

Standing Order – EPA Region III Part 22 Electronic Filing System

May 7, 2020

STANDING ORDER**Designation of EPA Region III Part 22 Electronic Filing System****Effective Date:** May 7, 2020

Background: Rule 22.5(a)(1) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Part 22 Rules”), 40 C.F.R. § 22.5(a)(1), states that, with regard to the filing of Part 22 related documents with a Regional Hearing Clerk, “[t]he Presiding Officer ... may by order authorize or require filing by facsimile or an electronic filing system subject to any appropriate conditions and limitations.”

Designation of EFS: Pursuant to my authority as the Regional Judicial and Presiding Officer of EPA Region III, I hereby designate the Agency’s Outlook-based email system to serve as EPA Region III’s Electronic Filing System (EFS) for documents to be filed with the Regional Hearing Clerk (RHC) in connection with administrative enforcement actions under the Part 22 Rules. This Standing Order does not require that documents be filed using this EFS. Rather, it authorizes the use of the email EFS as an option, in addition to those methods already authorized by the Part 22 Rules for the filing of documents with the RHC.

The use of the EFS is subject to the following conditions and limitations:

- **EFS Email Address** – Documents being filed with the RHC using the EFS are to be emailed to the following email address: r3_hearing_clerk@epa.gov. A document emailed to the Regional Judicial and Presiding Officer directly does not constitute filing using the EFS and will not be deemed to be filed as part of the administrative record for the matter;
- **Caption of EFS Email** - The caption of the EFS email must contain the following information: name of case; EPA docket no.; and identification of document being filed. (Ex. In the matter of: ABC Company, Inc.; U.S. EPA Docket No. RCRA-03-2020-XXXX; Administrative Complaint);
- **Parties Copied on EFS Email** - It is the responsibility of the party filing a document using the EFS to make certain that all other parties to the matter are copied on the EFS email;
- **Date/Time of Filing** - Pursuant to Rule 22.5(a)(1), a document is considered to be filed when received by a RHC. 40 C.F.R. 22.5(a)(1). For purposes of the EFS, the date and time of the filing of a document in the EFS will be the date and time indicated on the email that is received by the RHC email account, subject to the following limitations: a document that has an email time stamp after 4:00 p.m. Eastern Standard Time will be treated as having been filed the next business day;
- **Certificate of Service** – In accordance with Rule 22.5(a)(3), a Certificate of Service shall accompany any document filed with the RHC using the EFS. 40 C.F.R. § 22.5(a)(3);

- **Original** – For purposes of the administrative record of the matter, the “original” of a filed document shall be the electronic file that is received by the RHC in the RHC email account;
- **RHC Email Acknowledgement** – The RHC will send to all parties an email acknowledging receipt of the document filed using the EFS. The Email Acknowledgement will indicate the date and time that the document was filed in the EFS;
- **Stamping of Filed Documents** – The RHC will stamp (either physically or electronically) all documents received by the EFS. The Stamp will indicate that the document was filed and will indicate the date and time of filing with the EFS;
- **Compliance with Part 22 Rules** – A party submitting a document using the EFS is required to comply with all Part 22 Rules, including, but not limited to, rules pertaining to: format and substance of the particular type of document being filed. To the extent that this Standing Order conflicts with any requirement or provision of the Part 22 Rules, the Part 22 Rules control and are applicable;
- **Format of Filed Documents** – Documents submitted electronically must be in Portable Document Format (“PDF”). (Note - The Agency is not endorsing this product nor the company that makes it);
- **Contact Information for Submitting Party** – The email that is transmitting the document to the EFS must contain the following contact information for the submitting party or its authorized representative: name, phone number, mailing address, and e-mail address;
- **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, filed documents can be signed either: via a pdf of a “wet signature” or via an 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, provided they are approved by a region’s Senior Information Official (“SIO”). See May 5, 2020 *Region3 ORC Digital Signature Process Standard Operating Procedure*;
- **Signature of Documents by Outside Parties/Non-Agency** - Documents filed using the EFS must be signed by an outside/non-Agency party in accordance with Rule 22.5(c)(3), 40 C.F.R. § 22.5(c)(3). More specifically, filed documents can be signed either: via a pdf of a “wet signature” or via an e-signature. For an RJO to accept an electronically signed document from an outside/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. These and similar products embed metadata identifying a unique user and the time and date that the signature was

