

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

In Re:

Atlantic Shores Offshore
Wind, LLC, for the Atlantic
Shores Project 1 and
Project 2

EPA Permit Number: OCS-EPA-R2 NJ 02

Appeal No. _____

NOTICE OF APPEAL

Save Long Beach Island, Inc., (“SLBI”) a non-profit organization, participated in the public comment period in connection with the above captioned Air Permit pursuant to the Clean Air Act (“CAA”). SLBI hereby submits this Petition for Review of the permit decision referenced (issued on September 30, 2024), in accordance with 40 CFR § 124.19, appeal of a PSD (Prevention of Significant Deterioration) permit. Documentation germane to this Petition is attached in support of the brief, *infra*.

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TABLE OF CONTENTS

INTRODUCTION	1
I. ARGUMENT.....	2
A. EPA Arbitrarily and Capriciously Approves the Permit, as it Inadequately Considers the Determinants of PM 2.5 24 Hour Values	2
B. EPA Arbitrarily and Capriciously Approves the Permit, as the Relevant NJ State Implementation Plan Contains no Provision for Offshore Emissions.....	6
CONCLUSION/REQUEST FOR RELIEF	7
STATEMENT OF COMPLIANCE WITH WORD LIMITATION	8

TABLE OF AUTHORITIES

Cases

Sur Contra la Contaminacion v. EPA, 202 F.3d 443 (1 st Cir. 2000).....	2
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Statutes

42 USCS § 7604.....	1
Administrative Procedures Act, 5 U.S.C. § 706(2)(A)	2

Regulations

40 CFR § 51.308(3)(iv).....	5
40 CFR §124.19.....	1
40 CFR §124.19(a)(3).....	1
40 CFR 52.21(c).....	1

INTRODUCTION

Pursuant to the procedures set forth at 40 CFR §124.19, SLBI hereby appeals the EPA's approval of air permit OCS-EPA-R2 NJ 02, and after filing its public comments in connection with same, now seeks the review of the Environmental Appeals Board.¹ SLBI contends that the EPA – notwithstanding clarifications to certain of SLBI's initial complaints – continues to violate the CAA² and APA by arbitrarily authorizing a permit that possesses substantive factual deficiencies. Those deficiencies, as fully adumbrated *infra*, include the non-disclosure of, and/or failure to employ, certain important determinants in the 24-hour PM 2.5 analysis. Further, the approval of the permit is arbitrary as the NJ State Implementation Plan does not include the offshore emission source of Atlantic Shores' project. For both of these reasons, SLBI requests that the approval of OCS-EPA-R2 NJ 02 be set aside until such deficiencies are rectified.

¹ Such petition for review is timely, 40 CFR §124.19(a)(3), as it is filed within 30 days of final agency action on the above captioned Air Permit, and this Board maintains jurisdiction.

² Clean Air Act, 42 USCS § 7604. SLBI contends violations of the PM 2.5 24-hour standard, as delineated in the CAA regulations at 40 CFR 52.21(c).

I. ARGUMENT

A. EPA Arbitrarily and Capriciously³ Approves the Permit, as it Inadequately Considers the Determinants of PM 2.5 24 Hour Values

SLBI initially apprised (Exhibit A) the EPA of what appeared to be an erroneously employed methodology for calculation of the 24-hour particulate matter (“PM”) 2.5 concentration, i.e., that it was predicated upon a three-year averaging. SLBI also raised a number of issues regarding how the determination of higher concentration values for a single year were being calculated.⁴

EPA’s “Response to Comment” document, attached as Exhibit B, clarifies that compliance with the Prevention Significant Deterioration (“PSD”) 24-hour PM 2.5 increment standards are ascertained via the second highest concentration value for a given year.⁵ The modeled result for that 24-hour PM 2.5 increment was adduced as 0.69 ug/m³ including secondary impact.⁶ Nonetheless, EPA fails to clarify or disclose the quantity of emissions modelled over the 24-hour

³ Administrative Procedures Act, 5 U.S.C. § 706(2)(A), is the apposite standard of review for challenges to permits pursuant to the Clean Air Act. *Sur Contra la Contaminacion v. EPA*, 202 F.3d 443 (1st Cir. 2000) (reviewing a determination by the Environmental Appeals Board involving a PSD permit).

⁴ <https://www.regulations.gov/document/EPA-R02-OAR-2024-0312-0083> - See SLBI public comments.

⁵ “For the 24-hour Class I PM 2.5 increment, compliance with which is assessed at the Brigantine National Wilderness Area, the standard is not averaged over a 3-year period, but rather the modeled concentrations of PM 2.5 at each receptor for each year are reviewed to ensure that the 24-hour PM 2.5 increment for a Class I area is not exceeded at a given receptor more than once per year (the “2nd-high”). This “2nd-high” value is examined for all three years modeled to ensure that the highest “2nd-high” value over the 3-year period (also referred to as the “high-2nd-high”) does not exceed increment requirements,” p. 42., EPA Response to Comment Document, Exhibit B.

