



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Wesco Construction Co.,) Docket No. CAA-03-2018-0054
)
Respondent.)

ORDER FOR RESPONDENT TO FILE ANSWER

The Complaint in this matter was filed with the Regional Hearing Clerk, Region III, U.S. Environmental Protection Agency, on February 1, 2018. The Agency served a copy of the filed Complaint on Respondent on February 17, 2018. On March 14, 2018, a representative of Respondent sent a letter in response to the Complaint directly to counsel for the Agency. See Submission of Respondent’s Answer by the Complainant (Aug. 14, 2018) (“Submission”). Counsel for the Agency, treating the letter as an Answer, filed the letter with the Regional Hearing Clerk on August 14, 2018, and the next day the Regional Hearing Clerk forwarded this matter to the Office of Administrative Law Judges. I was designated to preside over this proceeding on August 17, 2018.

Respondent’s letter disputes various allegations in the Complaint, but as the Agency observes in its Submission, Respondent’s letter does not sufficiently comply with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice” or “Rules”).¹ With respect to filing an Answer to the Complaint, the Rules of Practice provide as follows:

- (a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order . . . 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

¹ The parties are advised to familiarize themselves with the applicable statute(s) and the Rules of Practice. An informal Practice Manual, Citizen’s Guide to proceedings before the Office of Administrative Law Judges (“OALJ”), and significant decisions issued by the Administrative Law Judges are accessible on the OALJ’s website at www.epa.gov/oalj.

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.

40 C.F.R. § 22.15. However, Respondent's letter was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and does not clearly and directly admit, deny, or explain *each* of the factual allegations contained in the complaint.

Consequently, no later than **October 5, 2018**, Respondent is **ORDERED** to file an Answer that complies with the Rules of Practice and to clearly state if it desires a hearing upon the issues. Notwithstanding the Rules' instructions to file an Answer with the Regional Hearing Clerk, because the matter has now been forwarded to this Tribunal, Respondent shall file its Answer with this Tribunal and shall serve a copy on the Agency as directed below.

RESPONDENT IS CAUTIONED THAT FAILURE TO TIMELY COMPLY WITH THIS ORDER MAY RESULT IN THE ENTRY OF DEFAULT JUDGMENT AGAINST IT.

Filing and Service. Consistent with Section 22.5 of the Rules of Practice, the original and one copy of all documents intended to be part of the record in this proceeding (excluding a fully-executed Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk), shall be filed with the Headquarters Hearing Clerk.² Electronic filing is strongly

² Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep the official record and be the proper filing location for all contested cases in

encouraged.³ To file a document electronically, a party shall use a web-based tool known as the OALJ E-Filing System by visiting the website for the OALJ at www.epa.gov/oalj. Documents filed electronically are deemed to constitute both the original and one copy of the document.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered “filed” at the time and date of electronic reception, as recorded by the OALJ E-Filing System immediately upon reception. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the Judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁴ Electronically filed textual documents must be in Portable Document Format (“PDF”). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of party’s prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, documents may be filed by U.S. mail, personal delivery, courier, or commercial delivery service. To file a document using the U.S. Postal Service, address the document to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency

which an answer was filed after May 1, 2012. For more information, see the OALJ’s website at www.epa.gov/oalj.

³ More information about electronic filing may be found in the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges, available on the OALJ website at www.epa.gov/oalj.

⁴ If your multimedia file exceeds 70 megabytes, you may submit the file on a compact disc or thumb drive and mail it to one of the addresses above, or contact Michael Wright, a staff attorney at the OALJ, who can be reached at (202) 564-3247 or wright.michaelb@epa.gov, for instructions on alternative electronic filing methods.

1200 Pennsylvania Ave., NW
Mail Code 1900R
Washington, DC 20460

To file a document using UPS, FedEx, DHL, other courier or commercial delivery service, or personal delivery, address the document to:

Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

A document submitted by U.S. mail, personal delivery, courier, or commercial delivery service is considered “filed” when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document. The OALJ is open to receive such paper filings between 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday.

Regardless of the method of filing, all filed documents must be signed and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be served on the undersigned and on each party. 40 C.F.R. § 22.5(b). Documents may be served by U.S. mail, personal delivery, reliable commercial delivery service, or email if the party being served has consented in writing to service by email and provided a valid email address. 40 C.F.R. § 22.5(b)(2). Documents filed through the OALJ E-Filing System are deemed to have been served on the undersigned. A document is considered served upon mailing, when placed in the custody of a reliable commercial delivery service, or upon electronic transmission. 40 C.F.R. § 22.7(c).

Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure. The parties are cautioned that, unless redacted, all information filed with the OALJ will be made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) pertaining to any person. Where filing of such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the materials filed. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

To the extent that any person files or submits any unredacted CBI or PII pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. Submission of such information through the OALJ E-Filing System will also be

considered a waiver of confidentiality. To protect such information against public disclosure, parties must follow the procedures specified on the OALJ website at www.epa.gov/oalj.

Contact Information. For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Matt Barnwell, Attorney-Advisor, at (202) 564-3245 or barnwell.matt@epa.gov.

SO ORDERED.

Christine Donelian Coughlin

Christine Donelian Coughlin
Administrative Law Judge

Dated: September 17, 2018
Washington, D.C.

In the Matter of *Wesco Construction Co.*, Respondent.
Docket No. CAA-03-2018-0054

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order for Respondent to File Answer**, dated September 17, 2018, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Matt Barnwell
Attorney-Advisor

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic and Regular Mail to:

Philip Yeany, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 3
Mail Code 3RC50
1650 Arch Street
Philadelphia, PA 19103-2029
Email: yeany.philip@epa.gov
For Complainant

Copy by Certified Mail to:

Donald Dolittle
President
Wesco Construction Co.
902 Saginaw Road
Oxford, PA 19363
Certified Mail No: 7013 0600 0001 3336 6384
For Respondent

Dated: September 17, 2018
Washington, D.C.

**OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C.

GUIDANCE ON USE OF OALJ E-FILING SYSTEM

The Office of Administrative Law Judges (“OALJ”) utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to oaljfilimg@epa.gov or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at www.epa.gov/oalj. Documents filed electronically are deemed to constitute both the original and one copy of the document, and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon reception by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format (“PDF”).

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party’s prehearing exchange of information, should be submitted separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits should be submitted together as one attachment consisting of a single electronic file, to the extent technically practicable.

The OALJ E-Filing System is not equipped either to accommodate or to protect the privacy of confidential business information (“CBI”) or sensitive personally identifiable information (“PII”) that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to consider the CBI or PII contained in the document, the party shall also file a paper copy of the unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified on the OALJ’s website at www.epa.gov/oalj. To the extent that any person files any un-redacted CBI or PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.