

# A CITIZEN'S GUIDE TO EPA'S ENVIRONMENTAL APPEALS BOARD



July 2018

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

**Notice:** The Agency has recently published a final rule amending the regulations for appeals before the Environmental Appeals Board. The rule has an effective date of September 21, 2020. This document has not been reviewed to determine if any changes are needed to reflect the rule. Filers are advised to consult the final rule before filing appeals or other submissions with the Board. More information is available [here](#).

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## Introduction

This Citizen's Guide (Guide) provides a brief description of how federal environmental laws protect you and your community, and how the U.S. Environmental Protection Agency's (EPA) Environmental Appeals Board (EAB) ensures that these laws are administered consistently and fairly. The Guide also provides general information about the procedures the EAB uses to make decisions and is intended principally for anyone without formal legal training who is involved in a case pending before the EAB. If you are involved in a legal matter before the EAB, or would like to participate in a legal matter pending before the EAB, this Guide can answer some of your questions about EAB procedures and direct you to more detailed sources of information.

This Guide provides general guidance only. To participate effectively in an EAB proceeding, you should read the specific statutes and regulations that apply to your case. You should also consult the EAB's standing orders and Practice Manual, available at the EAB's website at [www.epa.gov/eab](http://www.epa.gov/eab). These documents contain additional information about EAB procedures and provide templates to create appeal documents.

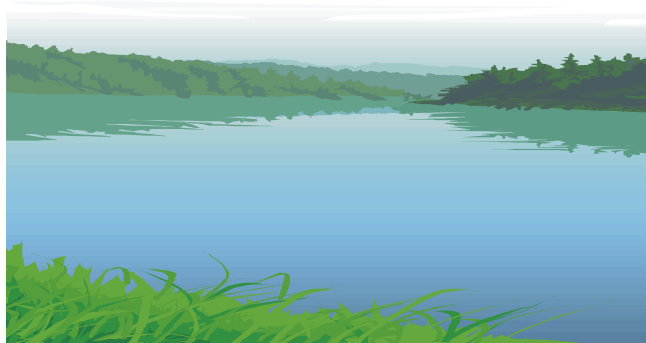
The EAB's website also includes EAB decisions and additional information, such as answers to Frequently Asked Questions about EAB procedures. The "[EAB Dockets](#)" link provides electronic access to most public documents filed in cases currently pending before the EAB and EAB cases closed after January 1, 2006. The EAB Dockets link also contains a list of EAB cases closed before January 1, 2006. More information about the online EAB dockets is available on page 12 of this Guide.

Participants in EAB proceedings may file documents electronically, subject to the requirements of the EAB's standing orders on electronic filing (available by following the "[Standing](#)

[Orders](#)” link on the EAB website) and any subsequent rules and revisions. More information about electronic filing can be found in the [“How and Where Should I File Documents with the EAB”](#) section of this Guide, and in the [EAB Practice Manual](#), which is also posted on the EAB website.

For further information about the laws that EPA administers and a description of the activities of each of EPA’s program offices, visit EPA’s website at [www.epa.gov](http://www.epa.gov).

## How Do Environmental Laws Protect Us?



The federal environmental laws protect us all by identifying and addressing risks to public health and the natural environment – air, water, and land. EPA is responsible for leading the effort to implement most of these laws. EPA:

- conducts research to identify environmental risks and evaluates ways to minimize or avoid these risks;
- imposes limits on the release of certain pollutants into the environment;
- issues federal permits that regulate certain activities that may pose a risk to human health, the environment, or both; and
- enforces environmental laws by taking legal action against violators, including actions to impose financial penalties on violators.

# What Are the Major Environmental Laws that EPA Administers?

## Overview

The environmental laws that EPA administers address a wide range of actual and potential threats to the environment. These laws set forth Congress' goals to safeguard the air, land, and water, and establish a legal framework to achieve these goals. They give EPA the authority, and in many cases, impose a duty on EPA, to develop and issue regulations that implement the laws' requirements. EPA's regulations spell out the activities that the Agency oversees and rules of conduct for persons who are involved in those activities. The laws are published in the United States Code. EPA's environmental regulations are published in title 40 of the Code of Federal Regulations (C.F.R.). You can find the U.S. Code and the CFR on the Internet at <http://www.govinfo.gov> and at most law libraries.

Congress intends that the states and tribes play a role in carrying out the federal environmental laws and has authorized the states and tribes to implement many specific environmental programs. The EAB hears only cases that concern federal permits, enforcement, and other actions, and not those arising from approved state or otherwise independent programs.

