REGION 2
NEW YORK, N.Y. 10007

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Julia Hanft, General Counsel
Wego Chemical Group
277 Northern Boulevard
Great Neck, NY 11021

RE: In the Matter of Wego Chemical Group *et al,* Docket No. TSCA-02-2026-9241

Dear Ms. Hanft:

Enclosed is a Complaint and Notice of Opportunity for Hearing (the "Complaint") and related documents in the above-referenced administrative proceeding. This Complaint alleges violations of Section 15 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2614, and various regulations the Environmental Agency (EPA) promulgated pursuant to TSCA.

Respondent has the right to a formal hearing to contest any of the allegations in the Complaint.

If Respondent wishes to contest the allegations in the Complaint and/or contest penalty amounts that might be assessed thereunder for the alleged violations, Respondent must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to EPA's Region 2 Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Region2_RegionalHearingClerk@epa.gov

If Respondent does not file an Answer within thirty (30) days of receipt of this Complaint and has not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against Respondent.

Whether or not Respondent requests a formal hearing, it may request an informal conference with EPA to discuss any issue relating to the alleged violations. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference does not substitute for a written Answer, affect what Respondent might choose to assert in its Answer, or extend the thirty (30) days by which Respondent must file an Answer requesting a hearing.

Enclosed is a copy of the "Consolidated Rules of Practice" (CROP), which govern this proceeding and are codified at 40 C.F.R. Part 22 (Amended May 22, 2017). CROP can also be found at https://www.ecfr.gov/current/title-40/chapter-I/subchapter-A/part-22?toc=1. Also enclosed is a copy of a standing order from the EPA Region 2 Regional Judicial Officer authorizing an electronic system for filing and serving documents electronically in proceedings governed by the CROP.

If you have any questions or wish to schedule an informal settlement conference, please contact Assistant Regional Counsel Lee Spielmann at Spielmann.Lee@epa.gov or 212-637-3222.

Sincerely yours,

Doughlas McKenna, Acting Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of:

Wego Chemical Group, Wego Chemical LLC, Wegochem International LLC, Wego Chemical and Mineral LLC, Wego Chemical Group LP, Wego Chemical Group Inc., and Wego Chemical and Mineral Corp,

Respondents.

Proceeding Under Section 16(a) of the Toxic Substances Control Act, as amended, 15 U.S.C. § 2615(a).

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Docket No. TSCA-02-2026-9241

COMPLAINT

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency"), by and through his attorneys, hereby alleges, on information and belief, the following as and for his complaint against Respondents:

Jurisdiction

1. This administrative proceeding is commenced pursuant to the provisions of Section 16(a) of the Toxic Substances Control Act, as amended (the "Act" or "TSCA"), 15 U.S.C. § 2615(a), for a declaration of liability and for the assessment of a civil penalty for Respondents' failures (as detailed below) to have complied in carrying out their commercial activities with requirements of TSCA and/or regulations promulgated under authority of TSCA.

2. This tribunal is vested with jurisdiction over this proceeding pursuant to Section 16(a)(2) of TSCA, 15 U.S.C. § 2615(a)(2), and 40 C.F.R. § 22.1(a)(5).

3. This "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING" "Complaint") constitutes the "written notice to the person to be assessed a civil penalty," as required by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), for any violation of, *inter alia*, Section 15 of TSCA, 15 U.S.C. § 2614.

4. Complainant in this proceeding is the Acting Director of the Enforcement and Compliance Assurance Division of EPA, Region 2.

5. Complainant has been duly delegated the authority to institute this proceeding.

The Toxic Substances Control Act, General Provisions

6. Congress enacted the Toxic Substances Control Act in 1976 after finding, in part, that "human beings and the environment are being exposed each year to a large number of chemical substances and mixtures," in order that "adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment...." 15 U.S.C. § 2601(a)(1); 15 U.S.C. § 2601(b)(2).

7. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), states, in part, that "[i]t shall be unlawful for any person to...fail or refuse to comply with any requirement of this subchapter [15 U.S.C. §§ 2601-2629] or any rule promulgated...under this subchapter."

8. Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B), states, in part, that "[i]t shall be unlawful for any person to...fail or refuse to...submit reports, notices or other information...as required by this chapter [Chapter 53, 15 U.S.C. §§ 2601 to 2692] or a rule thereunder...."

9. Pursuant to the authority Congress granted the Agency, EPA promulgated the following regulations codified at the following parts of the Code of Federal Regulations: **(a)** 40 C.F.R. Part 700, "General," promulgated under authority of, *inter alia*, Section 26 of TSCA, 15 U.S.C. § 2625; **(b)** 40 C.F.R. Part 704, "Reporting And Recordkeeping Requirements," promulgated under authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a); **(c)** 40 C.F.R. Part 707, "Chemical Imports and Exports," promulgated under authority of, *inter alia*, Sections 13 and 26 of TSCA, 15 U.S.C. §§ 2612 and 2625, respectively; **(d)** 40 C.F.R. Part 711, denominated "TSCA Chemical Data Reporting Requirements" (governing the reporting of chemical data to the Agency), promulgated under authority of Section 8(a) of TSCA, 15 U.S.C. § 2607(a); **(e)** 40 C.F.R. Part 720, "Premanufacture Notification," promulgated under authority of, *inter alia*, Section 5 of TSCA, 15 U.S.C. §§ 2604; **(f)** 40 C.F.R. Part 721, "Significant New Use Of Chemical Substances," promulgated under authority of, *inter alia*, Sections 5 and 8 of TSCA, 15 U.S.C. §§ 2604 and 2607, respectively; **(g)** 40 C.F.R. Part 751, "Regulation of Certain Chemical Substances and Mixtures Under Section 6 of the Toxic Substances Control Act," promulgated under authority of, *inter alia*, Sections 6 of TSCA, 15 U.S.C. §§ 2605; **(h)** 40 C.F.R. Part 766, "Dibenzo-Para-Dioxins/Dibenzofurans," promulgated under Section 4 of TSCA, 15 U.S.C. § 2603; and **(i)** 19 C.F.R. §§ 12-11.8 – 12.127, regarding the importation of "Chemical Substances in Bulk and as Part of Mixtures and Articles," promulgated by the United States Department of Homeland Security and the United States Department of the Treasury, in consultation with EPA, under authority of, *inter alia*, Section 13(b) of TSCA, 15 U.S.C. § 2612(b).

10. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), any person who violates a provision of, *inter alia*, Section 15 of TSCA, 15 U.S.C. § 2614, shall be liable to the United States for a civil penalty in an amount not to exceed $37,500 for each such violation.

11. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act (Section 701 of Pub.L. 114-74), 28 U.S.C. § 2461, in conjunction with the implementing regulations codified at 40

C.F.R. Part 19, increased, *inter alia*, the maximum statutory penalty EPA might obtain pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), to $49,772 for any violation of a provision under Section 15 of TSCA, 15 U.S.C. § 2614, provided such violation occurred on or after November 2, 2015 and that the penalty for such violation was assessed on or after January 8, 2025. 40 C.F.R. § 19.4, Table 1.

12. In relevant part, Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), states "[e]ach day a violation of [Section 15 of TSCA, 15 U.S.C. § 2614] continues shall, for purposes of [Section 16(a) of TSCA, 15 U.S.C. § 2615(a)], constitute a separate violation of Section 2614 [15 U.S.C. § 2614]...."

13. Sub-paragraph (2)(A) of Section 16(a), 15 U.S.C. § 2615(a)(2)(A), authorizes the commencement of a proceeding for the assessment of penalty sought pursuant to Section 16(a).

Background: History and Operations

14. Respondents are: **(a)** Wego Chemical Group; **(b)** Wego Chemical LLC; **(c)** Wegochem International LLC; **(d)** Wego Chemical and Mineral LLC; **(e)** Wego Chemical Group LP; **(f)** Wego Chemical Group Inc.; and **(g)** Wego Chemical and Mineral Corp.

15. Respondents constitute an association or other business entity conducting commercial operations (in interstate and international commerce) for, *inter alia*, the importation, exportation and distribution of "chemical substances" (as that term is defined in Section 3(2) of TSCA, 15 U.S.C. § 2602(2))[1] and that variously operate, individually or collectively as a joint enterprise (two or more), under or otherwise using the name "Wego Chemical Group" (hereinafter as so defined referred to as the "Wego entities" or "Respondents").

16. For times pertinent to the matters alleged below, each of the Wego entities had been organized and has existed under the laws of the State of New York or the State of Delaware.

17. Each of the Wego entities has been a person for purposes of TSCA, as set forth in each of 40 C.F.R. §§ 704.3, 710.3 and 720.3.

18. For the times set forth below, Respondents have been importers of chemical substances that include household and industrial chemicals; lubricants, coatings, adhesives and sealants; pharmaceuticals; personal care products; chemicals for metal working; chemicals for water treatment; and chemicals used in the building and construction industries. Respondents sell, supply and distribute into interstate commerce and international commerce such chemical substances that they import.

19. For the times set forth below, Respondents have owned, operated and/or controlled: **(a)** one facility the address of which is 239 Great Neck Road [sometimes noted as 235 Great Neck Road], Great Neck (Nassau County), New York 11021 (the "Great Neck Road facility");

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1 Terms that are herein defined by their statutory and/or regulatory definitions are subsequently used as so defined.

and **(b)** another facility the address of which is 277 Northern Blvd., Great Neck (Nassau County), New York 11021 (the "Northern Blvd. facility").

20. Respondents at present own, operate and/or control the Great Neck Road facility and/or the Northern Blvd. facility.

21. On May 24, 2021, a duly designated representatives of EPA (Jesse Miller, Ph.D.) sent e-mails to Felicia Lynch, the Quality and Regulatory Affairs Manager of Respondents, that "request[ed] information from Wego Chemical Group regarding compliance with TSCA Sections 4, 5, 6, 8, 12, and 13," including information on corporate structure, imported chemical substances and exported chemical substances. Follow-up and responsive e-mails were thereafter exchanged between Dr. Miller and Respondents.

22. Complainant and Respondent Wego Chemical Group entered into a tolling agreement that was executed by Julia Hanft, as general counsel in the name of Respondent Wego Chemical Group, and which provided, in part, "[t]he period between November 1, 2024 and March 31, 2025…shall not be included in computing the running of any statute of limitations that might be applicable to any action, suit or proceeding brought by EPA against Wego [Chemical Group] for any of the causes of action pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) identified in the…letter" of July 17, 2024.

23. The aforementioned July 17, 2024 letter discussed potential causes of action of various provisions of TSCA and/or regulations promulgated thereunder that arose or that might have arisen between January 2018 and March of 2021.

COUNT 1: FAILURE TIMELY TO FILE 40 CFR PART 711 REPORT (Attachment 1)

24. Complainant repeats and realleges each allegation contained in paragraphs "1" through "23," above, with the same force and effect as if fully set forth herein.

25. The regulation codified at 40 C.F.R § 711.5, requires reporting to EPA of "[a]ny chemical substance that is in the Master Inventory at the beginning of a submission period described in [40 C.F.R.] § 711.20, unless the chemical substance is specifically excluded by [40 C.F.R.] § 711.6."

26. The term "Master Inventory File" is defined at 40 C.F.R. § 711.3, as "EPA's comprehensive list of chemical substances which constitutes the TSCA Inventory compiled under TSCA section 8(b) [15 U.S.C. § 2607(b)]. It includes chemical substances reported under 40 CFR part 710 and substances reported under 40 CFR part 720 for which a Notice of Commencement of Manufacture or Import has been received under 40 CFR 720.120."

27. The regulation codified at 40 C.F.R. § 711.8(a) requires reporting to EPA by "[a]ny person who manufactured (including imported) for commercial purposes 25,000 lb (11,340 kg) or more of a chemical substance described in [40 C.F.R.] § 711.5 at any single site owned or controlled by that person during any calendar year since the last principal reporting year."

28. Under 40 C.F.R. § 711.3, the term "site" is defined to "mean[] a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. More than one manufacturing plant may be located on a single site."

29. Under 40 C.F.R. § 711.3(2), the term "site" is more particularly defined to include, in part, the following: "The site for an importer who imports a chemical substance described in [40 C.F.R.] § 711.5 is the U.S. site of the operating unit within the person's organization that is directly responsible for importing the chemical substance. The import site, in some cases, may be the organization's headquarters in the United States."

30. The "last principal reporting year" prior to 2020 was, within the meaning of 40 C.F.R. § 711.8, calendar year 2016.

31. The relevant period during which the required 40 C.F.R. § 711.8(a) reporting of chemical substances imported during any calendar year "since the last [2016] principal reporting year" was June 1, 2020 through January 29, 2021 (*i.e.* for chemical substances imported for commercial purposes above the listed threshold levels in any calendar years 2016, 2017, 2018 and 2019), as prescribed by 40 C.F.R. § 711.20 (and set forth in 85 *Fed. Reg.* 75235 (November 25, 2020)).

32. Pursuant to 40 C.F.R. § 711.15(a), any person obligated to report the importation of chemical substances under 40 C.F.R. § 711.8 was required to submit the necessary information to EPA using the Chemical Data Reporting electronic submittal format (hereinafter referred to as the "Form U").

33. Forty C.F.R. § 711.3 states, in part, that "the definitions of 40 CFR 704.3 also apply to" 40 C.F.R. Part 711, with 40 C.F.R. § 704.3 defining the term "person" to "include[] any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity…."

34. Each of the Wego entities is, and has been for the times relevant to the allegations of this count and Counts 2 and 3 [as set forth below], a "person" within the meaning of 40 C.F.R. § 704.3.

35. Respondents imported for commercial purposes each of 209 chemical substances as listed and identified in Attachment 1 to this complaint (collectively referred to as the "Attachment 1 chemical substances") in volumes exceeding 25,000 pounds per year in at least one of the four calendar years between (and including) 2016 and 2019 (*i.e.* in 2016, 2017, 2018 and/or 2019).

36. Respondents imported the following quantities of Attachment 1 chemical substances and Attachment 2 chemical substances (as the latter is set forth in Count 2, below) in each of the following years: **(a)** in 2016, at least 68 million pounds; **(b)** in 2017, at least 85 million pounds; **(c)** in 2018, at least 109 million pounds; and **(d)** in 2019, at least 89 million pounds.

37. Each of the Respondents was the "importer" (within the meaning of that term as defined in 40 C.F.R. § 704.3) of the Attachment 1 chemical substances.

38. The necessary transactions to secure the importation of each of the Attachment 1 chemicals, including the legal, logistical and scheduling arrangements to ensure that each

of the importations was effected, were made, finalized, scheduled and/or confirmed from the Great Neck Road facility.

39. As a consequence of the importations of the Attachment 1 chemical substances, Respondents "manufacture[d]" (as that term is defined in Section 3(7) of TSCA, 15 U.S.C. § 2602(7), and 40 C.F.R. § 711.3) such chemical substances.

40. With average annual sales at or above $290 million, none of the Respondents was a "small manufacturer" within the meaning of 40 C.F.R. § 704.3 during the times of the importation of the Attachment 1 chemical substances.

41. For the importations (in whole or in part) of the Attachment 1 chemical substances, the following were listed on official United States custom records (*i.e.,* official United States Customs and Border Protection-authorized electronic data interchange), as both the importers of record, and the consignees of record: **(a)** Wego Chemical LLC; **(b)** Wegochem International LLC; and **(c)** Wego Chemical and Mineral Corp.

42. Each of the Attachment 1 chemical substances was on EPA's Master Inventory File as of June 1, 2020, and none of them was excluded pursuant to 40 C.F.R. § 711.6 from the chemical data reporting requirement under 40 C.F.R. Part 711.