- applied to the document. The metadata in the document should demonstrate that the signature applied was valid and was not altered in the time after the digital signature was applied. If the submitting party is emailing a pdf of a document with a wet signature, the submitting party must also mail the original signature page of the document (i.e., the page bearing the wet signature) to the RHC. The RHC will include this signature page in the official record of the matter;
- **Signature Representation** – Pursuant to Rule 22.5(c)(3), the signature on a document filed using the EFS constitutes a representation that the signer has read the document, that to the best of his or her knowledge the statements made therein are true, and that the document is not interposed for delay. 40 C.F.R. § 22.5(c)(3);
 - **Service of EFS Filed Documents** – The filing of a document using the EFS and the copying of an opposing party of the email to the EFS do NOT constitute service of the document under the Part 22 Rules. Service of the document on all opposing parties must still be completed in accordance with the applicable Part 22 Rules. See 40 C.F.R. § 22.5(b);
 - **Amendments to Filed Documents** – Once a document has been received by the EFS it is part of the administrative record of the matter. It cannot be retrieved, deleted or altered in any manner by the submitting party. Amendments to filed documents can only be performed in accordance with the Part 22 Rules;
 - **PII and CBI** – It is the responsibility of a party submitting a document via the EFS to make certain that the document does not contain Personal Identification Information (PII) or Confidential Business Information (CBI). Because documents uploaded onto the EFS are deemed to be public documents, filers may not upload any confidential business information. Any claim of confidentiality for any business information will be deemed to be waived if such information is uploaded using this system. Additionally, filers may not upload other private information the disclosure of which would constitute an unwarranted invasion of any person's privacy (for example: social security numbers, birthdates, medical records, personal financial information or other private information). For information on how to file CBI or other private materials, please contact the RHC;
 - **Filing of Complaints** - This Standing Order applies only in proceedings in which notice to a Respondent of the availability of the EFS for the filing of an Answer or Motion is clearly provided. A copy of this Standing Order is to accompany all Complaints that are filed and served. In order for the efficient and effective use of the EFS, the parties are encouraged to confer and reach agreement regarding acceptable electronic addresses and other logistical issues; and
 - **Applicability 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. With regard to 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 Regional Judicial and Presiding Officer. This Standing Order does not apply to the submission of Consent Agreements and Final Orders (“CAFOs”) for consideration by the Regional Judicial and Presiding Officer. The process and requirements for the submission of CAFOs in connection with settlements of Part 22 matters is governed by the EPA Region III *Standard Operating Procedure for Filing and Service of Part 22 Consent Agreements/ Final Orders (Consent Agreement/Order), Expedited Settlement Agreements (ESA), Complaints and Motions, and Orders When Regional Judicial Officer (RJO)/Regional Hearing Clerk (RHC) on Telework (“SOP”)* (Revised April 29, 2020). To the extent that there is a conflict between this Standing Order and the *SOP*, the Standing Order controls and will be applicable. This Standing Order also does not apply to the filing of a document with the EPA Office of Administrative Law Judges (“OALJ”) or the EPA Environmental Appeals Board (“EAB”). Please check the OALJ and EAB websites for e-filing procedures and requirements before those entities.

The conditions and limitations set forth herein may be amended or revoked generally or in regard to a specific case or group of cases by further order of the Regional Judicial and Presiding Officer in his or her sole discretion at any time. In addition, the Regional Judicial and Presiding Officer may issue an order modifying these conditions and limitations if deemed appropriate in his or her discretion.

Termination Date of Standing Order: This Standing Order will remain in effect until terminated in writing by the Regional Judicial and Presiding Officer of EPA Region III.

Date: May 7, 2020

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Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

United States Environmental Protection Agency**Region III****STANDING ORDER****Order Authorizing Electronic Service of Certain Part 22 Documents**

Effective Date: May 22, 2020

Background/Legal Authority: Rule 22.5(b)(2) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Part 22 Rules”), 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.”

Order: Pursuant to my authority as the Regional Judicial and Presiding Officer of EPA Region III, in accordance with the Part 22 Rules, 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 the Part 22 Rules.

The use of the electronic service of documents is subject to the following conditions and limitations:

- **Administrative Complaints**– Complaints filed in connection with Part 22 proceedings are not covered by this Standing Order. Service of Complaints must be accomplished in accordance with the Part 22 Rules. *See* Rule 22.5(b)(1), 40 C.F.R. § 22.5(b)(1).
- **Applicability 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 as to a particular proceeding shall end upon: the filing of an Answer with the RHC pursuant to Rule 22.15, 40 C.F.R. § 22.15; the issuance of an Initial Decision and Default Order pursuant to Rule 22.17, 40 C.F.R. § 22.17; or the conclusion of the matter pursuant to the filing of a Final Order pursuant to Rule 22.18, 40 C.F.R. § 22.18. With regard to proceedings subject to Subpart I of the Part 22 Rules, this Standing Order shall be applicable during the duration of the proceeding unless revoked or modified by the Regional Judicial and Presiding Officer. This Standing Order also does not apply to the service of documents that are filed with the EPA Office of Administrative Law Judges (“OALJ”) or the EPA Environmental Appeals Board (“EAB”). Please check the OALJ and EAB websites for electronic service procedures and requirements for proceedings before those entities.

- **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).
- **Completion of Service** – Pursuant to Rule 22.7(c), 40 C.F.R. § 22.7(c), for documents served electronically, service of such documents is complete upon transmission.
- **Copy of Standing Order to Respondents** – A copy of this Standing Order is to be made an attachment to any Complaint filed in EPA Region III after the effective date of this Standing Order. The Standing Order will be provided to Respondent(s) as part of the service of the Complaint. 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).
- **Certificate of Service** – The Certificate of Service accompanying a document served electronically must indicate the specific method utilized for purposes of electronically serving the document.
- **Use of Electronic Service is Discretionary** – This Standing Order authorizes the use of electronic service, it does not require the use of electronic service. Part 22 documents may still be served in accordance with other approved methods set forth in Rule 22.5, 40 C.F.R. § 22.5.
- **Part 22 Rules Control** – To the extent that this Standing Order conflicts with the Part 22 Rules, the Part 22 Rules control.

The conditions and limitations set forth herein may be amended or revoked generally or in regard to a specific case or group of cases by further order of the Regional Judicial and Presiding Officer in his or her sole discretion at any time. In addition, the Regional Judicial and Presiding Officer may issue an order modifying these conditions and limitations if deemed appropriate in his or her discretion.

Termination Date of Standing Order: This Standing Order will remain in effect until terminated in writing by the Regional Judicial and Presiding Officer of EPA Region III.

Date: May 22, 2020

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Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III