fisheries Service; U.S. Geological Service; U.S. Fish and Wildlife Services; and the National Park Service. *Id.* Further, the COP states that “pre-construction avian work is anticipated to take approximately one year before the installation of WTGs” [turbines]. COP at 69. This timeline contradicts Cape Wind’s statements that it has received all necessary permits to begin construction and that it is ready to proceed within weeks. In fact, Cape Wind has a number of permits outstanding, giving the Board ample time to undertake considered review of Region 1’s Air Permit.

III. CONCLUSION

As the COP contains representations by Cape Wind on matters directly before the Board, as offered by Cape Wind in its Response to Petition for Review and Motion for Expedited Review, the Alliance respectfully requests that the Board take notice of the statements of the COP.

Respectfully submitted, March 21, 2011.



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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 March 21, 2011, that the following were hand-delivered to the Clerk of the Environmental Appeals Board: Notice of Supplemental Authority; and accompanying Exhibit A, Cape Wind Associates' Construction and Operations Plan ("COP"). A copy of the foregoing documents were served today as paper copies on interested parties in this matter, Cape Wind Associates, and EPA Region 1, by mail.

/s/ Richard E. Ayres

Richard E. Ayres