43. Pursuant to 40 C.F.R. § 711.8(a), Respondents were required to submit a report to EPA for the importations of the Attachment 1 chemical substances during the prescribed reporting period of June 1, 2020 through January 29, 2021 (also subsequently referred to as the "2020-2021 reporting period").

44. Respondents never filed a 40 C.F.R. Part 711 Form U for their importation of the 209 Attachment 1 chemical substances (or for any portion thereof) during the 2020-2021 reporting period.

45. On or about June 16, 2025, Robyn Whitney, as "Quality and Regulatory Affairs Manager" of "Wego Chemical Group Inc.," signed as an authorized official and submitted to EPA the required 40 C.F.R. Part 711 Form U for Respondents' 2016-2019 importations of the Attachment 1 chemical substances, nearly four and one-half years after such filing had become due. This Form U submission included the following information: **(a)** Domestic Parent: "Wego Chemical Group Inc."; **(b)** Technical contact company: "Wego Chemical Group"; **(c)** Site: "Wego Chemical Group located at 235 [sic] Great Neck Road, Great Neck NY 11021"; and **(d)** D&B Number: "08-012-9092" [a D&B number that then pertained to Wego Chemical Group LP].

46. Respondents' failure to file the required Form U report during the 2020-2021 reporting period for their importation of each of the Attachment 1 chemical substances during any of calendar years 2016, 2017, 2018 and 2019 constitutes 209 separate and independent failures to comply with, and thus 209 separate and independent violations of, 40 C.F.R. § 711.8(a).

47. Respondents' failure to file the required Form U report during the 2020-2021 reporting period for their importation of each of the Attachment 1 chemical substances during any of calendar years 2016, 2017, 2018 and 2019 constitutes 209 separate and independent

unlawful acts pursuant to, and thus 209 separate and independent violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

48. As a consequence of each of the 209 Form U reporting violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 2: FAILURE TIMELY TO FILE 40 CFR PART 711 REPORT ("Group 2")

49. Complainant repeats and realleges each allegation contained in paragraphs "1" through "48," above, with the same force and effect as if fully set forth herein.

50. The regulation codified at 40 C.F.R. § 711.8(b) states, in pertinent part, "Any person who manufactured (including imported) for commercial purposes any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 5(a)(2), 5(b)(4), or 6 [15 U.S.C. §§ 2604(a)(2), 2604(b)(4), or 2605, respectively], or is the subject of an order in effect under TSCA section…5(e) [15 U.S.C. § 2604(e)]…is subject to reporting as described in [40 C.F.R.] § 711.8(a), except that the applicable production volume threshold is 2,500 lb (1,134 kg)."

51. Respondents imported for commercial purposes each of the following five chemical substances, as identified below (including with their respective Chemical Abstracts Services Registry Number ("CASRN")), in volumes exceeding 2,500 pounds per year in at least one of the four calendar years between (and including) 2016 and 2019 (*i.e.,* in 2016, 2017, 2018, and 2019): **(a)** Decabromodiphenyl ether, CASRN 1163-19-5 (hereinafter "DBDE"); **(b)** 1-ethyl-2-pyrrolidinone, CASRN 2687-91-4 (hereinafter ""ETPY") ; **(c)** Dichloromethane, CASRN 75-09-2 (hereinafter "DMET"); **(d)** 1,1,2-trichloroethene, CASRN 79-01-6 (hereinafter "TETH"); and **(e)** Benzene, 1,1'-(1,2-ethanediyl) bis [2,3,4,5,6-] pentabromo, CASRN 84852-53-9 (hereinafter this halogenated phenyl alkane referred to as "BEPB") (collectively, these five chemical substances referred to as the "Group 2 chemicals").

52. Each of the Respondents was the "importer" (within the meaning of that term as defined in 40 C.F.R. § 704.3) of the Group 2 chemicals.

53. The necessary transactions to secure the importation of each of the Group 2 chemicals, including the legal, logistical and scheduling arrangements to ensure that each of the importations was effected, were made, finalized, scheduled and/or confirmed from the Great Neck Road facility.

54. As a consequence of the importations of the Group 2 chemicals, Respondents manufactured the Group 2 chemicals.

55. With average annual sales at or above $290 million, none of the Respondents was a "small manufacturer" within the meaning of 40 C.F.R. § 704.3 during the times of the importation of the Group 2 chemicals.

56. For the importations (in whole or in part) of the Group 2 chemicals, the following were listed on official United States custom records (*i.e.,* official United States Customs and Border Protection-authorized electronic data interchange), as both the importers of record, and the consignees of record: **(a)** Wego Chemical LLC; **(b)** Wegochem International LLC; and **(c)** Wego Chemical and Mineral Corp.

57. Each of the Group 2 chemicals was on EPA's Master Inventory File as of June 1, 2020, and none of them was excluded pursuant to 40 C.F.R. § 711.6 from the chemical data reporting requirement under 40 C.F.R. Part 711.

58. During the period between June 1, 2020 and January 2021 (but not necessarily limited to such period), DBDE was subject to a: **(a)** final test rule issued pursuant to Section 4 of TSCA, 15 U.S.C. § 2603 (as set forth in 40 C.F.R. §§ 766.20, 766.25); **(b)** proposed "significant new use" rule pursuant to Sections 5(a)(2) and 5(b)(4) of TSCA, 15 U.S.C. § 2604(a)(2) and § 2604(b)(4) [as set forth in 77 *Fed. Reg.* 19861 (April 2, 2012)]; and **(c)** proposed risk management rule issued pursuant to Section 6 of TSCA, 15 U.S.C. § 2605 [as set forth in 84 *Fed. Reg.* 36728 (July 29, 2019)].

59. During the period between June 1, 2020 and January 2021 (but not necessarily limited to such period), ETPY was subject to a proposed "significant new use" rule pursuant to Sections 5(a)(2) and 5(b)(4) of TSCA, 15 U.S.C. § 2604(a)(2) and § 2604(b)(4) [as set forth in 81 *Fed. Reg.* 85472 (November 28, 2016)].

60. During the period between June 1, 2020 and January 2021 (but not necessarily limited to such period), DMET was subject to a final risk management rule issued pursuant to Section 6 of TSCA, 15 U.S.C. § 2605 [as set forth in 40 C.F.R. §§ 751.101 – 751.109].

61. During the period between June 1, 2020 and January 2021 (but not necessarily limited to such period), TETH was subject to a: **(a)** final "significant new use" rule pursuant to Sections 5(a)(2) and 5(b)(4) of TSCA, 15 U.S.C. § 2604(a)(2) and § 2604(b)(4) [as set forth in 40 C.F.R. § 721.10851]; and **(b)** proposed risk management rule issued pursuant to Section 6 of TSCA, 15 U.S.C. § 2605 [as set forth in 82 *Fed. Reg.* 7432 (January 19, 2017) and 81 *Fed. Reg.* 91592 (December 16, 2016)].

62. During the period between June 1, 2020 and January 2021 (but not necessarily limited to such period), BEPB was subject to: **(a)** a final "significant new use" rule pursuant to Sections 5(a)(2) and 5(b)(4) of TSCA, 15 U.S.C. § 2604(a)(2) and § 2604(b)(4) [as set forth in 40 C.F.R. § 721.536]; and **(b)** an order under Section 5(e) of TSCA, 15 U.S.C. § 2604(e).

63. Pursuant to 40 C.F.R. § 711.8(b), Respondents were required to submit a report to EPA for the importations of the Group 2 chemicals during the 2020-2021 reporting period.

64. Respondents never filed a 40 C.F.R. Part 711 Form U for their importation of the five Group 2 chemicals (or any portion thereof) during the 2020-2021 reporting period.

65. On or about June 16, 2025, Robyn Whitney, as Quality and Regulatory Affairs Manager of Wego Chemical Group Inc., signed as an authorized official and submitted to EPA the required 40 C.F.R. Part 711 Form U for Respondents' 2016-2019 importations of the

Group 2 chemicals, nearly four and one-half years after such filing had become due. This Form U submission included the following information: **(a)** Domestic Parent: "Wego Chemical Group Inc."; **(b)** Technical contact company: "Wego Chemical Group"; **(c)** Site: "Wego Chemical Group" located at 235 [sic] Great Neck Road, Great Neck NY 11021"; and **(d)** D&B Number: "08-012-9092" [a D&B number that then pertained to Wego Chemical Group LP].

66. Respondents' failure to file the required Form U report during the 2020-2021 reporting period for their importation of each of the Group 2 chemicals during any of calendar years 2016, 2017, 2018 and 2019 constitutes five separate and independent failures to comply with, and thus five separate and independent violations of, 40 C.F.R. § 711.8(b) incorporating 40 C.F.R. § 711.8(a).

67. Respondents' failure to file the required Form U report during the 2020-2021 reporting period for their importation of each of the Group 2 chemicals during any of calendar years 2016, 2017, 2018 and 2019 constitutes five separate and independent unlawful acts pursuant to, and thus five separate and independent violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

68. As a consequence of each of the five Form U reporting violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 3: FAILURE TO REPORT REQUIRED INFORMATION IN 2020 FORM U

69. Complainant repeats and realleges each allegation contained in paragraphs "1" through "68," above, with the same force and effect as if fully set forth herein.

70. In pertinent part, 40 C.F.R. § 711.15 requires reporting as follows: "Any person who must report under this part, as described in [40 C.F.R.] § 711.8 must submit the information described in this section for each chemical substance described in [40 C.F.R.] § 711.5 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lb (11,340 kg) or more (or in an amount of 2,500 lb (1,134 kg) or more for chemical substances subject to the rules, orders, or actions described in [40 C.F.R.] § 711.8(b)) at any one site during any calendar year since the last principal reporting year (*e.g.,* for the 2020 submission period, consider calendar years 2016, 2017, 2018, and 2019, because 2015 was the last principal reporting year)" (henceforth said quoted provision referred to as the "711.15 prefatory provision").

71. For the times relevant to the matters alleged in this count, each of the Respondents constituted a "person" as identified in the 711.15 prefatory provision.

72. Forty C.F.R. § 711.15(b) sets out information required to be reported in the 2020 and subsequent Form U submissions (*e.g.*, the 2024 Form U submissions, covering importations effected during the period of 2020 through 2023), stating, "The information described in paragraphs (b)(1) through (4) of this section must be reported for each chemical substance manufactured (including imported) in an amount of 25,000 lb (11,340 kg) or more (or in an amount of 2,500 lb (1,134 kg) or more for chemical substances subject to the rules, orders, or actions described in [40 C.F.R.] § 711.8(b))) at any one

site during any calendar year since the last principal reporting year. The requirement to report information described in paragraph (b)(4) of this section is subject to exemption as described in § 711.6."

73. Each of the 214 chemical substances listed in the 2020 Form U (hereinafter collectively "the 2020 Form U chemicals") constituted a "chemical substance" also within the meaning of the 711.15 prefatory provision and within the meaning of 40 C.F.R. § 711.15(b).

74. Five of the 214 2020 Form U chemicals were exempted from the reporting requirements of 40 C.F.R. § 711.15(b)(4) as described in 40 C.F.R. § 711.6(b).

75. Forty C.F.R. § 711.15(b)(4) states, in pertinent part, that "The following chemical-specific information must be reported for each reportable chemical substance manufactured (including imported) above the applicable production volume threshold, as described in this section. Persons subject to paragraph (b)(4) of this section must report the information described in paragraphs (b)(4)(i) and (ii) of this section for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, *etc.*). *** If information responsive to a given data requirement under this paragraph, including information in the form of an estimate, is not known or reasonably ascertainable, the submitter is not required to respond to the requirement."

76. Two hundred and nine of the 2020 Form U chemicals constituted "reportable chemical substance[s]" for purposes of 40 C.F.R. § 711.15(b)(4).

77. Forty C.F.R. § 711.15(b)(4)(i)(A), requires in pertinent part, with regard to the chemical-specific information that must be reported pursuant to 40 C.F.R. § 711.15(b)(4), "[a] designation indicating the type of industrial processing or use operation(s) at each site that receives a reportable chemical substance....For each chemical substance, report the letters which correspond to the appropriate processing or use operation(s) listed in Table 4 to paragraph (b)(4)(i)(A)" (henceforth the required information to be reported from Table 4 referred to as "the required Table 4 information).

78. Forty C.F.R. § 711.15(b)(4)(i)(B) requires in pertinent part, with regard to the chemical-specific information that must be reported pursuant to 40 C.F.R. § 711.15(b)(4), "A code indicating the sector(s) that best describe the industrial activities associated with each industrial processing or use operation reported under paragraph (b)(4)(i)(A) of this section. For each chemical substance, report the code that corresponds to the appropriate sector(s) listed in Table 5 to paragraph (b)(4)(i)(B)" (henceforth the required information to be reported from Table 5 referred to as "the required Table 5 information").

79. Forty C.F.R. § 711.15(b)(4)(i)(C) requires in pertinent part, with regard to the chemical-specific information that must be reported pursuant to 40 C.F.R. § 711.15(b)(4), "For each sector reported under paragraph (b)(4)(i)(B) of this section, the applicable code(s) from Table 6 to paragraph (b)(4)(i)(C) must be selected to designate the function category(ies) that best represents the specific manner in which the chemical substance is used" (henceforth the required information to be reported from Table 6 referred to as "the

required Table 6 information"). The regulation further specifies how reporting is to be effected for the 2020 Form U and for the subsequent (2024) Form U.

80. In each field of the 2020 Form U respectively calling for the required Table 4 information, the required Table 5 information, and the required Table 6 information, the initialism "NKRA" was entered, thereby signifying such information was *not known or reasonably ascertainable*.

81. For each of the respective entries in which "NKRA" was written in the 2020 Form U, the following was known to Respondents or was otherwise ascertainable to them through reasonable effort:

[a] the required Table 4 information, *i.e.* "the letters which correspond to the appropriate processing or use operation(s) listed in Table 4," as provided in 40 C.F.R. § 711.15(b)(4)(i)(A);

[b] the required Table 5 information, *i.e.* the "code [corresponding to the appropriate sector(s) listed in Table 5] indicating the sector(s) that best describe the industrial activities associated with each individual processing or use operation," as provided in 40 C.F.R. § 711.15(b)(4)(i)(B); and

[c.] the required Table 6 information, *i.e.* "the applicable code(s) from Table 6…to designate the function category(ies) that best represent the specific manner in which the chemical substance is used," as provided for in 40 C.F.R. § 711.15(b)(4)(i)(C).

82. Prior to submitting to EPA the 2020 Form U, Respondents possessed, *inter alia*, the required Table 4 information, the required Table 5 information, and the required Table 6 information for the chemical substances listed in that Form U. Respondents had, prior to submitting to EPA the 2020 Form U, used such information for sales and marketing purposes.

83. The following are illustrative but not exhaustive of Respondents' failures to report the required Tables 4, 5, and 6 information pertained to the listing of these chemical substances in the 2020 Form U: **(a)** Methanesulfonic acid, 1,1,1-trifluoro- (with CASRN 1493-13-6 (hereinafter "MSA"); **(b)** Cryolite (Na3(AlF6)), CASRN 15096-52-3 (hereinafter "CRY"); **(c)** 2-Propenoic acid, 1,1'-[2-ethyl-2-[[1-oxo-2-propen-1yl) oxy[methyl]-1,3-propanediyl] ester (hereinafter "PAM"); **(d)** 1,2-Benzenedicarboxylic acid, 1,2-dibutyl ester, CASRN 84-74-2 (hereinafter "BDX"); and **(e)** Benzene, 1,1'-(1,2-ethanediyl)bis[2,3,4,5,6-pentabromo], CASRN 84852-53-9 (hereinafter "BEP") (hereinafter collectively, the "2020 Form U five chemicals"). Such examples follow, below.