⁶ See SLBI public comments, p. 10., <https://www.regulations.gov/document/EPA-R02-OAR-2024-0312-0083>.

period and their concomitant energy level assignments for the particular pile being modeled which is itself not disclosed. In other words, there is no analysis or disclosure of emission concentrations changing as a function of the pile-type and hammer energy level. There was no disclosure of whether the energy or energies simulated by the air quality model were adequate to complete the pile driving effort. Such energies and presumably their associated air emissions can vary by a factor of ten from the start to the finish of the pile driving cycle, and therefore can affect the modeled PM2.5 concentration result dramatically. This remains a critical dereliction of duty in the Air Permit approval.

As explained in SLBI's response to EPA's Response to Comment document, Exhibit C, there remain unaccounted for issues in the Air Permit analysis. The Air Permit (Exhibit D), and Response to Comment Document make general statements that emissions from construction activities, i.e., pile driving, were modelled concurrently and continuously over the 24-hour period to be conservative. EPA assumes it is unnecessary to know pile driving time and other details. However, as SLBI's document underscores in Exhibit C:

“First, we need to know what type and size pile foundation⁷ is being modeled, what the maximum energy needed is to drive it, and how that compares with the numbers used by NOAA for underwater noise modeling. Next, we need a clear statement that the peak emission levels from all the various devices, vessels and engines were added to get a conservative overall emission rate that was used

⁷ See also, SLBI's Public Comments, “The air permit application should have disclosed what size monopile is being installed and how long it will take to embed it in the seabed. It is important to pin down the pile driving hours required because emissions are high during that activity and air pollutant densities at the...” Exhibit A, p. 10. <https://www.regulations.gov/document/EPA-R02-OAR-2024-0312-0083>

for the full 24 hours, and finally what energy that represents to see if the sources modeled - along with the modeled hourly emission rate - provides for the energy level needed.” Exhibit C.

Notwithstanding the EPA putative conservative posture as to the 24-hour PM 2.5 increment modelling, the problem remains that the Air Permit (Exhibit D) and Response to Comment Document (Exhibit B) **fail to**: a) describe whether the peak emission values derived from every device were summed to arrive at the conservative hourly emission rate for pile driving; b) disclose and describe precisely what type and size foundation was modelled; c) disclose and describe the corresponding energy magnitudes for the given foundation being pile driven; d) disclose and describe the pile driving energy mediated by the equipment scenario modelled in comparison to the highest energy magnitude necessary to complete the pile driving; and, e) juxtapose the energy produced by the air dispersion scenario modeled with the energies required in the JASCO Applied Sciences Noise Exposure Modeling Reports supporting the Biological Opinion for Atlantic Shores South.

As explained in Exhibit C by SLBI, the lack of disclosure and analysis as it pertains to the specific piles and corresponding energies simulated in the air dispersion modelling, render the EPA’s conclusions on compliance with 24-hour PM 2.5 standards rather dubious. For instance, the pile driving energy is incredibly important to the analysis, as described in Exhibit C:

“Given the factor of 10 variation in pile driving energy over a cycle, the modelled 24 -hour PM 2.5 concentration of 0.66406 micrograms per cubic meter (ug/m³) at the BWA on page 45 of the RTC could increase multi-fold and violate the PSD increment of 2.0 ug/m³,

depending upon what pile driving energy and associated emissions were selected for the 24-hour air dispersion modeling.” Exhibit C.

Further to the aforesaid remarks, the Air Permit and Response to Comment Document do not examine air emissions attendant to major turbine component failures and repair and replacement activities in the overall assessment of long-term turbine operations and maintenance.⁸ This dereliction has the effect of augmenting the already aforementioned inadequacies in the Air Permit’s analysis. Regarding operations and maintenance emissions, this raises the need for not just daily increment modeling of major turbine component repair or replacement scenarios, but also how frequently that will happen for a 200-turbine complex and affect the annual increment calculation. Based on the limited information cited for smaller turbines in Exhibit C, such occurrences could be frequent. As SLBI noted in their public comments, in Exhibit A:

“Prior studies of smaller turbines have indicated a high probability for major maintenance and repairs for a single turbine in one year, and here we have 200 turbines. In addition, the stresses on the larger turbines are greater than that for the smaller ones, pointing towards an even higher frequency of component failure occurrences. Therefore, the permit needs to explain what the frequency and risk of component failure is, how it would be addressed, and what emissions would be incurred during these periods.” Exhibit A, p. 13.

