



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW
ATLANTA, GEORGIA 30303-3104

APPEALING THE OCEAN ERA PERMIT

The Ocean Era National Pollutant Discharge Elimination System (NPDES) Permit has already been the subject of an Administrative Appeal to EPA’s Environmental Appeals Board (EAB) pursuant to 40 Code of Federal Regulations (CFR) § 124.19. The EAB issued a decision on May 6, 2022, remanding in part and denying review in part. The remand portion of the Order directed EPA Region 4 to “clearly state whether the Region determined that the permitted discharge will not cause unreasonable degradation of the marine environment.” The Region has issued a Clarification on Remand in accordance with the EAB’s Order, affirming that the Region determined that the permitted discharge will not cause unreasonable degradation of the marine environment. The Clarification on Remand has been added to the Administrative Record for the permit decision.

Under 40 CFR § 124.19(l)(2)(iii), a final permit decision must be issued by the Regional Administrator “[u]pon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.” As the EAB did not specifically provide for further appeal, the permit is now being issued by EPA Region 4 as final agency action. Any further appeal must be brought in the appropriate U.S. Circuit Court of Appeals pursuant Section 509(b)(1)(F) of the Clean Water Act, 33 U.S.C. § 1369(b)(1)(F).

Section 509(b)(1)(F) of the Clean Water Act, 33 U.S.C. § 1369(b)(1)(F) provides that Review of a final decision “issuing or denying any permit under section 1342 of this title [CWA section 402]” “may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts business which is directly affected by such action upon application by such person. Any such application shall be made within 120 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after the 120th day.”