84. With regard to MSA, the current "Wego" website (https://wegoglobal.com) lists the "industries" as being "chemical manufacturing, electronics, industrial, Pharma, and Pharmaceutical."

85. With regard to CRY, the current "Wego" website lists the "industries" as "CASE & Construction, Electronics, Industrial, and Metal finishing."

86. With regard PAM, the current "Wego" website lists the "industries" as "Adhesives & Sealants, CASE & Construction, Graphic Arts, Industrial, Paints & Coatings."

87. With regard to BDX, the current "Wego" website lists the "industries" as "CASE & Construction, Industrial, Paint & Coatings, Plastics & Processing."

88. With regard to BEP, the current "Wego" website lists the "industries" as "CASE & Construction, Foam & Barrier Systems, Industrial, Paint & Coatings, Plastics & Processing, Resins, Polymers, & Adhesives."

89. With regard to MSA, the current "Wego" website lists "catalyst" as a function.

90. With regard to CRY, the current "Wego" website lists "processing aide" as a function.

91. With regard to PAM, the current "Wego" website lists "crosslinker" as a function.

92. With regard to BDX, the current "Wego" website lists "plasticizer" as a function.

93. With regard to BEP, the current "Wego" website lists "flame retardant" as a function.

94. In the 2020 Form U, Respondents failed to disclose the required Table 4 information, the required Table 5 information, and the required Table 6 information for 209 chemical substances.

95. Forty C.F.R. § 711.15(b)(4)(i)(D), requires in pertinent part, with regard to the chemical-specific information that must be reported pursuant to 40 C.F.R. § 711.15(b)(4), "The estimated percentage, rounded off to the closest 10 percent, of total production volume of the reportable chemical substance associated with each combination of industrial processing or use operation, sector, and function category. Where a particular combination of industrial processing or use operation, sector, and function category accounts for less than 5 percent of the submitter's site's total production volume of a reportable chemical substance, the percentage must not be rounded off to 0 percent if the production volume attributable to that industrial processing or use operation, sector, and function category combination is 25,000 lb (11,340 kg) or more during the reporting year" (hereinafter, the "required estimated percentage").

96. In each field of the 2020 Form U respectively calling for the required estimated percentage information, the initialism "NKRA" was entered, thereby signifying such information was *not known or reasonably ascertainable*.

97. For each of the respective entries in which "NKRA" was written in the 2020 Form U, the required estimated percentage information was known to Respondents or was otherwise ascertainable to them through reasonable effort.

98. In the 2020 Form U, Respondents failed to disclose the required estimated percentage information for 209 chemical substances.

99. Respondents, as national and international distributors of chemical substances with sales offices around the world, distributed in commerce the chemical substances reported in the 2020 Form U.

100. The totality of the failures to disclose the aforesaid required information (the Table 4 information, the Table 5 information, the Table 6 information, and the estimated percentage information) for 209 chemical substances listed in the 2020 Form U deprived EPA of information necessary for it to make fact-based and thus informed risk-evaluation decisions concerning chemical substances imported into the United States.

101. Each of Respondents' 209 failures to provide in the 2020 Form U required information that was known to them or was reasonably ascertainable but for which only the notation "NKRA" was made, separately and independently constituted 209 failures to comply with, and thus 209 separate and independent violations of, the requirements set out in 40 C.F.R. § 711.15.

102. Each of Respondents' 209 failures to provide in the 2020 Form U required information that was known to them or was reasonably ascertainable but for which only the notation "NKRA" was made, constitutes 209 separate and independent unlawful acts pursuant to, and thus 209 separate and independent violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

103. As a consequence of each of the 209 separate and independent information reporting violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 4: FAILURE TO REPORT REQUIRED INFORMATION IN 2024 FORM U

104. Complainant repeats and realleges each allegation contained in paragraphs "1" through "103," above, with the same force and effect as if fully set forth herein.

105. In 40 C.F.R. § 711.20, it states, in pertinent part, "All information reported to EPA in response to the requirements of this part [40 C.F.R. Part 711] must be submitted during an applicable submission period. The 2024 CDR submission period ran from June 1, 2024, to November 22, 2024" (89 *Fed. Reg.* 79150 (September 27, 2024)). This is the period for reporting the importation of chemical substances above the applicable threshold reporting levels imported "since the last principal reporting year," *i.e.* calendar years 2020, 2021, 2022 and 2023.

106. The "last principal reporting year" prior to 2024 was, within the meaning of 40 C.F.R. § 711.8, calendar year 2020.

107. For the times relevant to the matters alleged in this count, each of the Respondents constituted a "person" as identified in the 711.15 prefatory provision.

108. On or about August 8, 2024, Robyn Whitney, as Quality and Regulatory Affairs Manager of Wego Chemical Group Inc., signed as an authorized official and submitted to EPA the required 40 C.F.R. Part 711 Form U for Respondents' 2020-2023 importations of 254

chemical substances. This Form U submission included the following information: **(a)** Domestic Parent: "Wego Chemical Group Inc."; **(b)** Technical contact company: "Wego Chemical Group"; **(c)** Site: "Wego Chemical and Mineral Corp." located at 239 Great Neck Road, Great Neck NY 11021"; and **(d)** D&B Number: "08-018-2344" [a D&B number that then pertained to Wego Chemical LLC] (hereinafter this Form U submission referred to as the "2024 Form U").

109. Each of the 254 chemical substances listed in the 2024 Form U constituted a "chemical substance" within the meaning of the prefatory provision of 40 C.F.R. § 711.15 and within the meaning of 40 C.F.R. § 711.15(b)

110. Seven of the 254 chemical substances listed in the 2024 Form U were exempted from the reporting requirements of 40 C.F.R. § 711.15(b)(4) as described in 40 C.F.R. § 711.6(b).

111. Two hundred and forty-seven of the 2024 Form U chemical substances constituted "reportable chemical substance[s]" for purposes of 40 C.F.R. § 711.15(b)(4).

112. In each field of the 2024 Form U respectively calling for the required Tables 4 information, the required Table 5 information, and the required Table 6 information, the initialism "NKRA" was entered, thereby signifying such information was *not known or reasonably ascertainable*.

113. For each of the respective entries in which "NKRA" was written in the 2024 Form U, the following was known to Respondents or was otherwise ascertainable to them through reasonable effort:

    [a.] the required Table 4 information, *i.e.* "the letters which correspond to the appropriate processing or use operation(s) listed in Table 4," as provided in 40 C.F.R. § 711.15(b)(4)(i)(A);

    [b.] the required Table 5 information, *i.e.* the "code [corresponding to the appropriate sector(s) listed in Table 5] indicating the sector(s) that best describe the industrial activities associated with each individual processing or use operation," as provided in 40 C.F.R. § 711.15(b)(4)(i)(B); and

    [c.] the required Table 6 information, *i.e.* "the applicable code(s) from Table 6…to designate the function category(ies) that best represent the specific manner in which the chemical substance is used," as provided for in 40 C.F.R. § 711.15(b)(4)(i)(C).

114. Prior to submitting to EPA the 2024 Form U, Respondents possessed, *inter alia*, the required Table 4 information, the required Table 5 information, and the required Table 6 information for the chemical substances listed in that Form U. Respondents had, prior to submitting to EPA the 2024 Form U, used such information for sales and marketing purposes.

115. The following are illustrative but not exhaustive of Respondents' failures to report the required Tables 4, 5, and 6 information pertained to the listing of each of the following chemical substances in the 2024 Form U: **(a)** MSA; **(b)** CRY; **(c)** PAM; **(d)** Glycine, N,N'-

1,2-ethanediylbis[N-(carboxymethyl)- ,CASRN 60-00-4 (hereinafter "GEB"); and **(e)** Propane, 1,1,1,3,3-pentafluoro-, CASRN 460-73-1 (hereinafter "PPF") (hereinafter and for purposes of this count, collectively referred to as the "five 2024 Form U chemicals"). Such examples were set out in Count 3 above for MSA, CRY, and PAM, and examples for GEB and PPF follow below.

116. With regard to GEB, the current "Wego" website lists the "industries" as being "Agriculture, CASE & Construction, Chemical Manufacturing, Industrial, Personal Care & Cosmetics, Water Treatment."

117. With regard to PFF, the current "Wego" website lists the "industries" as being "CASE & Construction, Chemical Manufacturing, Foam & Barrier Systems, Industrial."

118. With regard to GEB, the current "Wego" website lists "chelator" as a function.

119. With regard to PFF, the current "Wego" website lists each of "Blowing Agent" and "Processing Aid" as a function.

120. In the 2024 Form U, Respondents failed to disclose the required Table 4 information, the required Table 5 information, and the required Table 6 information for 247 chemical substances.

121. In each field of the 2024 Form U respectively calling for the required estimated percentage information, the initialism "NKRA" was entered, thereby signifying such information was *not known or reasonably ascertainable*.

122. In each of the respective entries in which "NKRA" was written in the 2024 Form U, the required estimated percentage information was known to Respondents or was otherwise ascertainable to them through reasonable effort.

123. In the 2024 Form U, Respondents failed to disclose the required estimated percentage information for 247 chemical substances.

124. Respondents, as national and international distributors of chemical substances with sales offices around the world, distributed in commerce the chemical substances reported in the 2024 Form U.

125. The totality of the failures to disclose the aforementioned required information (the Table 4 information, the Table 5 information, the Table 6 information, and the estimated percentage information) for 247 chemical substances listed in the 2024 Form U deprived EPA of information necessary for it to make fact-based and thus informed risk-evaluation decisions concerning chemical substances imported into the United States.

126. Each of Respondents' 247 failures to provide in the 2024 Form U required information that was known to them or was reasonably ascertainable but for which only the notation "NKRA" was made, separately and independently constituted 247 failures to comply with, and thus 247 separate and independent violations of, the requirements set out in 40 C.F.R. § 711.15.

127. Each of Respondents' 247 failures to provide in the 2024 Form U required information that was known to them or was reasonably ascertainable but for which only the notation "NKRA" was made, constitutes 247 separate and independent unlawful acts pursuant to, and thus 247 separate and individual violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

128. As a consequence of each of the 247 separate and independent information reporting violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 5: PRE-MANUFACTURE NOTIFICATION VIOLATIONS

129. Complainant repeats and realleges each allegation contained in paragraphs "1" through "128," above, with the same force and effect as if fully set forth herein.

130. The regulation codified at 40 C.F.R. § 720.22(b)(1) provides that "[a]ny person who intends to import a new chemical substance into the United States for commercial purposes must submit a notice, unless the substance is excluded under [40 C.F.R.] § 720.30 or unless the substance is imported as part of an article."

131. Forty C.F.R. § 720.3 defines, inter alia, the following terms: **(a)** "person" to include "any…company"; **(b)** "new chemical substance" as "any chemical substance which is not included on the Inventory"; and **(c)** "Inventory" to "mean[] the list of chemical substances manufactured or processed or in the United States that EPA compiled and keeps current under section 8(b) of [TSCA]."

132. In calendar year 2021, Respondents imported for commercial purposes a chemical substance, 2-butenoic acid, (2E), also known as trans-crotonic acid, Chemical Abstract Services Registry Number 107-93-7 (hereinafter "TCA") into the United States on or about each of the following dates (followed by the weight of the TCA imported on each such date): **(a)** July 13, 2021 (5,606 kilograms [12,333 pounds]); and **(b)** July 31, 2021 (20,700 kilograms [45,540 pounds]).

133. On or about June 1, 2023, Respondents imported for commercial purposes 3,456 kilograms (7,603 pounds) of TCA into the United States.

134. In calendar year 2024, Respondents imported for commercial purposes TCA into the United States on or about each of the following dates (followed by the weight of the TCA imported on each such date): **(a)** July 23, 2024 (21,024 kilograms [46,253 pounds]); **(b)** August 5, 2024 (21,004 kilograms [46,208 pounds]); and **(c)** August 25, 2024 (21,154 kilograms [46,539 pounds]).

135. On or about February 21, 2025, Respondents imported for commercial purposes 21,180 kilograms (46,596 pounds) of TCA into the United States.

136. On or about April 10, 2025, Julia Hanft, Respondents' General Counsel, e-mailed EPA to respond to a prior Jesse Miller inquiry, stating the TCA "was sold to a customer in the

CASE (Coatings, Adhesives, Sealants, and Epoxies) industry and not for food and/or cosmetic use."

137. The sale of the TCA to a customer in the "CASE industry" was for a "commercial purpose[]" within the meaning of 40 C.F.R. § 720.22(b)(1).

138. For the importations of the TCA, the following were listed on official United States custom records (*i.e.*, official United States Customs and Border Protection-authorized electronic data interchange), as both the importers of record, and the consignees of record: **(a)** Wego Chemical LLC; **(b)** and Wegochem International LLC.

139. Because TCA was not on the TSCA Inventory during the entirety of the time of the seven TCA importations, it constituted a new chemical substance throughout such time.

140. At no time when the seven importations occurred had TCA been excluded from the 40 C.F.R. § 720.22(b)(1) pre-manufacture notification requirement under 40 C.F.R. § 720.30.

141. Respondents were required to file a 40 C.F.R. § 720.22(b)(1) pre-manufacture notice prior to the TCA being imported into the United States.

142. Respondents never filed a pre-manufacture notice for any of the seven TCA importations.

143. Respondents' failures have filed a pre-manufacture notice for any of the TCA importations constitutes seven separate and independent failures to comply with, and thus seven separate and independent violations of, 40 C.F.R. § 720.22(b)(1).

144. Respondents' failures to have filed a pre-manufacture notice for any of the TCA importations constitutes seven separate and independent unlawful acts pursuant to, and seven separate and independent violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

145. As a consequence of each of the seven TCA pre-manufacture notice violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 6: FAILURE TO PROVIDE REQUISITE TSCA CERTIFICATION

146. Complainant repeats and realleges each allegation contained in paragraphs "1" through "145," above, with the same force and effect as if fully set forth herein.

147. The regulation codified at 40 C.F.R. § 707.20(a)(1) provides, in relevant part, that "the regulation promulgated by the United States Customs Service [and] Department of the Treasury (19 CFR 12.118 through 12.127, and 127.28 [amended]) [are intended] to implement section 13 of TSCA, 15 U.S.C. 2612."

148. The regulation codified at 19 C.F.R. § 12.119(a) states, in part, "Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of [c]hemical substances in bulk form…."

149. The regulation codified at 19 C.F.R. § 12.120(b) defines a "TSCA chemical substance in bulk form" as "a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) (other than as part of an article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container."

150. The regulation codified at 19 C.F.R. 12.120(d) defines "TSCA-excluded chemicals" as "any chemicals that are excluded from the definition of TSCA chemical substance by section 3(2)(B) (ii)-(vi) of TSCA, (15 U.S.C. 2602(2) (b) (ii)-(vi)) (other than as part of a mixture), regardless of form."

151. The regulation codified at 19 C.F.R. § 12.121(a)(1) provides, in relevant part, the following: "The importer…of a TSCA chemical substance in bulk form…must certify in writing or electronically that the chemical shipment complies with all applicable rules and orders under TSCA by filing with CBP [United States Customs and Border Protection] the following statement: 'I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder'" (hereinafter, a "positive certification").

152. The regulation codified at 19 C.F.R. § 12.121(a)(2) provides, in relevant part, the following: "The importer…of any TSCA-excluded chemical not clearly identified as such must certify in writing or electronically that the chemical shipment is not subject to TSCA by filing with CBP the following statement: 'I certify that all chemicals in this shipment are not subject to TSCA'" (hereinafter a "negative certification").

153. Each of the seven TCA importations into the United States constituted an importation into the "customs territory of the United States of a chemical substance in bulk form" within the meaning of Section 13(a)(1) of TSCA, 15 U.S.C. § 2612(a)(1), and 19 C.F.R. §§ 12.118-121.