⁸ See, e.g., these issues broached in SLBI’s Public Comments, Exhibit A: “We assume from those apparent contradictions that no air quality modeling of either construction activity or operations and maintenance activity that would logically follow the construction period was done for 2027 or 2028.” P. 9. “The air permit application does not explain what operation and maintenance activities are being modeled. . .” P. 13.

Therefore, the EPA's approval of the Air Permit continues to constitute an arbitrary and capricious action due to the failure to adequately account for the aforesaid issues.

B. EPA Arbitrarily and Capriciously Approves the Permit, as the Relevant NJ State Implementation Plan Contains no Provision for Offshore Emissions

Secondarily, in their public comments, Exhibit A, SLBI raised the issue of the State Implementation Plan ("SIP") for New Jersey being inadequate. Specifically, the currently applicable SIP for NJ does not consider offshore particulate emissions. Neither the State of NJ nor EPA accounts for the significant visibility impairments derived from outer-continental shelf wind turbine construction (and from decommissioning) in respect to satisfying NJ's haze goals.

As described in Exhibit C by SLBI:

"By approving this permit and allowing a significant adverse impact on the visibility in the Brigantine Wilderness Class 1 area from a source that was not included in the SIP, the EPA has invalidated the rate of progress measures and the SIP goals. This air permit should not have been granted pending revisions to the SIP to assure that additional offsetting emission reductions can be achieved so that the stated haze objectives can be met." Exhibit C.

The current SIP⁹ addresses visibility at the Brigantine Wilderness Area, but exclusively includes land-based emissions. It does not include sources such as OCS wind energy development. Pursuant to 40 CFR § 51.308(3)(iv), NJ must "identify all anthropogenic sources of visibility

⁹ <https://dep.nj.gov/wp-content/uploads/airplanning/RegionalHazeSIP2020-FinalSIP.pdf>

impairment considered by the State in developing its long-term strategy. The State should consider major and minor stationary sources, mobile sources, and area sources.” Therefore, the duty to identify such sources is abrogated by way of failing to include offshore wind as an emissions producing agent. Moreover, as enunciated in SLBI’s Exhibit C, the Atlantic Shores project imparts a significant deleterious effect on the SIP rate of progress via impairing the deciview goal, which seeks to improve visibility by 0.28 deciviews per year. Note that the Atlantic Shores Final Environmental Impact Statement Appendix F Table 3.4.1-13 denotes an adverse deciview change of 0.61 in 2019, 0.87 in 2018, and 0.96 in 2020. As such, besides the issue of failing to account for offshore sources, the project destructively interferes with the SIP’s annual goal of improving visibility.

Therefore, the EPA’s approval of the Air Permit continues to constitute an arbitrary and capricious action due to the fact that the currently approved SIP altogether fails to account for the emissions derived from Atlantic Shores’ offshore wind project. The project’s Air Permit must be set aside until such time as the NJ SIP is amended to incorporate offshore emission sources, thereby complying with the regulations.

CONCLUSION/REQUEST FOR RELIEF

SLBI respectfully requests that the Environmental Appeals Board reverse and set aside the EPA’s Air Permit, OCS-EPA-R2 NJ 02, for the reasons delineated *supra*.

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Dated: October 15, 2024

STATEMENT OF COMPLIANCE WITH WORD LIMITATION

The Petition for Review is 1,882 words in length and complies with the word limitation of 14,000 words in 40 C.F.R. § 124.19(d)(3).

/s/ Thomas Stavola Jr. Esq.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Petition for Review in the matter of Atlantic Shores Offshore Wind, LLC, for the Atlantic Shores Project 1 and Project 2, EPA Permit Number: OCS-EPA-R2 NJ 02, was filed with the Environmental Appeals Board through its e-filing system on October 15, 2024, and was sent to the following persons in the manner indicated.

By email, to: United States Environmental Protection Agency - Michael S. Regan, Administrator, at: Regan.Michael@epa.gov on October 15, 2024. Email sent by Thomas Stavola Jr. Esq.

By email, to: Lisa F. Garcia, Region 2 EPA Administrator, at: garcia.lisa@epa.gov on October 15, 2024. Email sent by Thomas Stavola Jr. Esq.

By service company, to Atlantic Shores Offshore Wind LLC, delivered to the authorized agent at Corporation Service Company, 251 Little Falls Drive, Wilmington, DE, 19808.

/s/ Thomas Stavola Jr. Esq.

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LIST OF ATTACHMENTS

Exhibit A – SLBI Public Comments SLBI Public Comments on OCS-EPA-R2 NJ 02

Exhibit B –Response to Public Comments Document

Exhibit C – SLBI Response to Response to Public Comment Document

Exhibit D – Air Permit, OCS-EPA-R2 NJ 02