

**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 FOR LEAVE TO FILE REPLY BRIEF

The Alliance to Protect Nantucket Sound and the Wampanoag Tribe of Gay Head/Aquinnah ("Petitioners") hereby move for leave to file a reply to the briefs submitted in the above-captioned matter. Petitioners filed their Petition for Review on February 9, 2011. Respondent Region 1 of the U.S. Environmental Protection Agency and Intervenor Cape Wind Associates (collectively, "Respondents") filed their Responses on March 15, 2011.

Both the Region's and Cape Wind's Response briefs dismiss Petitioners' claims concerning the change in staging location for the project's construction phase as unsupported by the record. Cape Wind Response at 7 (stating that Petitioners' claim is "baseless"); Region 1 Response at 85 (stating that "this assertion is unsupported by the record."). Petitioners seek leave to file a reply to correct these inaccuracies, which are, despite the Region's contentions to the contrary, central to one of the primary legal issues

raised in the Petition.¹ The reply demonstrates that Respondents' statements are factually incorrect and explains to the Board the significance of the February 24 email document on this point, which Petitioners moved to supplement the record with on April 5, 2011. Petitioners only obtained this email from the results of a FOIA on March 31, 2011.

More generally, Petitioners request an opportunity to respond to Respondents' briefs, which together run more than one hundred pages of substantive argument. Petitioners seek to correct several errant statements made by Respondents on dispositive issues, and to clarify their own argument where Respondents have misstated Petitioners' position in their responses. *See, e.g.*, Region 1 Response at 45 (stating that Petitioners had submitted "detailed comments" on the 1-hour NO₂ and SO₂ modeling and therefore "have had an opportunity to address these issues" already). This statement, like others made by Respondents, is an inaccurate presentation of a significant issue that requires correction.

Accordingly, Petitioners respectfully move for leave to file the enclosed reply.

Respectfully submitted, April 5, 2011.

/s/ Richard E. Ayres

Richard E. Ayres
Ayres Law Group
1615 L Street, N.W., Suite 650
Washington, DC 20036
Tel: (202) 452-9200

¹ Paradoxically, the Region states in its brief that "while [. . .] this issue [moving the staging location] is of limited or no relevance to the Permit" because the permit does "not itself regulate the project's staging location," the Region itself previously inquired with Cape Wind whether the staging location was to be moved "because air quality modeling could potentially be affected by vehicle travel paths, and because certain other non-Clean Air Act requirements to which the issuance of the Permit was subject could potentially be affected by a change to the project location." Region 1 Response at 85. Beyond this admission in its brief, the Region's own actions, i.e., halting all work on the permit until Cape Wind clarified this issue, belie the Region's assertion that this issue is of "limited or no" relevance to the permit.

Fax: (202) 416-0155
ayresr@ayreslawgroup.com

Counsel for The Alliance to
Protect Nantucket Sound

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 for Leave to File Reply Brief was filed electronically with the Environmental Appeals Board via the Central Data Exchange system. I further certify that a copy of the foregoing document was served via U.S. mail on counsel of record today.

/s/ Richard E. Ayres

Richard E. Ayres