154. For each of the seven TCA importations, Respondents constituted the "importer" within the meaning of 19 C.F.R. § 12.121(a)(1).

155. None of the seven TCA importations involved a "TSCA-excluded chemical" within the meaning of 19 C.F.R. § 12.121(a)(2).

156. For each of the seven TCA importations, Respondents were required to provide a positive or negative certification.

157. Respondents failed to provide either a positive certification or a negative certification, either in writing or electronically, for each of the seven TCA importations.

158. Respondents' failures to provide either of the two required certifications (either a positive or negative certification) for each of the seven TCA importations constitutes seven separate and independent failures to comply with and thus seven separate and independent violations of 19 C.F.R. § 12.121(a).

159. Respondents' failures to provide either of the two required certifications constitutes seven separate and independent unlawful acts pursuant to, and seven separate and independent violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

160. As a consequence of each of Respondents' seven certification violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 7: SUBMISSION OF ERRONEOUS NOTICE OF COMMENCEMENT

161. Complainant repeats and realleges each allegation contained in paragraphs "1" through "160," above, with the same force and effect as if fully set forth herein.

162. Forty C.F.R. § 720.102(a) provides: "Any person who commences the manufacture of a new chemical substance for a nonexempt commercial purpose for which that person previously submitted a section 5(a) notice under this part must submit a notice of commencement of manufacture" (hereinafter such latter notice referred to as an "NOC").

163. The regulation codified at 40 C.F.R. 720.102(c)(1)(iv) sets forth what information the NOC must, in part, include: "The date of commencement for the submitter's manufacture for a non-exempt commercial purpose (indicating whether the substance was initially manufactured in the United States or imported). *** For importers, the date of commencement is the date the new chemical substance clears United States customs."

164. On or about August 23, 2019, Respondents submitted to EPA a TSCA Section 5(a) (15 U.S.C. § 2604(a)) pre-manufacture notice for a chemical substance claimed to be confidential, for which EPA assigned pre-manufacture notice case number P-19-0153.

165. On or about August 6, 2020, Respondents submitted to EPA an NOC for the chemical substance identified in P-19-0153.

166. For the period including, but not limited to, the time between August 23, 2019 and August 6, 2020, the chemical substance identified in P-19-0153 was a new chemical substance.

167. The August 6, 2020 NOC Respondents submitted to EPA indicated the date for the first commercial importation of the chemical substance identified in P-19-0153 for a non-exempt purpose as August 6, 2020.

168. On or about April 11, 2025, Julia Hanft, Respondents' General Counsel, responding to an earlier Jesse Miller inquiry, e-mailed EPA, stating "[w]e reviewed our files and confirm that the product covered by the pre-manufacture notice (PMN) P-19-0153 and notice of commencement (NOC) for the PMN substance has not been imported by Wego into the US."

169. The August 6, 2020 NOC contained erroneous information, specifically that Respondents had first imported the chemical substance identified in P-19-0153 for non-exempt commercial purpose on August 6, 2020.

170. Respondents' submission of erroneous information in the August 6, 2020 NOC constitutes a failure to comply with, and thus a violation of, 40 C.F.R. 720.102(c)(1).

171. Respondents' failure to provide correct information in the August 6, 2020 NOC constitutes an unlawful act pursuant to, and thus a violation of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

172. As a consequence of Respondents' NOC violation, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 8: FAILURE TO SUBMIT EXPORT NOTIFICATION

173. Complainant repeats and realleges each allegation contained in paragraphs "1" through "172" with the same force and effect as if fully set forth herein.

174. Section 12(b)(2) of TSCA, 15 U.S.C. § 2611(b)2) provides in relevant part: "If any person exports or intends to export to a foreign country a chemical substance…for which…a rule has been proposed or promulgated under section 2604 or 2605 of this title…such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule…."

175. The regulation codified at 40 C.F.R. § 707.60(a) provides: "Section 12(b) of [TSCA, 15 U.S.C. § 2611(b)] requires any person who exports or intends to export a chemical substance or mixture to notify the [EPA] of such exportation to a particular country if any of the following actions have been taken under [TSCA] with respect to that chemical substance or mixture," and one such action, set forth in sub-paragraph (a)(3), provides "[a] rule has been proposed or promulgated under section 5 or 6 [15 U.S.C. § 2604 or 2605]…."

176. The regulation codified at 40 C.F.R. § 707.65(a) provides, in part, "[f]or each action under TSCA triggering export notification, exporters must notify EPA of their export or intended export of each subject chemical substance or mixture for which export notice is required under [40 C.F.R.] § 707.60 in accordance with the" provisions of sub-paragraphs (a)(1)(i) and (a)(1)(ii).

177. On December 5, 2019, Respondents exported for commercial purposes to Canada a chemical substance identified as Ethene, 1,1,2-trichloro- (commonly referred to as trichloroethylene; CASRN 79-01-6 [hereinafter "TCE"]).

178. On June 9, 2020, Respondents exported for commercial purposes to Canada a chemical substance identified as 2-Pyrrolidinone, 1-methyl- (commonly known as N-methylpyrrolidone; CASRN 872-50-4 [hereinafter "NMP"]).

179. At the time Respondents exported it, TCE was subject to a: **(a)** "significant new use" rule pursuant to 40 C.F.R. § 721.10851 (as set forth in 81 *Fed. Reg.* 91592 [December 16, 2016]), and **(b)** proposed risk management rule issued pursuant to Section 6 of TSCA, 15 U.S.C. § 2605 (as set forth in 82 *Fed. Reg.* 7432 [January 19, 2017] and 81 *Fed. Reg.* 91592 [December 16, 2016]).

180. At the time Respondents exported it, NMP was subject to a proposed risk management rule issued pursuant to Section 6 of TSCA, 15 U.S.C. § 2605 (as set forth in 82 *Fed. Reg.* 7432 [January 19, 2017] and 81 *Fed. Reg.* 91592 [December 16, 2016]).

181. For the export of both TCE and RMP, Respondents were required to provide to EPA the notification required by: **(a)** Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and **(b)** 40 C.F.R. § 707.65(a)

182. For the export of TCE and NMP, Respondent failed to provide to EPA the notification required by: **(a)** Section 12(b) of TSCA, 15 U.S.C. § 2611(b), and **(b)** 40 C.F.R. § 707.65(a).

183. Respondents' failures to have provided to EPA an export notification for each of TCE and NMP exports constitutes two separate and independent failures to comply with, and thus two separate and independent violations of the requirement of both 15 U.S.C. § 2611(b) and 40 C.F.R. § 707.65(a).

184. Respondent's failures to have provided to EPA an export notification for each of the TCE and NMP exports constitute two separate and independent unlawful acts pursuant to, and thus two separate and independent violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

185. As a consequence of each of Respondents' export violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 9: FAILURE TO SUBMIT SIGNIFICANT NEW USE NOTICE TO EPA

186. Complainant repeats and realleges each allegation contained in paragraphs "1" through "185," above," with the same force and effect as if fully set forth herein.

187. In relevant part, Section 5(a)(1)(A) of TSCA, 15 U.S.C. § 2604(a)(1)(A), provides that "no person may manufacture or process any chemical substance for a use which the [EPA] Administrator has determined, in accordance with paragraph (2), is a significant new use."

188. The regulation codified at 40 C.F.R. § 721.5(a)(1) provides the following persons must submit, with specified exceptions not relevant here, a significant new use notice to EPA: a person "who intends to manufacture or process for commercial purposes a chemical substance identified in a specific section in subpart E ["Significant New Uses for Specific Chemical Substances"] of this part, and intends to engage in a significant new use of the substance identified in that section."

189. Forty C.F.R. § 721.5(a)(2) further provides that "a person described in this paragraph is not required to submit a significant new use notice if that person can document [*inter alia*] …the following as to each recipient of the substance from that person": in sub-paragraph "i": "That the person has notified the recipient, in writing, of the specific section in subpart E of this part which identifies the substance and its designated significant new uses."

190. Pursuant to 40 C.F.R. § 721.536(a)(1), a provision of Subpart E of 40 C.F.R. Part 721, "The chemical substance identified generically as halogenated phenyl alkane (PMN P-89-867) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section."

191. Forty C.F.R. § 721.536(a)(2)(ii) provides, in part, that "significant new uses" include the "Hazard communication program. Requirements as specified in [*inter alia*] § 721.72…(b), (c), …(g)(1)(vii), (g)(2)(iv), (g)(2)(v), (g)(3)(ii), (g)(4)(iii), and (g)(5)."

192. Forty C.F.R. § 721.72 provides, in part: "Whenever a substance is identified in subpart E of this part as being subject to this section, a significant new use of that substance is any manner or method of manufacture (including import) or processing associated with any use of that substance without establishing a hazard communication program as described in this section."

193. As part of the "hazard communication program," the regulation codified at 40 C.F.R. § 721.72(b)(2) requires, in part, that "[e]ach employer shall ensure that each container of the substance leaving the workplace" has a label containing the information set forth in sub-provision "(i)," pertaining to statements regarding "health hazard(s) and precautionary measure(s)," "environmental hazard(s)" and "exposure."

194. As part of the "hazard communication program," the regulation codified at 40 C.F.R. § 721.72(c)(1) requires that "[e]ach employer must obtain or develop a SDS [a "Safety Data Sheet," as defined in 40 C.F.R. § 721.3] for the substance," with 40 C.F.R. § 721.72(c)(2) prescribing the information that each SDS must contain.

195. As part of the "hazard communication program," the regulation codified at 40 C.F.R. § 721.72(g) provides, in part, "Whenever referenced in subpart E of this part for a substance, the following human health and environmental hazard, exposure, and precautionary statements shall appear on each label as specified in paragraph (b) of this section and the SDS as specified in paragraph (c) of this section."

196. As part of the "hazard communication program," in 40 C.F.R. § 721.72(g), the following are included as the "human health and environmental hazard, exposure, and precautionary statements" [followed by the specific sub-provision in which each is respectively listed]:

    [a.] "May cause cancer" [(1)(vii)];

    [b.] "Use respiratory protection" [(2)(iv)];

    [c.] "Toxic to aquatic organisms" [(3)(ii)];

    [d.] "Do not release to water" [(4)(iii)]; and

    [e.] "Each human health or environmental hazard precautionary statement identified is subpart E of this part for the label on the substance container must be followed by the statement, 'See SDS for details'" [5].

197. Respondents imported for commercial purposes a chemical substance commonly known as decabromodiphenyl ethane, more formally identified as Benzene, 1,1'-(1,2 ethanediyl) bis [2,3,4,5,-pentabromo], which chemical substance bears CASRN 84852-53-9 (hereinafter referred to as "DBE"), a chemical substance generically identified as a halogenated phenyl alkane within the meaning of 40 C.F.R. § 721.536(a)(1), a provision of Subpart E of 40 C.F.R. Part 721.

198. In response to an inquiry from EPA (Jesse Miller) requesting "[f]or the previous 5 years, records documenting the names and addresses…of all persons to whom Wego directly sells and transfers the [DBE]," Vincent Gamboli, identified as "Wego Regulatory Inquiries Zendesk" in the e-mail he sent to EPA on January 7, 2022, stated, "There were a total of 4 shipments to US, all in June and July of 2019."

199. More specifically, subsequent to Respondents' importations of the DBE, they distributed in commerce (*i.e.* sold) the DBE as follows: **(a)** on June 5, 2019, to one customer (hereinafter identified as "Customer A") 44,092 pounds [20,042 kilograms]; **(b)** on June 6, 2019, to Customer A 41,887.4 pounds [19,040 kilograms]; **(c)** on July 9, 2019, to another customer (hereinafter identified as "Customer B") 44,091 pounds [20,041 kilograms]; and **(d)** separately on July 9, 2019, to Customer B 44,092 pounds [20,042 kilograms] (hereinafter the two customers referred to collectively as "the Customers").

200. For purposes of 40 C.F.R. § 721.72, Respondents constituted for the entirety of the period relevant to the importations and distributions of DBE, an "employer" within the meaning of 40 C.F.R. § 721.3.

201. Respondents failed to ensure that each container of the DBE sold to the Customers was prior to distribution labeled in accordance with the provisions of 40 C.F.R. § 721.72(b)(1).

202. Respondents failed to obtain or develop an SDS for the DBE that contained, at a minimum, the information set forth in 40 C.F.R. § 721.72(c)(2).

203. Respondents failed to ensure that the required human health and environmental hazard, exposure, and precautionary statements appeared on the label on each container holding the DBE prior to distribution, as specified in 40 C.F.R. § 721.72(b).

204. Respondents failed to obtain or develop an SDS for the DBE that contained the human health and environmental hazard, exposure, and precautionary statements as specified in 40 C.F.R. § 721.72(c).

205. Respondent failed to provide the written notice prescribed in 40 C.F.R. § 721.5(a)(2)(i) to either the Customers concerning "the specific section in subpart E of this part which identifies the substance [the DBE] and its designated significant new uses" (collectively such failures referred to as "Respondents' SNU failures").

206. As a consequence of Respondents' SNU failures, each of Respondents' four imports of the DBE constituted engaging in a "significant new use" of the DBE for purposes of 40 C.F.R. § 721.72.

207. Respondents were required to submit to EPA a "significant new use notice" (hereinafter "SNUN") for each of their four separate DBE importations pursuant to 40 C.F.R. § 721.5(a)(1).

208. Respondents failed to submit a SNUN to EPA for any of their DBE importations, as required by 40 C.F.R. § 721.5(a)(1).

209. Respondents' failures to have submitted a SNUN for each of their DBE importations constitute four separate and independent failures to comply with, and thus four violations of, 40 C.F.R. § 721.5(a)(1).

210. Respondents' failures to have submitted a SNUN to EPA for each of their four importations constitutes four unlawful acts pursuant to, and four violations of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)**, Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

211. As a consequence of each of the for SNUN violations, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

COUNT 10: FILING A FALSE CERTIFICATION OF NO MANUFACTURE

212. Complainant repeats and realleges each allegation contained in paragraphs "1" through "211" with the same force and effect as if fully set forth herein.

213. Pursuant to 40 C.F.R. § 700.40(a), "The purpose of this subpart [40 C.F.R. Part 700, Subpart C; 40 C.F.R. §§ 700.40-700.49] is to establish and collect fees from manufacturers and processors to defray part of EPA's cost of administering the" TSCA, as amended.

214. In 40 C.F.R. § 700.40(b), it states, in relevant part, that 40 C.F.R. Part 700, Subpart C "applies to all manufacturers…who manufacture a chemical substance that is subject to a risk evaluation under TSCA section 6(b)(4) of [TSCA]…."

215. Pursuant to 40 C.F.R. § 700.43, the definitions applicable to subpart C of 40 C.F.R. Part 700 (40 C.F.R. §§ 700.40-700.49) include the definitions contained in, *inter alia*, 40 C.F.R. § 720.3

216. Pursuant to 40 C.F.R. § 720.3, "Manufacture means to…import into the customs territory of the United States."

217. Forty C.F.R. § 700.45(a)(3) states, in part, "Manufacturers of a chemical substance that is subject to a risk evaluation under section 6(b) of [TSCA] shall remit for each such chemical risk evaluation the applicable fee identified in paragraph (c) of this section in accordance with the evaluation procedures in paragraphs (f) and (g) of this section."

218. Forty C.F.R. § 700.45(b)(1) states, in part, "For purposes of identifying manufacturers subject to fees for…section 6 EPA-initiated risk evaluations, EPA will publish a preliminary list of manufacturers identified through a review of data sources

described in paragraph (b)(2) of this subsection…and publish a final list specifying the manufacturers responsible for payment."

