



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

|   |   |                                    |
|---|---|------------------------------------|
| In the Matter of:                             | ) |                                    |
|   | ) |                                    |
| <b>Frederick-Winchester Service Authority</b> | ) | <b>Docket No. CWA-03-2024-0036</b> |
| <b>9 West Piccadilly Street</b>               | ) |                                    |
| <b>Winchester, VA 22601,</b>                  | ) |                                    |
|   | ) |                                    |
| <b>Frederick County Sanitation Authority</b>  | ) |                                    |
| <b>d/b/a Frederick Water</b>                  | ) |                                    |
| <b>315 Tasker Road</b>                        | ) |                                    |
| <b>Stephens City, VA 22655,</b>               | ) |                                    |
|   | ) |                                    |
| <b>Respondents.</b>                           | ) |                                    |
|   | ) |                                    |
| <b>Crooked Run</b>                            | ) |                                    |
| <b>Wastewater Treatment Plant</b>             | ) |                                    |
| <b>130 Crappie Court</b>                      | ) |                                    |
| <b>Front Royal, VA 22630,</b>                 | ) |                                    |
|   | ) |                                    |
| <b>Facility.</b>                              | ) |                                    |

**ORDER DESIGNATING PETITION OFFICER AND DIRECTING COMPLAINANT TO FILE A RESPONSE TO THE PETITION**

This administrative proceeding commenced when the U.S. Environmental Protection Agency, Region 3 (“Agency”) agreed to a Consent Agreement and proposed Final Order (“proposed CAFO”) between the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and the Frederick-Winchester Service Authority and the Frederick County Sanitation Authority (“Respondents”). The proposed CAFO would settle claims brought under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and was to be filed pursuant to 40 C.F.R. §§ 22.1(a)(6), 22.13(b), 22.18(b)(2), (b)(3).<sup>1</sup> On April 3, 2024, the Agency published a public notice declaring its intent to file the proposed CAFO.

Before the deadline on May 13, 2024, several parties submitted comments critical of the proposed CAFO. The Agency responded to the comments, and on July 16, 2024, it received a

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<sup>1</sup> These rules permit the parties to settle one or more claims before the filing of a complaint. 40 C.F.R. § 22.13(b). Thus, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO in accordance with 40 C.F.R. § 22.18(b)(2) and (3). Consequently, no complaint was filed in this proceeding.

petition to set aside the proposed CAFO submitted by Alan Randolph Holland, Jr. (“Petitioner”).<sup>2</sup> After considering the issues raised in the Petition, Complainant declined to set aside the proposed CAFO. On September 17, 2024, the Regional Administrator for Region 3 filed with the Office of Administrative Law Judges a Request to Assign Petition Officer in accordance with 40 C.F.R. § 22.45(c)(4)(iii).

Chief Administrative Law Judge Susan L. Biro, U.S. Environmental Protection Agency, Washington, D.C., is hereby designated to serve as the Petition Officer in this proceeding, which arises under 33 U.S.C. § 1319(g) and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Rules of Practice”).

Complainant is **ORDERED** to present to this Tribunal a written response to the Petition and to serve copies of the response on Respondents and Petitioner no later than **November 25, 2024**. *These documents shall not be filed with the Regional Hearing Clerk or Presiding Officer.* 40 C.F.R. § 22.45(c)(4)(iv).<sup>3</sup> Further, each party and Petitioner is ordered to, no later than **November 15, 2024**, file a statement disclosing the email address at which the party or Petitioner agrees to accept electronic service of documents issued by this Tribunal or filed by other parties or Petitioner.<sup>4</sup>

Parties shall participate in this matter through the submission of documents in the manner described below.

**Filing:** The Rules of Practice provide that the original and one copy of each document intended to be part of the record of this proceeding shall be filed with the Headquarters Hearing Clerk of the OALJ.<sup>5</sup> 40 C.F.R. § 22.5(a)(1). The Rules of Practice further provide that this Tribunal may authorize filing by an electronic filing system, *id.*, which it did by Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, available on the OALJ’s website at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf>.

