

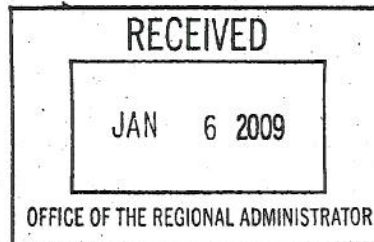
US EPA ARCHIVE DOCUMENT

# SAVE OUR SOUND

alliance to protect nantucket sound

January 5, 2009

Robert Varney  
Administrator  
EPA New England, Region 1  
Suite 1100  
1 Congress Street  
Boston, MA 02114-2023



**Re: Cape Wind Application for OCS Permit**

Dear Mr. Varney:

The Alliance to Protect Nantucket Sound (APNS) has reviewed the "Outer Continental Shelf Air Regulations Permit Application" that the ESS Group submitted to EPA on December 17, 2008, on behalf of the Cape Wind energy project proposal. We believe that no legally valid draft permit can be issued based on this application until both Cape Wind and the Minerals Management Service (MMS) have taken further steps, and hereby urge EPA to make this point clear to both Cape Wind and MMS.

Specifically, APNS believes that the application lacks the information required to support a legally valid draft permit. The application properly concludes (p. 31) that the Cape Wind construction project is a major source of nitrogen oxides that will be located in an ozone nonattainment area. Thus, the emissions from the project must be offset by other emissions reductions beyond those now legally required. These offsets must be federally enforceable before the permit is approved, and must actually take place before the project begins operation. Since Cape Wind alleges that it intends to begin construction in 2009, it is obligated to complete the regulatory and technical work of achieving those reductions in a legally acceptable form in a timely manner. To address the important issues in any meaningful way, the public will need to know details about these offsets before any comment period on a draft permit begins. Unfortunately, the December 17 permit application says virtually nothing about this issue. It does not discuss where the offsets will come from, why they will be legally valid, and why they will be adequate in quantity to offset the quite large construction emissions at stake.

For all these reasons, EPA must require Cape Wind's consultant to submit a new permit application. But that by itself will not be enough. As we explained in our December 8, 2008, letter to MMS (copied to EPA), additional emissions from Cape Wind will not be subject to the OCS permit and will need to be offset under the Clean Air Act conformity determination for which MMS is responsible. The draft MMS conformity determination fails as completely as the Cape Wind permit application to explain where the offsets will come from, and why they will be legally valid. These questions of offset adequacy and legality are so similar and so interdependent that they must be answered together.

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Accordingly, we urge EPA to: 1) require Cape Wind to submit a new permit application addressing the offset question in satisfactory detail; and 2) inform MMS that EPA will not proceed to process such a new permit application until MMS has revised its draft conformity determination to address the offset issue in similar detail. At that point, the two decisions should, and we believe legally must, be processed together, with a common comment period and a common record. We also urge EPA, once again, to make clear to MMS that it cannot legally issue a final EIS for the Cape Wind project until it has issued a final conformity determination that addresses these issues, and has observed the legally required public comment procedures in issuing it.

More than seven years after this ill-conceived, improperly-sited project was first proposed, many of the critical aspects of the Cape Wind energy plant remain a mystery. The developer has not indicated where the funding to build the massive project will come from and how it can possibly be profitable. Nor has the applicant provided full disclosure of the effect of the project on the cost of electricity, which will clearly increase. Cape Wind has also failed to explain how a project that is designed around the 3.6 MW GE turbine can be built, when such turbines do not exist. MMS, for its part, has allowed Cape Wind to pursue its application under a grossly inadequate record, while compounding the deficiencies by failing to require the applicant to provide necessary information on avian impacts, cultural resource impacts, oil spill contingency plans, and many other critically important issues. To make matters even worse, MMS itself has conducted a seriously inadequate NEPA review under an invalid purpose and need statement with an insufficient alternatives analysis. APNS sincerely hopes that EPA will not follow the unfortunate path of MMS and allow Cape Wind to pursue its important Clean Air Act compliance measures on the basis of an incomplete record and insufficient applicant information.

We are grateful for the strong scrutiny EPA has provided on this proposal over the years, and request that Cape Wind and MMS be held to the letter of the law under the Clean Air Act. Thank you for considering these comments and please let me know if APNS can be of future assistance.

Respectfully submitted,



Glenn G. Wattle  
President and CEO

cc: Sen. Edward M. Kennedy  
Sen. John F. Kerry  
Rep. William Delahunt  
Randall B. Luthi,  
Rodney Cluck, Ph.D.

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