219. Forty C.F.R. § 700.45(b)(5) states, in relevant part, "All manufacturers other than those listed in paragraphs (a)(2)(i) through (iii) and (a)(3)(i) through (iii) of this section who have manufactured (including imported) the chemical substance [that is subject to risk evaluation under section 6(b) of TSCA] in the previous five years must submit notice to EPA, irrespective of whether they are included in the preliminary list specified in paragraph (b)(3) of this section."

220. Forty C.F.R. § 700.45(b)(5)(iii), denominated "Certification of no manufacture," states, in relevant part, "If a manufacturer is identified on the preliminary list but has not manufactured the chemical [that is subject to risk evaluation under section 6(b) of TSCA] in the five-year period preceding publication of the preliminary list, the manufacturer may submit a certification statement attesting to these facts."

221. By Federal Register notice dated January 27, 2020, "Carbon Tetrachloride; Draft Toxic Substances Control Act (TSCA) Risk Evaluation and TSCA Science Advisory Committee on Chemicals (SACC) Meetings; Notice of Availability, Public Meetings, and Request for Comment," 85 *Fed. Reg.* 4661, EPA identified the preliminary lists of manufacturers (including importers) of 20 chemical substances that had been designated as a High-Priority Substance for risk evaluation and for which fees would be charged.

222. In the preliminary lists, "Wego Chemical & Mineral Corp." with listed parent company D&B number 07-310-8664, was identified as the importer for dibutyl phthalate, CAS # 84-74-2, docket number EPA-HQ-OPPT-2019-0677-0019 (hereinafter "DBP"). D&B number 07-310-8664 presently pertains to Wego Chemical and Mineral LLC.

223. Respondents imported DBP into the customs territory of the United States in the following years, as follows: **(a)** 216,161 pounds in 2016; and **(b)** 44,092 pounds in 2018.

224. On or about July 7, 2020, Respondent Wego Chemical Group submitted to EPA its Central Data Exchange a *Certification of no manufacture* form pursuant to 40 CFR 700.45(b)(5)(iii) attesting that Respondents had not imported the DBP in the five-year period preceding publication of the preliminary list (*i.e.,* in the five-year period prior to January 27, 2020).

225. The *Certification of no manufacture* contained false and erroneous information, specifically regarding the assertion that Respondents had not imported DBP in the five years period preceding January 2020.

226. The submission of a false and erroneous *Certification of no manufacture* constitutes a failure to comply with, and thus a violation of, 40 C.F.R. 700.45(b)(5).

227. The 40 C.F.R. 700.45(b)(5) violation constitutes an unlawful act pursuant to, and a violation of: **(a)** Section 15(1) of TSCA, 15 U.S.C. § 2614(1), and **(b)** Section 15(3)(B) of TSCA, 15 U.S.C. § 2614(3)(B).

228. As a consequence of the 40 C.F.R. 700.45(b)(5) violation, Respondents are jointly and severally liable to the United States pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

PROPOSED CIVIL PENALTY

For purposes of determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires the following: "In determining the amount of a civil penalty, the Administrator [of EPA] shall take into account the nature, circumstances, extent, and gravity of the violation or violations, and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require." This Complaint does not specify a proposed penalty. EPA will do so pursuant to 40 C.F.R. § 22.19(a)(4), which provides:

> If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in [TSCA].

At such time as it proposes a specified penalty for the violations alleged in this Complaint, EPA will consider the above-listed statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and such consideration will include any credible documentary information any respondent has introduced into the litigation or has otherwise provided EPA for settlement purposes. In developing a specified penalty for each of the set of violations alleged in this Complaint, EPA will utilize the guidance set forth in EPA's Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12 and 13 (revised March 31, 1999 and effective June 1, 1999) for counts 1, 2, 4 and 6; and for counts 3 and 5, EPA's TSCA Section 5 Enforcement Response policy (last amened July 1, 1993), as both documents have been further updated. *See* 40 C.F.R. § 19.4. These enforcement response policies provide guidance to effect rational, consistent, and equitable calculation methodologies for applying the statutory penalty criteria (enumerated above) to particular cases and are available upon request to EPA or may be obtained from the Internet, at https://www.epa.gov/sites/production/files/documents/erp8_12r.pdf and https://www.epa.gov/sites/default/files/2016-06/documents/amendedtscasection5-erp.pdf. As set forth above in paragraphs 10 and 11 of the allegations, at the time of TSCA's passage in 1976, $25,000 constituted the maximum dollar amount per violation EPA could seek and obtain for any violation of Section 15 of TSCA, 15 U.S.C. § 2614; that amount has been increased to $49,772 for any such violation occurring on or after November 2, 2015 and for which a penalty has been assessed on or after January 8, 2025. 40 C.F.R. § 19.4, Table 1. Accordingly, this $49,772 amount constitutes the maximum penalty authorized under the Inflation Adjustment Act for each of the aforementioned alleged violations, as more specifically detailed below.

Complainant thus sets forth the following with regard to the civil penalties to be sought for the violations herein alleged:

Count 1: TSCA Section 8(a): Failure to Submit 2020 Form U for 209 Reportable Chemical Substances (25,000 pound threshold)

Requirement: The applicable requirement: 40 C.F.R. § 711.8(a).

Violation: Respondents failed to file a 2020 Form U CDR within the prescribed reporting period (June 1, 2020 through January 29, 2021) for 209 chemical substances.

Penalty: A penalty of up to $49,772 for each of the 209 Attachment 1 chemicals listed in the 2020 Form U that Respondents failed timely to submit.

Count 2: TSCA Section 8(a): Failure to Submit 2020 Form U Chemical Data Report for Five Reportable Chemical Substances (2,500 pound threshold)

Requirement: The applicable requirements: 40 C.F.R. § 711.8(b).

Violation: Respondents failed to file a 2020 Form U CDR within the prescribed reporting period (June 1, 2020 through January 29, 2021) for five chemical substances for which the reporting threshold was 2,500 pounds,

Penalty: A penalty of up to $49,772 for each of these five chemical substances listed in the 2020 Form U that Respondents failed timely to submit.

Count 3: TSCA Section 8(a): Failure to Report Required Information in 2020 Form U

Requirement: The applicable requirement: 40 C.F.R. § 711.15.

Violation: Respondents in the 2020 For U failed to provide information required by 40 C.F.R. 711.15, for the 209 chemical substances listed in Attachment 1.

Penalty: A penalty of up to $49,772 for each of the 209 chemical substances for which Respondents failed to report required information.

Count 4: TSCA Section 8(a): Failure to Report Required Information in 2024 Form U

Requirement: The applicable requirement: 40 C.F.R. § 711.15.

Violation: Respondents in the 2024 For U failed to provide information required by 40 C.F.R. 711.15, for 247 chemical substances.

Penalty: A penalty of up to $49,772 for each of the 247 chemical substances for which Respondents failed to report required information.

Count 5: Seven Pre-Manufacture Notice Violations

Requirement: The applicable requirement: 40 C.F.R. § 720.22(b)(1).

Violation: Respondents on seven separate occasions imported a new chemical substance known as trans-crotonic acid ("TCA") without the required antecedent pre-manufacture notice ever having been submitted to EPA for this chemical substance.

Penalty: A penalty of up to $49,772 for each of the seven alleged pre-manufacture notice violations.

Count 6: Failure to Provide Requisite TSCA Certifications for TCA Importations

Requirement: The applicable requirement: 40 C.F.R. § 707.20(b)(2).

Violation: For the same importations at issue in Count 5, Respondents failed to certify whether any such importation complied with TSCA provisions or were exempt from TSCA provisions.

Penalty: A penalty of up to $49,772 for each of the seven alleged certification violations.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this administrative litigation, originally published in the Federal Register on July 23, 1999 (64 *Fed. Reg.* 40138), are entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS" ("Consolidated Rules") and are codified at 40 C.F.R. Part 22. These rules have been amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 *Fed. Reg.* 2230 (January 9, 2017). These amendments became effective on May 22, 2017 and apply to all Part 22 case filings after that date. A copy of the current version of the Consolidated Rules, incorporating these recent amendments, accompanies service of this Complaint.

A. Answering the Complaint

Where Respondents (each respondent may answer for itself, or a respondent may answer on behalf of itself and other respondents; henceforth, for the discussion below, the term "Respondents" refers to a respondent individually or collectively to two or more respondents in concert as appropriate to the specific context) intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that a Respondent(s) is entitled to judgment as a matter of law, such Respondent(s) are directed to file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer(s) to the Complaint, and such Answer(s) must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2 is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

The attached Standing Order from the Regional Judicial Officer of U.S. Environmental Protection Agency, Region 2, dated August 3, 2020, authorizes electronic service of certain Part 22 documents, including the Respondents' Answer(s) to this Complaint (Attachment A). Respondent should therefore serve the Answer(s) upon the Regional Hearing Clerk electronically to the following address: region2_regionalhearingclerk@epa.gov

A copy of Respondents' Answer(s), including any request for hearing, must also be sent to Complainant. 40 C.F.R. § 22.15(a). Complainant has designated Assistant Regional Counsel Lee Spielmann to receive service on his behalf. Respondents may send documents filed in this matter to Mr. Spielmann electronically at Spielmann.Lee@epa.gov.

Respondents' Answer(s) to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in their Answer(s), the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer(s) shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding) and (3) whether Respondent(s) requests a hearing. 40 C.F.R. § 22.15(b).

Respondents' failure affirmatively to raise in the Answer(s) facts that constitute or that might constitute the grounds of their defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondents in the Answer(s), a hearing upon the issues raised by the Complaint and Answer(s) may be held. 40 C.F.R. § 22.15(c). *See generally* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer(s) raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. *See* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: "A civil penalty for a violation of section 2614 ... of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity ... for a hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554]."

If Respondents fail to request a hearing, such failure may operate to preclude Respondents from obtaining judicial review of an adverse EPA order. *See* 15 U.S.C. § 2615(a)(3), which states, in part: "Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business."

C. Failure to Answer

If Respondents fail in the Answer(s) to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondents fail to file a timely [i.e., in accordance with the thirty (30)-day period set forth in 40 C.F.R. § 22.15(a)] Answer(s) to the Complaint, such Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents for failure to timely file an Answer(s) to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R.§ 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondents, and to collect the assessed penalty amount, in federal court.

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondents have filed an Answer(s) should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk. Respondents should register to use the EPA e-filing system: https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm

E. Exhaustion Of Administrative Remedies

Where Respondents fail to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondents then waive the right to judicial review. 40 C.F.R. § 22.27(d).

To appeal an initial decision to the Agency's Environmental Appeals Board ("EAB"), Respondents must do so "[w]ithin 30 days after the initial decision is served upon the parties." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "five days shall be added to the time allowed by these rules for the filing of a responsive pleading or document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondents request a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of TSCA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in the Complaint, and Respondents may also provide whatever additional information that they believe to be relevant to the disposition of this matter, including: **(1)** actions Respondents has taken to correct any or all of the violations herein alleged, and/or **(2)** any other special facts or circumstances Respondents wish to raise.

Section 16(a)(2)(C) of TSCA, 15 U.S.C. § 2615(a)(2)(C), provides, in part, "The Administrator [of EPA] may compromise, modify, or remit, with or without conditions, any civil penalty which shall be imposed under this sub-section." Accordingly, Complainant has the authority to modify the amount of the proposed potential penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any relevant information previously not known to Complainant, or to dismiss any or all of the charges, if Respondents are able to demonstrate the relevant allegations are without merit and no causes of action as herein alleged exist. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this complaint should be directed to the following EPA counsel:

Lee A. Spielmann
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3222
spielmann.lee@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Any request for a formal hearing does not preclude Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request(s) for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer(s) to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference will be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondents waive the right to contest the allegations in the Complaint and waive any right they might possess to seek administrative or judicial review of the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). To conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondents entering into a settlement through the signing of such Consent Agreement and their complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation arising out of the allegations made in the Complaint. Respondents entering into a settlement does not extinguish, waive, satisfy, or otherwise affect their obligation and responsibility to comply with all applicable TSCA statutory and regulatory requirements for the operation of their importing and related-business activities, and to maintain such compliance, including the obligation pertaining to the required quadrennial submission of the Form U and the filing of documentation required by applicable statutory and/or regulatory provisions.

Attachment 1: 2020 Form U Chemical Substances (25000lb Reporting Threshold)
Attachment 2: RJO Standing Order Authorizing Electronic Service
Attachment 3: Part 22 Consolidated Rules of Practice

Dated: May 22, 2026
New York, New York

COMPLAINANT:

Doughlas McKenna, Acting Director
Enforcement and Compliance Assurance Division
Environmental Protection Agency, Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

To: Julia Hanft, General Counsel
Wego Chemical Group
277 Northern Blvd.
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277 Northern Blvd.
Great Neck, New York 11021

In re Wego Chemical Group, et al.
Docket No. TSCA-02-2026-9241

CERTIFICATE OF SERVICE

This is to certify that on the 22 day of MAY, 2026, I caused to be mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the foregoing "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING" ("Complaint") with three attachments, bearing Docket Number TSCA-02-2026-9241, with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, to each of the following.

Julia Hanft, General Counsel
Wego Chemical Group
277 Northern Blvd.
Great Neck, New York 11021

Julia Hanft, General Counsel
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I also on said date sent via e-mail a copy of the Complaint and three attachments to the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2 at the following address: region2_regionalhearingclerk@epa.gov.