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<sup>2</sup> The Rules of Practice identifies such participants as “commenters,” but for the sake of clarity, he will be referred to as “Petitioner” from this point forward. See 40 C.F.R. § 22.45(c)(4).

<sup>3</sup> The Rules of Practice also demand that the Agency present a copy of the complaint along with its written response. 40 C.F.R. § 22.45(c)(4)(iv). However, this requirement does not apply because this action was commenced by a CAFO that has already been submitted to the record.

<sup>4</sup> The Rules of Practice authorize the service of certain filed documents by electronic means. See 40 C.F.R. § 22.5(b)(2). More information regarding the submission of documents can be found below.

<sup>5</sup> Pursuant to the Pilot Program to Migrate Certain Regional Hearing Clerk Functions to the Headquarters Hearing Clerk, the OALJ and the Headquarters Hearing Clerk shall maintain the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information on the Pilot Program, see the OALJ’s website at <https://www.epa.gov/alj/administrative-law-judges-pilot-program-migrate-certain-regional-hearing-clerk-functions>.

Electronic filing is strongly encouraged. To file a document electronically, the document shall be submitted to the Headquarters Hearing Clerk using the OALJ E-Filing System, a web-based tool that can be accessed by visiting the OALJ's website at [www.epa.gov/alj](http://www.epa.gov/alj). A document filed electronically is deemed to constitute both the original and one copy of the document.

Any party seeking to file electronically must first register with the OALJ E-Filing System at [https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf/HomePage?ReadForm](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm). 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 that party will be 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 receipt, as recorded by the OALJ E-Filing System immediately upon receipt. 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 Petition Officer. 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.<sup>6</sup>

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.<sup>7</sup> Electronically filed textual documents must be in Portable Document Format ("PDF").

Alternatively, documents may be filed by U.S. mail or commercial delivery service, such as UPS or FedEx.<sup>8</sup> However, a document submitted by those means is not considered "filed" until the Headquarters Hearing Clerk physically receives it, as reflected by the date stamp applied to the document by the Headquarters Hearing Clerk. The Tribunal's ability to receive filings and correspondence by U.S. mail and commercial deliveries on a daily basis is limited. Thus, timely receipt and filing of a document submitted by U.S. mail or commercial delivery service is not assured.

If a party nevertheless opts to file by U.S. mail or commercial delivery service, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by

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<sup>6</sup> The emailed electronic receipt will be the filing party's only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ's E-Docket Database webpage, available at [https://yosemite.epa.gov/oarm/alj/alj\\_web\\_docket.nsf](https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf), or on the Agency's Administrative Enforcement Dockets webpage, available at <https://yosemite.epa.gov/oa/rhc/epaadmin.nsf>, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

<sup>7</sup> If a party's multimedia file exceeds 70 megabytes, the party may contact the Headquarters Hearing Clerk at (202) 564-6281 or [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov) for instructions on alternative electronic filing methods.

<sup>8</sup> Conversely, this Tribunal is not able to accept filings or correspondence by personal delivery due to the physical office of the Tribunal not being accessible to the public on a daily basis.

calling the Headquarters Hearing Clerk at (202) 564-6281. To file a document using U.S. mail or commercial delivery service, the document shall be sent to the following address:

Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Attn: Mary Angeles, Headquarters Hearing Clerk  
Mail Code 1900R, WJC East Mailroom 1309  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Regardless of the method of filing, all filed documents must be signed in accordance with 40 C.F.R. § 22.5(c) and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