Dated: MAY 22nd, 2026
New York, New York

Jaleesa Taylor

Attachment 1

ATTACHMENT 1: GROUP 1 CHEMICAL SUBSTANCES

	CASRN	Chemical Name
1	100-21-0	1,4-Benzenedicarboxylic acid
2	10022-31-8	Nitric acid, barium salt (2:1)
3	10042-76-9	Nitric acid, strontium salt (2:1)
4	100-44-7	Benzene, (chloromethyl)-
5	100-51-6	Benzenemethanol
6	10099-74-8	Nitric acid, lead(2+) salt (2:1)
7	10124-37-5	Nitric acid, calcium salt (2:1)
8	101-83-7	Cyclohexanamine, N-cyclohexyl-
9	103-23-1	Hexanedioic acid, 1,6-bis(2-ethylhexyl) ester
10	10361-37-2	Barium chloride (BaCl2)
11	10476-85-4	Strontium chloride (SrCl2)
12	105-08-8	1,4-Cyclohexanedimethanol
13	105-58-8	Carbonic acid, diethyl ester
14	106-14-9	Octadecanoic acid, 12-hydroxy-
15	1067-53-4	2,5,7,10-Tetraoxa-6-silaundecane, 6-ethenyl-6-(2-methoxyethoxy)-
16	106-94-5	Propane, 1-bromo-
17	1071-93-8	Hexanedioic acid, 1,6-dihydrazide
18	108-30-5	2,5-Furandione, dihydro-
19	108-31-6	2,5-Furandione
20	108-32-7	1,3-Dioxolan-2-one, 4-methyl-
21	108-77-0	1,3,5-Triazine, 2,4,6-trichloro-
22	108-80-5	1,3,5-Triazine-2,4,6(1H,3H,5H)-trione
23	109-65-9	Butane, 1-bromo-
24	110-17-8	2-Butenedioic acid (2E)-
25	110-97-4	2-Propanol, 1,1'-iminobis-
26	111-20-6	Decanedioic acid

	CASRN	Chemical Name
27	111-40-0	1,2-Ethanediamine, N1-(2-aminoethyl)-
28	112-34-5	Ethanol, 2-(2-butoxyethoxy)-
29	112-80-1	9-Octadecenoic acid (9Z)-
30	112-92-5	1-Octadecanol
31	117-08-8	1,3-Isobenzofurandione, 4,5,6,7-tetrachloro-
32	1185-55-3	Silane, trimethoxymethyl-
33	119-53-9	Ethanone, 2-hydroxy-1,2-diphenyl-
34	119-61-9	Methanone, diphenyl-
35	119-65-3	Isoquinoline
36	120-12-7	Anthracene
37	1332-77-0	Boron potassium oxide (B4K2O7)
38	120-55-8	Ethanol, 2,2'-oxybis-, 1,1'-dibenzoate
39	121-79-9	Benzoic acid, 3,4,5-trihydroxy-, propyl ester
40	121-91-5	1,3-Benzenedicarboxylic acid
41	122-20-3	2-Propanol, 1,1',1"-nitrilotris-
42	122-62-3	Decanedioic acid, 1,10-bis(2-ethylhexyl) ester
43	122-99-6	Ethanol, 2-phenoxy-
44	123-86-4	Acetic acid, butyl ester
45	123-99-9	Nonanedioic acid
46	124-04-9	Hexanedioic acid
47	13674-84-5	2-Propanol, 1-chloro-, 2,2',2"-phosphate
48	124-64-1	Phosphonium, tetrakis(hydroxymethyl)-, chloride (1:1)
49	127-09-3	Acetic acid, sodium salt (1:1)
50	128-37-0	Phenol, 2,6-bis(1,1-dimethylethyl)-4-methyl-
51	1310-58-3	Potassium hydroxide (K(OH))
52	1310-65-2	Lithium hydroxide (Li(OH))

	CASRN	Chemical Name
53	131-17-9	1,2-Benzenedicarboxylic acid, 1,2-di-2-propen-1-yl ester
54	1314-56-3	Phosphorus oxide (P2O5)
55	1330-43-4	Boron sodium oxide (B4Na2O7)
56	1333-83-1	Sodium fluoride (Na(HF2))
57	1341-49-7	Ammonium fluoride ((NH4)(HF2))
58	13463-67-7	Titanium oxide (TiO2)
59	134-84-9	Methanone, (4-methylphenyl)phenyl-
60	13601-19-9	Ferrate(4-), hexakis(cyano-.kappa.C)-, sodium (1:4), (OC-6-11)-
61	14075-53-7	Borate(1-), tetrafluoro-, potassium (1:1)
62	140-93-2	Carbonodithioic acid, O-(1-methylethyl) ester, sodium salt (1:1)
63	141-53-7	Formic acid, sodium salt (1:1)
64	141-97-9	Butanoic acid, 3-oxo-, ethyl ester
65	142-16-5	2-Butenedioic acid (2Z)-, 1,4-bis(2-ethylhexyl) ester
66	13943-58-3	Ferrate(4-), hexakis(cyano-.kappa.C)-, potassium (1:4), (OC-6-11)-
67	144-62-7	Ethanedioic acid
68	1493-13-6	Methanesulfonic acid, 1,1,1-trifluoro-
69	15096-52-3	Cryolite (Na3(AlF6))
70	15625-89-5	2-Propenoic acid, 1,1'-[2-ethyl-2-[[(1-oxo-2-propen-1-yl)oxy]methyl]-1,3-propanediyl] ester
71	16871-90-2	Silicate(2-), hexafluoro-, potassium (1:2)
72	16893-85-9	Silicate(2-), hexafluoro-, sodium (1:2)
73	16919-27-0	Titanate(2-), hexafluoro-, potassium (1:2), (OC-6-11)-
74	16923-95-8	Zirconate(2-), hexafluoro-, potassium (1:2), (OC-6-11)-
75	16961-83-4	Silicate(2-), hexafluoro-, hydrogen (1:2)
76	17194-00-2	Barium hydroxide (Ba(OH)2)

	CASRN	Chemical Name
77	1739-84-0	1H-Imidazole, 1,2-dimethyl-
78	1758-73-2	Methanesulfinic acid, 1-amino-1-imino-
79	1852-04-6	Undecanedioic acid
80	1863-63-4	Benzoic acid, ammonium salt (1:1)
81	22984-54-9	2-Butanone, 2,2',2''-[O,O',O''-(methylsilylidyne)trioxime]
82	2451-62-9	1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-tris(2-oxiranylmethyl)-
83	25013-15-4	Benzene, ethenylmethyl-
84	25265-77-4	Propanoic acid, 2-methyl-, monoester with 2,2,4-trimethyl-1,3-pentanediol
85	2530-85-0	2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester
86	2687-94-7	2-Pyrrolidinone, 1-octyl-
87	27138-31-4	Propanol, oxybis-, dibenzoate
88	2809-21-4	Phosphonic acid, P,P'-(1-hydroxyethylidene)bis-
89	28553-12-0	1,2-Benzenedicarboxylic acid, 1,2-diisononyl ester
90	2873-97-4	2-Propenamide, N-(1,1-dimethyl-3-oxobutyl)-
91	29911-27-1	2-Propanol, 1-(1-methyl-2-propoxyethoxy)-
92	3296-90-0	1,3-Propanediol, 2,2-bis(bromomethyl)-
93	3319-31-1	1,2,4-Benzenetricarboxylic acid, 1,2,4-tris(2-ethylhexyl) ester
94	34690-00-1	Phosphonic acid, P,P',P'',P'''-[[(phosphonomethyl)imino]bis[6,1-hexanediylnitrilobis(methylene)]]tetrakis-
95	36483-57-5	1-Propanol, 2,2-dimethyl-, tribromo deriv.
96	36653-82-4	1-Hexadecanol
97	3710-84-7	Ethanamine, N-ethyl-N-hydroxy-
98	37971-36-1	1,2,4-Butanetricarboxylic acid, 2-phosphono-

	CASRN	Chemical Name
99	3811-04-9	Chloric acid, potassium salt (1:1)
100	3926-62-3	Acetic acid, 2-chloro-, sodium salt (1:1)
101	461-58-5	Guanidine, N-cyano-
102	474919-59-0	1,2-Cyclohexanedicarboxylic acid, 1,2-dinonyl ester, branched and linear
103	504-63-2	1,3-Propanediol
104	513-77-9	Carbonic acid, barium salt (1:1)
105	5165-97-9	1-Propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-, sodium salt (1:1)
106	5232-99-5	2-Propenoic acid, 2-cyano-3,3-diphenyl-, ethyl ester
107	532-32-1	Benzoic acid, sodium salt (1:1)
108	5329-14-6	Sulfamic acid
109	53306-54-0	1,2-Benzenedicarboxylic acid, 1,2-bis(2-propylheptyl) ester
110	540-69-2	Formic acid, ammonium salt (1:1)
111	540-88-5	Acetic acid, 1,1-dimethylethyl ester
112	541-02-6	Cyclopentasiloxane, 2,2,4,4,6,6,8,8,10,10-decamethyl-
113	544-63-8	Tetradecanoic acid
114	544-76-3	Hexadecane
115	552-30-7	5-Isobenzofurancarboxylic acid, 1,3-dihydro-1,3-dioxo-
116	55566-30-8	Phosphonium, tetrakis(hydroxymethyl)-, sulfate (2:1)
117	57-10-3	Hexadecanoic acid
118	57-11-4	Octadecanoic acid
119	57-55-6	1,2-Propanediol
120	593-85-1	Carbonic acid, compd. with guanidine (1:2)
121	5994-61-6	Glycine, N-(carboxymethyl)-N-(phosphonomethyl)-

	CASRN	Chemical Name
122	616-38-6	Carbonic acid, dimethyl ester
123	61788-44-1	Phenol, styrenated
124	62-56-6	Thiourea
125	629-11-8	1,6-Hexanediol
126	629-59-4	Tetradecane
127	6303-21-5	Phosphinic acid
128	6419-19-8	Phosphonic acid, P,P',P''-[nitrilotris(methylene)]tris-
129	64665-57-2	1H-Benzotriazole, 6(or 7)-methyl-, sodium salt (1:1)
130	64742-47-8	Distillates (petroleum), hydrotreated light
131	64742-48-9	Naphtha (petroleum), hydrotreated heavy
132	65-85-0	Benzoic acid
133	67-48-1	Ethanaminium, 2-hydroxy-N,N,N-trimethyl-, chloride (1:1)
134	67-56-1	Methanol
135	67762-27-0	Alcohols, C16-18
136	68153-57-1	Fatty acids, tall-oil, reaction products with diethanolamine
137	68513-87-1	Tar bases, quinoline derivs.
138	693-23-2	Dodecanedioic acid
139	6938-94-9	Hexanedioic acid, 1,6-bis(1-methylethyl) ester
140	69-72-7	Benzoic acid, 2-hydroxy-
141	72-19-5	L-Threonine
142	7320-34-5	Diphosphoric acid, potassium salt (1:4)
143	73-22-3	L-Tryptophan
144	7487-88-9	Sulfuric acid magnesium salt (1:1)
145	74-96-4	Ethane, bromo-

	CASRN	Chemical Name
146	7534-94-3	2-Propenoic acid, 2-methyl-, (1R,2R,4R)-1,7,7-trimethylbicyclo[2.2.1]hept-2-yl ester, rel-
147	75-37-6	Ethane, 1,1-difluoro-
148	75-52-5	Methane, nitro-
149	75-64-9	2-Propanamine, 2-methyl-
150	75-65-0	2-Propanol, 2-methyl-
151	75-75-2	Methanesulfonic acid
152	7601-54-9	Phosphoric acid, sodium salt (1:3)
153	7632-04-4	Perboric acid (HBO(O2)), sodium salt (1:1)
154	763-69-9	Propanoic acid, 3-ethoxy-, ethyl ester
155	7664-39-3	Hydrofluoric acid
156	7681-49-4	Sodium fluoride (NaF)
157	7681-53-0	Phosphinic acid, sodium salt (1:1)
158	77098-07-8	1,2-Benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, mixed esters with diethylene glycol and propylene glycol
159	7733-02-0	Sulfuric acid, zinc salt (1:1)
160	7757-79-1	Nitric acid potassium salt (1:1)
161	7758-02-3	Potassium bromide (KBr)
162	7758-16-9	Diphosphoric acid, sodium salt (1:2)
163	7758-29-4	Triphosphoric acid, sodium salt (1:5)
164	7772-98-7	Thiosulfuric acid (H2S2O3), sodium salt (1:2)
165	7778-74-7	Perchloric acid, potassium salt (1:1)
166	7783-28-0	Phosphoric acid, ammonium salt (1:2)
167	7784-18-1	Aluminum fluoride (AlF3)
168	7789-29-9	Potassium fluoride (K(HF2))
169	7789-38-0	Bromic acid, sodium salt (1:1)
170	7789-75-5	Calcium fluoride (CaF2)

	CASRN	Chemical Name
171	77-90-7	1,2,3-Propanetricarboxylic acid, 2-(acetyloxy)-, 1,2,3-tributyl ester
172	77-99-6	1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-
173	78-40-0	Phosphoric acid, triethyl ester
174	78-92-2	2-Butanol
175	78-96-6	2-Propanol, 1-amino-
176	79-14-1	Acetic acid, 2-hydroxy-
177	79-20-9	Acetic acid, methyl ester
178	8001-78-3	Castor oil, hydrogenated
179	8001-79-4	Castor oil
180	8017-16-1	Polyphosphoric acids
181	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
182	80-70-6	Guanidine, N,N,N',N'-tetramethyl-
183	811-97-2	Ethane, 1,1,1,2-tetrafluoro-
184	84-74-2	1,2-Benzenedicarboxylic acid, 1,2-dibutyl ester
185	872-50-4	2-Pyrrolidinone, 1-methyl-
186	87-66-1	1,2,3-Benzenetriol
187	89-65-6	D-erythro-Hex-2-enonic acid, .gamma.-lactone
188	90-72-2	Phenol, 2,4,6-tris[(dimethylamino)methyl]-
189	91-76-9	1,3,5-Triazine-2,4-diamine, 6-phenyl-
190	919-30-2	1-Propanamine, 3-(triethoxysilyl)-
191	947-19-3	Methanone, (1-hydroxycyclohexyl)phenyl-
192	96-49-1	1,3-Dioxolan-2-one
193	97-65-4	Butanedioic acid, 2-methylene-
194	98-56-6	Benzene, 1-chloro-4-(trifluoromethyl)-
195	98-73-7	Benzoic acid, 4-(1,1-dimethylethyl)-

	CASRN	Chemical Name
196	99-93-4	Ethanone, 1-(4-hydroxyphenyl)-
197	999-97-3	Silanamine, 1,1,1-trimethyl-N-(trimethylsilyl)-
198	688-84-6	2-Propenoic acid, 2-methyl-, 2-ethylhexyl ester
199	72162-23-3	Nitric acid, reaction products with cyclododecanol and cyclododecanone, by-products from, high-boiling fraction
200	623-53-0	Carbonic acid, ethyl methyl ester
201	107-46-0	Disiloxane, 1,1,1,3,3,3-hexamethyl-
202	87-90-1	1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-trichloro-
203	1633-05-2	Carbonic acid, strontium salt (1:1)
204	128-04-1	Carbamodithioic acid, N,N-dimethyl-, sodium salt (1:1)
205	149-73-5	Methane, trimethoxy-
206	13746-66-2	Ferrate(3-), hexakis(cyano-.kappa.C)-, potassium (1:3), (OC-6-11)-
207	7758-19-2	Chlorous acid, sodium salt (1:1)
208	16721-80-5	Sodium sulfide (Na(SH))
209	68201-32-1	Asphalt, sulfonated, sodium salt

Attachment 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

STANDING ORDER

AUTHORIZATION OF EPA REGION 2 ELECTRONIC FILING SYSTEM FOR FILING AND SERVING DOCUMENTS ELECTRONICALLY IN PROCEEDINGS GOVERNED BY 40 C.F.R. PART 22

Background. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, set forth at 40 C.F.R. Part 22 (Consolidated Rules of Practice or Part 22), state that "[t]he Presiding Officer . . . may by order authorize or require filing by . . . an electronic filing system, subject to any appropriate conditions and limitations." 40 C.F.R. § 22.5(a)(l).

Designation of Electronic Filing System (EFS). Pursuant to this authority, I hereby authorize the U.S. Environmental Protection Agency's (EPA) Microsoft Outlook email-based system as a Region 2 Electronic Filing System for utilization in Part 22 proceedings and adopt the following conditions and limitations to facilitate electronic filing. This Standing Order does not require that documents be filed using this EFS. Rather, it authorizes the use of the EFS as an option, in addition to those methods already authorized by the Part 22 for the filing of documents with the RHC.[1]

Electronic Service. In addition, Rule 22.5(b)(2) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(2), provides, in pertinent part, that "[a]ll documents filed by a party other than the complaint……shall be served by the filing party on all other parties. Service may be made …… by facsimile or other electronic means, including but not necessarily limited to email, if service by such electronic means is consented to in writing. … In addition, the Presiding Officer …. may by order authorize or require service by facsimile, email or other electronic means, subject to any appropriate conditions and limitations." Pursuant to my authority as the Regional Judicial and Presiding Officer of EPA Region 2, in accordance with Part 22, and subject to the conditions and limitations set forth below, I authorize the use of facsimile, email or other electronic means for the service of documents, other than Complaints, in proceedings subject to Part 22.

Filing Documents by Email in Region 2

The following conditions and limitations apply to the filing of documents by email in proceedings governed by the Consolidated Rules of Practice before the Regional Judicial Officer (RJO) serving as a

1 If a party is unable to electronically file during a protracted period of EPA Region 2 mandatory or unscheduled telework, the party shall contact the RHC to discuss other options for filing permitted by 40 C.F.R. § 22.5(a)(1).

Presiding Officer.[2]

1. **EFS email address and subject line. All documents being filed electronically with the Regional Hearing Clerk (RHC) using the EFS shall be sent to maples.karen@epa.gov.** The subject line of the email shall contain the name and docket number of the proceeding and the document being filed. It is the responsibility of the party filing a document suing the EFS to make certain that all other parties to the matter are copied on the EFS email.

2. **Format and contact information.** Electronically filed documents shall be submitted in portable document format (PDF), shall contain the contact name, phone number, mailing address, and email address of the filing party or its authorized representative, and shall otherwise conform to all applicable format requirements of 40 C.F.R. § 22.5(c). Where there are multiple attachments to a document, the attachments should be filed in a single electronic file to the extent technically practicable.

3. **Content.** A party electronically filing a document shall comply with the Consolidated Rules of Practice, including, but not limited to, all rules pertaining to content of the document being filed.

4. **Signature of Documents by EPA Personnel.** Documents filed using the EFS must be signed by EPA personnel in accordance with Rule 22.5(c)(3), 40 C.F.R. § 22.5(c)(3). More specifically, EPA personnel may sign documents with a PDF of a "wet signature" or with an acceptable electronic signature (e-signature). With regard to e-signatures by EPA personnel, these signatures must comply with the Agency's Electronic Signature Policy (Directive No. CIO 2136.0) and an Electronic Signature Procedure (Directive No. CIO 2136-P-01.0) that apply to new uses of electronic signature technology for internal Agency processes. Standard digital signature functions in applications, such as Adobe Reader and Acrobat DC, generally will satisfy these requirements.

5. **Signature of Documents by Outside Parties/Non-Agency.** Non-agency parties must sign documents in accordance with 40 C.F.R. § 22.5(c)(3) when utilizing Region 2's EFS. Non-agency parties may sign documents by submitting a PDF of a "wet signature" or by affixing an acceptable e-signature to the document being filed. For an RJO to accept an electronically signed document from a non-agency party (i.e., a respondent), the document needs to bear a "valid electronic signature." A Certificate Based Digital Signature, such as one created using standard digital signature software (for example, the Digital Signature function in Adobe Acrobat), can constitute a "valid electronic signature" for Part 22 purposes. Acceptable e-signature products will embed metadata identifying a unique user and the time and date that the signature was applied to the document. Since this information is embedded in the document itself, the electronic version of a document that has been electronically signed is considered the "original," and shall be preserved (with all relevant metadata) in accordance with any applicable records retention schedules. If a party files a document that has been electronically signed, the party must file the "original" version of the electronic document in order to preserve the

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2 **This Standing Order does not apply to the filing of Consent Agreements and Final Orders (CAFOs) and Expedited Settlement Agreements (ESAs) for consideration by the RJO. The process and requirements for the submission of CAFOs or ESAs in connection with settlements of Part 22 matters are governed by the *Region 2 Standard Operating Procedure for Filing and Service of Part 22 CAFOs and ESAs,* issued by the RJO on August 3, 2020.** To the extent that there is a conflict between this Standing Order and the SOP, the Standing Order controls and will be applicable.

metadata establishing that the digital signature is valid.

6. **Signature representation.** By filing a document electronically through EPA's Microsoft Outlook email-based system, a party, or its attorney or other representative, represents that the signatory has read the document, that to the best of his or her knowledge, information, and belief, the statements made therein are true, and that the document is not interposed for delay. 40 C.F.R. § 22.5(c)(3).

7. **Certificate of Service. In accordance with 40 C.F.R. § 22.5(a)(3), each document electronically filed by a party shall be accompanied by a certificate of service.**

8. **Documents sent to other email addresses.** Documents to be filed electronically shall be submitted to maples.karen@epa.gov or will not be accepted for electronic filing and will not be deemed to be filed as part of the administrative record for the matter, except for settlement documents in proceedings initiated under 40 C.F.R. §§ 22.13(b) and 22.18(b), which shall be filed in accordance with the ***Region 2 Standard Operating Procedure for Filing and Service of Part 22 CAFOs and ESAs*, issued on August 3, 2020.**

9. **Date/time of filing.** Pursuant to Rule 22.5(a)(1), a document is considered "filed" when received by the RHC. 40 C.F.R. § 22.5(a)(l). The RHC will electronically stamp documents received through the EFS with the date and time that the document is received by the RHC email account. Therefore, to be considered timely, documents electronically submitted to the EFS email account must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed. Documents emailed after 11:59 p.m. Monday through Friday, or anytime during the weekend, are considered filed at 7:00 a.m. the next business day, and will be stamped accordingly. [3]

10. **Original and copy.** The Consolidated Rules of Practice require that "[t]he original and one copy of each document intended to be part of the record shall be filed with the . . . Regional Hearing Clerk . . . when the proceeding is before the Presiding Officer . . .." 40 C.F.R. § 22.5(a)(1). A party who files electronically is deemed to satisfy this requirement.

11. **Amendments.** Once a document is received by the EFS, it becomes part of the administrative record of the matter. The document shall not be retrieved, deleted or altered in any manner by any submitting party. Amendments to filed documents can only be performed in accordance with the Consolidated Rules of Practice.

12. **Copy of Standing Order to Respondents.** This Order applies only in proceedings in which notice to the Respondent of the availability of electronic filing is clearly provided. **A copy of this Order, as well as the Consolidated Rules of Practice, is to accompany all Complaints that are filed and served after the effective date of this Standing Order. For any pending matter for which a Complaint was filed prior to the effective date of this Standing Order, Complainant is required to serve in a timely manner a copy of this Standing Order upon each Respondent(s).** To facilitate the efficient and effective use of the EFS, the parties are

3 For documents filed through non-electronic means, the inked date stamp physically applied by the RHC to the paper copy of the documents will continue to serve as the official record of the date and time of filing. The RHC may receive such paper filings between the hours of 6:30 a.m. and 4:00 p.m. Eastern Time, Monday through Friday.

encouraged to confer and reach agreement regarding acceptable electronic addresses and other logistical issues.

13. **Confidential business information (CBI) and personally identifiable information (PII).** It shall be the responsibility of the party electronically filing a document to ensure the document does not contain confidential business information (CBI) or personally identifiable information (PII). Any claim of confidentiality for business information will be deemed waived if such information is submitted to the EFS. Additionally, filers may not electronically submit other private information the disclosure of which would constitute the unwarranted invasion of any person's privacy, e.g., social security numbers, birthdates, medical information, financial information, or other private information. For information on how to file CBI or other private materials, please contact the RHC.

Serving Documents by Email in Region 2

Service requirements under the Consolidated Rules of Practice are distinct from filing requirements. Parties in proceedings under the Consolidated Rules of Practice shall ensure they review the requirements relating to both filing and service of documents. The following conditions and limitations apply to service of documents by email in proceedings governed by the Consolidated Rules of Practice before the RJO serving as a Presiding Officer.[4]

1. **Service on each party. Each document electronically filed shall be served on each party and the RJO as Presiding Officer and said service shall comply with the Consolidated Rules of Practice**. *See* 40 C.F.R. § 22.5(b).

2. **Administrative Complaints. The Consolidated Rules of Practice do not provide for the electronic service of complaints.** Service of a complaint in a proceeding is governed by 40 C.F.R. § 22.5(b)(1), which provides service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery. Therefore, this Order does not authorize electronic service of complaints.

3. **Reasonable Efforts for Service**. A party using electronic service for documents, other than complaints, shall undertake reasonable efforts to obtain valid contact information from the party being served (e.g., email address, facsimile number).

4. **Documents other than the complaint, orders, rulings, and decisions. All documents filed subject to this Order, other than the complaint, orders, rulings, and decisions, shall be served electronically by the party filing the documents.**

5. **Orders, rulings and decisions.** The RHC is responsible for serving copies of orders, rulings, and decisions by the RJO or Regional Administrator under the Consolidated Rules of Practice on all parties and is specifically authorized to do so by email pursuant to 40 C.F.R. § 22.6.

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4 This Order does not mandate electronic service of documents by the parties to a proceeding governed by the Consolidated Rules of Practice before the RJO serving as a Presiding Officer. Rather, it authorizes the use of service by email by parties in addition to those service methods already authorized and enumerated in the Consolidated Rules of Practice, except for the service of complaints. *See* 40 C.F.R. § 22.5(b).

6. **Subject line on email service other than orders, rulings, and decisions.** The subject line of the email serving documents by the parties shall contain the name and docket number of the proceeding. Documents served by email, other than orders, rulings, and decisions, shall be in portable document format (PDF) and shall contain the contact name, phone number, mailing address, and email address of the serving party or the authorized representative.

7. **Certificate of service by the parties**. In accordance with 40 C.F.R. § 22.5(a)(3), **each document electronically served by email shall be accompanied by a certificate of service stating that service is by email and containing the name and email address of each party being served.**

8. **Service complete.** Pursuant to 40 C.F.R. § 22.7(c), electronic service by email of documents by a party is complete upon transmission to the valid electronic address(es) of the other party(ies). Service by the RHC of orders, rulings, and decisions by email is complete upon transmission to the parties' valid email addresses as provided by the parties.

9. **Service on the Regional Judicial Officer.** To serve the RJO as Presiding Officer in either a proceeding initiated under 40 C.F.R. Part 22, Subpart I, or until an answer is filed in a Part 22 proceeding not subject to Subpart I of Part 22, the documents being served must be submitted electronically to Ferrara.helen@epa.gov, in addition to being filed with the RHC at maples.karen@epa.gov.

Applicability of Standing Order. This Order does not apply to the electronic filing with or service of documents that have been filed with the EPA Office of Administrative Law Judges or the EPA Environmental Appeals Board. Consult the EPA Office of Administrative Law Judges website at: https://www.epa.gov/alj, the EPA Environmental Appeals Board website at: https://www.epa.gov/eab, and/or contact the Headquarters Hearing Clerk or Board Hearing Clerk, as appropriate, for the applicable tribunal's filing procedures and requirements.

Termination of Standing Order. Unless a proceeding is subject to the provisions of Subpart I of the Part 22 Rules, the applicability of this Standing Order shall terminate as to a particular proceeding upon the filing of an answer with the RHC pursuant to 40 C.F.R. § 22.15, the issuance of an initial decision and default order pursuant to 40 C.F.R. § 22.17 or the conclusion of the matter pursuant to the entrance of a final order pursuant to 40 C.F.R. § 22.18. Regarding proceedings subject to Subpart I of the Part 22 Rules, this Standing Order shall be in effect during the duration of the proceeding unless revoked or modified by the RJO.[5]

Supersedes Earlier Order. This Standing Order supersedes the *Instructions for Electronic Filing of Documents Under 40 CFR Part 22 During Extended Period of Telework*, issued by the RJO on March 18, 2020.

Conditions and Limitations. The conditions and limitations set forth in this Order as they apply to both the electronic filing and service of documents may be amended or revoked generally or regarding a specific case or group of cases by further order at any time. In addition, the RJO may issue an order modifying these conditions and limitations if deemed appropriate. To the extent that this Standing Order conflicts with Part 22, Part 22 controls.

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5 The RJO shall serve as the Presiding Officer in proceedings initiated under 40 C.F.R. Part 22, Subpart I and conduct hearings and rule on all motions until an initial decision has become final or has been appealed. 40 C.F.R. § 22.51.

This Standing Order will remain in effect until terminated in writing by the Regional Judicial Officer of EPA Region 2.

IT IS SO ORDERED this 3rd day of August 2020.

HELEN FERRARA

Digitally signed by HELEN FERRARA
Date: 2020.08.03 21:43:07 -04'00'

Helen Ferrara
Regional Judicial Officer
U.S. EPA, Region 2

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Attachment 3

Title 40 —Protection of Environment
Chapter I —Environmental Protection Agency
Subchapter A —General

Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Authority: 7 U.S.C. 1361; 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

Source: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136*l*(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d)), and a determination of nonconforming engines, vehicles or equipment under sections 207(c) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7541(c) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), and 300j-6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c);

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(11) The assessment of any administrative civil penalty under section 1908(b) of the Act To Prevent Pollution From Ships ("APPS"), as amended (33 U.S.C. 1908(b)).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000; 79 FR 65900, Nov. 6, 2014; 81 FR 73970, Oct. 25, 2016]

§ 22.2 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

§ 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

Act means the particular statute authorizing the proceeding at issue.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.201(h).

Clerk of the Board means an individual duly authorized to serve as Clerk of the Environmental Appeals Board.

Commenter means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

Complainant means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

Consolidated Rules of Practice means the regulations in this part.

Environmental Appeals Board means the Board within the Agency described in 40 CFR 1.25.

Final order means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

Hearing means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

Hearing Clerk means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Initial decision means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

Party means any person that participates in a proceeding as complainant, respondent, or intervenor.

Permit action means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Proceeding means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

Regional Administrator means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.4(b).

Respondent means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000; 79 FR 65901, Nov. 6, 2014]

§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) ***Environmental Appeals Board.***

(1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice, and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

(b) ***Regional Judicial Officer.*** Each Regional Administrator shall delegate to one or more Regional Judicial Officers authority to act as Presiding Officer in proceedings under subpart I of this part, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I of this part does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to § 22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or

case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any case in which he serves as a Regional Judicial Officer. A Regional Judicial Officer shall not knowingly preside over a case involving any party concerning whom the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the commencement of the case. A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.

(c) ***Presiding Officer.*** The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) ***Disqualification, withdrawal and reassignment.***

(1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.5 Filing, service by the parties, and form of all filed documents; business confidentiality claims.

(a) ***Filing of documents.***

(1) The original and one copy of each document intended to be part of the record shall be filed with the Headquarters or Regional Hearing Clerk, as appropriate, when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. When a document is required to be filed with the Environmental Appeals Board, the document shall be sent to the Clerk of the Board by U.S. Mail, delivered by hand or courier (including delivery by U.S. Express Mail or by a commercial delivery service), or transmitted by the Environmental Appeal Board's electronic filing system, according to the procedures specified in 40 CFR 124.19 (i)(2)(i), (ii), and (iii). The Presiding Officer or the Environmental Appeals Board may by order authorize or require filing by facsimile or an electronic filing system, subject to any appropriate conditions and limitations.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) ***Service of documents.*** Unless the proceeding is before the Environmental Appeals Board, a copy of each document filed in the proceeding shall be served on the Presiding Officer and on each party. In a proceeding before the Environmental Appeals Board, a copy of each document filed in the proceeding shall be served on each party.

(1) ***Service of complaint.***

(i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(ii)

(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an agency of the United States complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) ***Service of filed documents other than the complaint, rulings, orders, and decisions.*** All documents filed by a party other than the complaint, rulings, orders, and decisions shall be served by the filing party on all other parties. Service may be made personally, by U.S. mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), by any reliable commercial delivery service, or by facsimile or other electronic means, including but not necessarily limited to email, if service by such electronic means is consented to in writing. A party who consents to service by facsimile or email must file an acknowledgement of its consent (identifying the type of electronic means agreed to and the electronic address to be used) with the appropriate Clerk. In addition, the Presiding Officer or the Environmental Appeals Board may by order authorize or require service by facsimile, email, or other electronic means, subject to any appropriate conditions and limitations.

(c) ***Form of documents.***

(1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, mailing address, telephone number, and email address of an individual authorized to receive service relating to the proceeding on behalf of the person. Parties shall promptly file any changes in this information with the Headquarters or Regional Hearing Clerk or the Clerk of the Board, as appropriate, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (b)(2) of this section and § 22.6.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any document which does not comply with this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) ***Confidentiality of business information.***

(1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any document to be filed in a proceeding under these Consolidated Rules of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to the public for inspection and copying.