**Service:** A copy of each document filed in this proceeding shall be “served” by the filing party on the Petition Officer and on all other parties. 40 C.F.R. § 22.5(b). While the Rules of Practice allow for documents to be served by various means, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve documents on all other parties by email only, *see* Revised Order Urging Electronic Filing and Service (June 22, 2023), *available at* <https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf>.<sup>9</sup> Documents filed electronically through the OALJ E-Filing System are deemed to have also been served electronically on the Petition Officer. To serve a document on the Petition Officer by U.S. mail or commercial delivery service, the address listed above shall be used. Service will be considered complete upon electronic transmission, upon mailing, or when placed in the custody of a commercial delivery service. 40 C.F.R. § 22.7(c). Additionally, in the interest of judicial efficiency, all orders and documents issued by this Tribunal will henceforth be served on the parties by electronic means only. *See* Revised Order Urging Electronic Filing and Service (June 22, 2023), *available at* <https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf>. If a party’s email address on record changes during the proceeding, the party shall promptly file and serve a notice informing this Tribunal and all opposing parties of the change.<sup>10</sup>

**Certificate of Service:** Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on

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<sup>9</sup> The Rules of Practice authorize electronic service with the written consent of the party being served. 40 C.F.R. § 22.5(b)(2). However, the Rules of Practice also provide that this Tribunal may by order authorize service by email subject to any appropriate conditions and limitations. *Id.* Pursuant to that authority, this Tribunal authorizes parties to utilize email to fulfill their service obligations without first obtaining the written consent of the party being served. *See* Revised Order Urging Electronic Filing and Service (June 22, 2023), *available at* <https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf>.

<sup>10</sup> If it is impossible for a party to receive service electronically, e.g., the party does not have any access to a computer, the party shall so advise this Tribunal and all opposing parties.

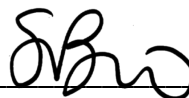
the Petition Officer and each party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 22.5(a)(3).

**Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure:** All information filed with the OALJ becomes part of the official case record, which is made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or sensitive Personally Identifiable Information (“PII”) pertaining to any person. 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.

Where filing a document containing such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or sensitive PII present in the document filed. If the filing party wishes for the Petition Officer to view and consider the CBI or PII in making a ruling or rendering a decision, the filing party *must* follow the procedures specified in the Privacy Act Statement & Notice of Disclosure of Confidential and Personal Information, available on the OALJ’s website at [https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19\\_privacyactstatement\\_noticeofdisclosure.pdf](https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19_privacyactstatement_noticeofdisclosure.pdf); in 40 C.F.R. § 22.5(d)(2); and in 40 C.F.R. Part 2 in order to protect the given information against public disclosure. The OALJ E-Filing System is not equipped to accommodate or protect the privacy of CBI or sensitive PII. Thus, the filing party must not file any unredacted version of a document containing CBI or sensitive PII through the OALJ E-Filing System. Rather, the filing party must file the unredacted version of the document in accordance with the aforementioned procedures either by U.S. mail or commercial delivery service sent to the address listed above or by contacting the Headquarters Hearing Clerk at (202) 564-6281 or [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov) for instructions on alternative electronic filing methods.

*To the extent that any person fails to adhere to the aforementioned procedures, that person thereby waives any claims to confidentiality and consents to public disclosure by EPA, including posting on the Internet, of all information claimed to be entitled to confidential treatment. Submission of such information through the OALJ E-Filing System will also be considered a waiver of confidentiality.*

**SO ORDERED.**



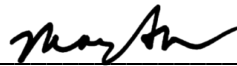
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Susan L. Biro  
Chief Administrative Law Judge

Dated: October 25, 2024  
Washington, D.C.

In the Matter of *Frederick-Winchester Service Authority, and Frederick County Sanitation Authority, d/b/a Frederick Water, (Crooked Run)*, Respondents.  
Docket No. CWA-03-2024-0036

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order Designating Petition Officer and Directing Complainant to File a Response to the Petition**, dated October 25, 2024, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



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Mary Angeles  
Paralegal Specialist

Original by OALJ E-Filing System to:  
Mary Angeles, Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
<https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf>

Copy by Regular and Electronic Mail to:



*Petitioner*

Promy Tabassum  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 3  
1600 John F. Kennedy Boulevard  
Philadelphia, PA 19103-2852  
Email: [tabassum.promy@epa.gov](mailto:tabassum.promy@epa.gov)  
*Counsel for Complainant*

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*Counsel for Respondents*

Dated: October 25, 2024  
Washington, D.C.