(2) Two versions of any document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Asserted". The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

[64 FR 40176, July 23, 1999, as amended at 69 FR 77639, Dec. 28, 2004; 79 FR 65901, Nov. 6, 2014; 82 FR 2234, Jan. 9, 2017]

§ 22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Headquarters or Regional Hearing Clerk, as appropriate, in any manner allowed for the service of such documents. All rulings, orders, decisions, and other documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. The Clerk of the Board, the Headquarters Hearing Clerk, or the Regional Hearing Clerk, as appropriate, must serve copies of such rulings, orders, decisions and other documents on all parties. Service may be made by U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), EPA's internal mail, any reliable commercial delivery service, or electronic means (including but not necessarily limited to facsimile and email).

[82 FR 2234, Jan. 9, 2017]

§ 22.7 Computation and extension of time.

(a) ***Computation.*** In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) ***Extensions of time.*** The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) ***Completion of service.*** Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing, when placed in the custody of a reliable commercial delivery service, or for facsimile or other electronic means, including but not necessarily limited to email, upon transmission. Where a document is served by U.S. mail, EPA internal mail, or commercial delivery service, including overnight or same-day delivery, 3 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document. The time allowed for the serving of a responsive document is not expanded by 3 days when the served document is served by personal delivery, facsimile, or other electronic means, including but not necessarily limited to email.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.8 *Ex parte* discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other

parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

§ 22.9 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention and non-party briefs.

(a) ***Intervention.*** Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) ***Non-party briefs.*** Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

§ 22.12 Consolidation and severance.

(a) ***Consolidation.*** The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Proceedings subject to subpart I of this part may be consolidated only

upon the approval of all parties. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) ***Severance.*** The Presiding Officer or the Environmental Appeals Board may, for good cause, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Commencement of a proceeding.

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).

§ 22.14 Complaint.

(a) ***Content of complaint.*** Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for each violation alleged;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for a Permit Action and a statement of its proposed terms and conditions; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or Permit Action;

(6) Notice if subpart I of this part applies to the proceeding;

(7) The address of the Regional Hearing Clerk; and

(8) Instructions for paying penalties, if applicable.

(b) ***Rules of practice.*** A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) ***Amendment of the complaint.*** The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

(d) ***Withdrawal of the complaint.*** The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

§ 22.15 Answer to the complaint.

(a) ***General.*** Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or Permit Action, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.

(b) ***Contents of the answer.*** The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(c) ***Request for a hearing.*** A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) ***Failure to admit, deny, or explain.*** Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) ***Amendment of the answer.*** The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 22.16 Motions.

(a) ***General.*** Motions shall be served as provided by § 22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

(1) Be in writing;

(2) State the grounds therefor, with particularity;

(3) Set forth the relief sought; and

(4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

(b) ***Response to motions.*** A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the

Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) ***Decision.*** The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, an Administrative Law Judge) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§ 22.29(c) and 22.51, an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision becomes final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) ***Oral argument.*** The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

[64 FR 40176, July 23, 1999, as amended at 82 FR 2234, Jan. 9, 2017]

§ 22.17 Default.

(a) ***Default.*** A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) ***Motion for default.*** A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) ***Default order.*** When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) ***Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.*** Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) ***Quick resolution.***

(1) A respondent may resolve the proceeding at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action. In a proceeding subject to the public comment provisions of § 22.45, this quick resolution is not available until 10 days after the close of the comment period.

(2) Any respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within 30 days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within 60 days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) ***Settlement.***

(1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) ***Consent agreement.*** Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement and a proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) ***Conclusion of proceeding.*** No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement.

(c) ***Scope of resolution or settlement.*** Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) ***Alternative means of dispute resolution.***

(1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

§ 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) ***Prehearing information exchange.***

(1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) Each party's prehearing information exchange shall contain:

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and

(ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

(b) ***Prehearing conference.*** The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference to consider:

(1) Settlement of the case;

(2) Simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) The time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(c) ***Record of the prehearing conference.*** No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer shall ensure that the record of the proceeding includes any stipulations, agreements, rulings or orders made during the conference.

(d) ***Location of prehearing conference.*** The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) ***Other discovery.***

(1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot reasonably be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act. The Presiding Officer may issue a subpoena for discovery purposes only in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.5(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in this paragraph (e) shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under any applicable law to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

(f) ***Supplementing prior exchanges.*** A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) ***Failure to exchange information.*** Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under § 22.17(c).

§ 22.20 Accelerated decision; decision to dismiss.

(a) ***General.*** The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) ***Effect.***

(1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedures

§ 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) ***Assignment of Presiding Officer.*** When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) ***Notice of hearing.*** The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact. The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing not later than 30 days prior to the date set for the hearing. The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

(c) ***Postponement of hearing.*** No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) ***Location of the hearing.*** The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.*

(1) The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some,

but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) ***Examination of witnesses.*** Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in paragraphs (c) and (d) of this section or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) ***Written testimony.*** The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the party who has called the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) ***Admission of affidavits where the witness is unavailable.*** The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) ***Exhibits.*** Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) ***Official notice.*** Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) ***Objection.*** Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) ***Offers of proof.*** Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the information excluded. The offer of proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the information from evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.

§ 22.26 Proposed findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision, Motion To Reopen a Hearing, and Motion To Set Aside a Default Order

§ 22.27 Initial Decision.

(a) ***Filing and contents.*** After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) ***Amount of civil penalty.*** If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

(c) ***Effect of initial decision.*** The initial decision of the Presiding Officer shall become a final order 45 days after its service upon the parties and without further proceedings unless:

(1) A party moves to reopen the hearing;

(2) A party appeals the initial decision to the Environmental Appeals Board;

(3) A party moves to set aside a default order that constitutes an initial decision; or

(4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

(d) ***Exhaustion of administrative remedies.*** Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to paragraph (c) of this section, respondent waives its rights to judicial review. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

§ 22.28 Motion to reopen a hearing or to set aside a default order.

(a) ***Motion to reopen a hearing —***

(1) ***Filing and content.*** A motion to reopen a hearing to take further evidence must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: State briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Headquarters or Regional Hearing Clerk, as appropriate. A copy of the motion shall be filed with the Clerk of the Board in the manner prescribed by § 22.5(a)(1).

(2) ***Disposition of motion to reopen a hearing.*** Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Headquarters or Regional Hearing Clerk, as appropriate, and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The timely filing of a motion to reopen a hearing shall automatically toll the running of the time periods for an initial decision becoming final under § 22.27(c), for appeal under § 22.30, and for the Environmental Appeals Board to elect to review the initial decision on its own initiative pursuant to § 22.30(b). These time periods begin again in full when the Presiding Officer serves an order denying the motion to reopen the hearing or an amended decision. The Presiding Officer may summarily deny subsequent motions to reopen a hearing filed by the same party if the Presiding Officer determines that the motion was filed to delay the finality of the decision.

(b) ***Motion to set aside default order —***

(1) ***Filing and content.*** A motion to set aside a default order must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. The motion shall be made to the Presiding Officer and filed with the Headquarters or Regional Hearing Clerk, as appropriate. A copy of the motion shall be filed with the Clerk of the Board in the manner prescribed by § 22.5(a)(1).

(2) ***Effect of motion to set aside default.*** The timely filing of a motion to set aside a default order automatically tolls the running of the time periods for an initial decision becoming final under § 22.27(c), for appeal under § 22.30(a), and for the Environmental Appeals Board to elect to review the initial decision on its own initiative pursuant to § 22.30(b). These time periods begin again in full when the Presiding Officer serves an order denying the motion to set aside or an amended decision. The Presiding Officer may summarily deny subsequent motions to set aside a default order filed by the same party if the Presiding Officer determines that the motion was filed to delay the finality of the decision.

[82 FR 2235, Jan. 9, 2017]

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) ***Request for interlocutory appeal.*** Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) ***Availability of interlocutory appeal.*** The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:

(1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and

(2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.

(c) ***Interlocutory review.*** If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

§ 22.30 Appeal from or review of initial decision.

(a) ***Notice of appeal and appeal brief —***

(1) ***Filing an appeal —***

(i) ***Filing deadline and who may appeal.*** Within 30 days after the initial decision is served, any party may file an appeal from any adverse order or ruling of the Presiding Officer.

(ii) ***Filing requirements.*** Appellant must file a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board as set forth in § 22.5(a). One copy of any document filed with the Clerk of the Board shall also be served on the Headquarters or Regional Hearing Clerk, as appropriate. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants.

(iii) ***Content.*** The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with appropriate page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with specific citation or other appropriate reference to the record (*e.g.*, by including the document name and page number)), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If

any appellant includes attachments to its notice of appeal or appellate brief, the notice of appeal or appellate brief shall contain a table that provides the title of each appended document and assigns a label identifying where it may be found in the record.

(iv) ***Multiple appeals.*** If a timely notice of appeal is filed by a party, any other party may file a notice of appeal and accompanying appellate brief on any issue within 20 days after the date on which the first notice of appeal was served or within the time to appeal in paragraph (a)(1)(i) of this section, whichever period ends later.

(2) ***Response brief.*** Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or non-party participant may file with the Environmental Appeals Board an original and one copy of a response brief responding to arguments raised by the appellant, together with specific citation or other appropriate reference to the record, initial decision, and opposing brief (*e.g.*, by including the document name and page number). Appellee shall simultaneously serve one copy of the response brief upon each party, non-party participant, and the Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. If any responding party or non-party participant includes attachments to its response brief, the response brief shall contain a table that provides the title of each appended document and assigns a label identifying where it may be found in the record. Further briefs may be filed only with leave of the Environmental Appeals Board.

(3) ***Length —***

(i) ***Briefs.*** Unless otherwise ordered by the Environmental Appeals Board, appellate and response briefs may not exceed 14,000 words, and all other briefs may not exceed 7000 words. Filers may rely on the word-processing system used to determine the word count. As an alternative to this word limitation, filers may comply with a 30-page limit for appellate and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, and any attachments do not count toward the word or page-length limitation. The Environmental Appeals Board may exclude any appeal, response, or other brief that does not meet word or page-length limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board to file a longer brief. Such requests are discouraged and will be granted only in unusual circumstances.

(ii) ***Motions.*** Unless otherwise ordered by the Environmental Appeals Board, motions and any responses or replies may not exceed 7000 words. Filers may rely on the word-processing system used to determine the word count. As an alternative to this word limitation, filers may comply with a 15-page limit. Headings, footnotes, and quotations count toward the word or page-length limitation. The Environmental Appeals Board may exclude any motion that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board. Such requests are discouraged and will be granted only in unusual circumstances.

(b) ***Review initiated by the Environmental Appeals Board.*** Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall issue an order notifying the parties and the Presiding Officer of its intent to review that decision. The Clerk of the Board shall serve the order upon the Regional Hearing Clerk, the Presiding Officer, and the parties within 45 days after the initial

decision was served upon the parties. In that order or in a later order, the Environmental Appeals Board shall identify any issues to be briefed by the parties and establish a time schedule for filing and service of briefs.

(c) ***Scope of appeal or review.*** The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties written notice of such determination to allow preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) ***Argument before the Environmental Appeals Board.*** The Environmental Appeals Board may, at its discretion in response to a request or on its own initiative, order oral argument on any or all issues in a proceeding. To request oral argument, a party must include in its substantive brief a statement explaining why oral argument is necessary. The Environmental Appeals Board may, by order, establish additional procedures governing any oral argument before the Environmental Appeals Board.

(e) ***Motions on appeal*** —

(1) ***General.*** All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided. In advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.

(2) ***Disposition of a motion for a procedural order.*** The Environmental Appeals Board may act on a motion for a procedural order at any time without awaiting a response.

(3) ***Timing on motions for extension of time.*** Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Environmental Appeals Board with a reasonable opportunity to issue an order.

(f) ***Decision.*** The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may remand the case to the Presiding Officer for further action.

[64 FR 40176, July 23, 1999, as amended at 68 FR 2204, Jan. 16, 2003; 69 FR 77639, Dec. 28, 2004; 79 FR 65901, Nov. 6, 2014; 80 FR 13252, Mar. 13, 2015; 82 FR 2235, Jan. 9, 2017]

Subpart G—Final Order

§ 22.31 Final order.

(a) ***Effect of final order.*** A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those

causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) ***Effective date.*** A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) ***Payment of a civil penalty.*** The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) ***Other relief.*** Any final order requiring compliance or corrective action, or a Permit Action, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) ***Final orders to Federal agencies on appeal.***

(1) A final order of the Environmental Appeals Board issued pursuant to § 22.30 to a department, agency, or instrumentality of the United States shall become effective 30 days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within 30 days of service of the final order. If a timely request is made, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the 30-day period described in paragraph (e)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order issued pursuant to § 22.30 shall be filed within 10 days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.4(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

Subpart H—Supplemental Rules

§ 22.33 [Reserved]

§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) ***Scope.*** This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)), and a determination of nonconforming

engines, vehicles or equipment under sections 207(c) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7541(c) and 7547(d)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) ***Issuance of notice.*** Prior to the issuance of a final order assessing a civil penalty or a final determination of nonconforming engines, vehicles or equipment, the person to whom the order or determination is to be issued shall be given written notice of the proposed issuance of the order or determination. Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies these notice requirements.

[81 FR 73971, Oct. 25, 2016]

§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) ***Scope.*** This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136l(a)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) ***Venue.*** The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

§ 22.36 [Reserved]

§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) ***Scope.*** This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) ("SWDA"). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) ***Corrective action and compliance orders.*** A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15.

§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) ***Scope.*** This section shall apply, in conjunction with §§ 22.1 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act ("CWA")(33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) ***Consultation with States.*** For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) ***Administrative procedure and judicial review.*** Action of the Administrator for which review could have been obtained under section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) ***Scope.*** This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) ***Judicial review.*** Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) ***Payment of civil penalty assessed.*** Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

§ 22.40 [Reserved]

§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) ***Scope.*** This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) ***Collection of civil penalty.*** Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under

part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives this right unless it requests in its answer a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the documents in the record as necessary, and notify the parties of the changes.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

(1) The docket number of the order;

(2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;

(3) The location of the facility where violations were found;

(4) A description of the violations;

(5) The penalty that was assessed; and

(6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

(a) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

[65 FR 30904, May 15, 2000]

§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice —*

(1) *General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) ***Type and content of public notice.*** The complainant shall provide public notice of the complaint (or the proposed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) ***Comment by a person who is not a party.*** The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) ***Participation in proceeding.***

(i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) ***Limitations.*** A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) ***Quick resolution and settlement.*** No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under § 22.18, or commenced under § 22.13(b), until 10 days after the close of the comment period provided in paragraph (c)(1) of this section.

(4) ***Petition to set aside a consent agreement and proposed final order.***

(i) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of any consent agreement between the parties and the proposed final order.

(ii) Within 30 days of receipt of the consent agreement and proposed final order a commenter may petition the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), to set aside the consent agreement and proposed final order on the basis that material evidence was not considered. Copies of the petition shall be served on the parties, but shall not be sent to the Regional Hearing Clerk or the Presiding Officer.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the consent agreement and proposed final order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or Environmental Appeals Board shall assign a Petition Officer to

consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the proposed final order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the proceeding by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. The Petition Officer shall:

(A) File the order with the Regional Hearing Clerk;

(B) Serve copies of the order on the parties and the commenter; and

(C) Provide public notice of the order.

(viii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Regional Administrator may issue the proposed final order, which shall become final 30 days after both the order denying the petition and a properly signed consent agreement are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the final order is denied, the final order shall become effective 30 days after such denial has been filed with the Regional Hearing Clerk.

§§ 22.46-22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

§ 22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to all adjudicatory proceedings for:

(1) The assessment of a penalty under sections 309(g)(2)(A) and 311(b)(6)(B)(i) of the Clean Water Act (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300h-2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) ***Relationship to other provisions.*** Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§ 22.11, 22.16(c), 22.21(a), and 22.29. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

§ 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

§ 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to § 22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.