## Clean Air Act

The Clean Air Act (CAA) is a comprehensive federal law that protects and improves the quality of the air by limiting the emission of air pollution from stationary and mobile sources. The CAA directs EPA to identify air pollutants, study the causes of air pollution, evaluate the impact of air pollutants on human health, and adopt national air quality standards for pollutants that may endanger public health or the environment. The CAA also includes licensing and permitting requirements. For example, the CAA authorizes EPA, or a state or local program approved by

EPA, to issue preconstruction permits for major sources of air pollution (such as factories and power plants) that set limits on the amount of each regulated pollutant the facility may emit. This type of permit is issued under the federal Prevention of Significant Deterioration (PSD) program and is designed to protect air quality in those areas of the United States where the air quality already meets or exceeds national standards (known as attainment areas).

The EAB reviews certain challenges to federal New Source Review (NSR), PSD, and CAA Title V operating permits issued by EPA or by a state, local, or tribal permitting authority to which EPA has delegated its permitting authority to issue federal permits. The public plays a key role in the CAA by providing comments on these permits. The EAB's authority under the CAA also includes reviewing Agency decisions issued under the "acid rain" regulations, as well as appeals from EPA-initiated administrative penalty cases brought against individuals, companies, or organizations that EPA alleges have violated the Clean Air Act or regulations issued to implement the Clean Air Act.

## **Clean Water Act**

The Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA), is the federal law that protects United States waters by regulating the discharge of pollutants. The states have the primary responsibility for protecting U.S. waters. However, EPA (or a state approved for this purpose) administers the CWA's National Pollution Discharge Elimination System (NPDES) permit program, which controls discharges of pollutants into regulated waters. The EAB has the authority to review challenges to EPA-issued NPDES permits. The public plays a key role in the CWA by providing comments on these permits. The EAB also reviews appeals from administrative penalty cases brought by EPA against individuals, companies, or organizations that EPA believes have violated the Clean Water Act or regulations issued to implement the Clean Water Act.



## **Comprehensive Environmental Response, Compensation, and Liability Act**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as Superfund) is a federal law that has two major purposes: first, to ensure that releases of hazardous substances are cleaned up promptly; and second, to require those who generated, transported, and disposed of hazardous substances improperly to pay for the cleanup. Among other things, CERCLA authorizes EPA (and certain other federal agencies) to

issue orders requiring a person, a group of people, or one or more companies to undertake specific actions to prevent or minimize the threatened release of hazardous substances or to clean up hazardous substances that already have been released.

The recipient of a cleanup order may petition the EAB to recover any challenged costs. However, a person who challenges a cleanup order must comply promptly and fully with the cleanup order first, and may not petition for reimbursement until the cleanup is complete.

The EAB's procedures for CERCLA reimbursement proceedings are set forth in the EAB's [Revised CERCLA Guidance](#) document, which is available on the EAB website in the "[EAB Guidance Documents](#)" link. The EAB also reviews appeals from administrative penalty cases brought by EPA against individuals, companies, or organizations that EPA alleges have violated a CERCLA cleanup order or other CERCLA requirements.

EPA may also seek an administrative penalty against persons who have violated a CERCLA cleanup order. Administrative Law Judges (ALJ) preside over penalty actions against persons who have failed to report spills and accidents to the National Response Center under CERCLA section 103. The EAB reviews appeals from the ALJ's decisions in these penalty cases.

## **Emergency Planning and Community Right to Know Act**

The Emergency Planning and Community Right to Know Act (EPCRA) is a federal law that helps local communities protect public health, safety, and the environment from chemical hazards. EPCRA requires certain facilities that manufacture, use, or store toxic chemicals to file reports on their releases of toxic chemicals into the environment. EPA compiles information submitted by these facilities and makes it available to the public through an information tool known as the Toxic Release Inventory (TRI), which can be accessed at [www.epa.gov/toxics-release-](http://www.epa.gov/toxics-release-)



[inventory-tri-program](#). The EAB reviews appeals from administrative penalty cases brought by EPA against individuals, companies, or organizations that EPA alleges have violated EPCRA.

## **Federal Insecticide, Fungicide, and Rodenticide Act**

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the federal law that provides for the regulation of pesticides to prevent them from causing unreasonable harm to health and the environment. Every pesticide that is sold or distributed in the U.S. must be registered with EPA. The pesticide registrant must provide information to EPA that supports its claim that the chemicals used in the pesticide will not pose an unreasonable risk to people or the environment. Pesticides must have labels that explain how to use them and that contain warnings about the risks posed by their use. Certain particularly dangerous pesticides may be applied only by a government-certified applicator. The certification requirement is intended to ensure that the applicator will use the pesticide in a way that minimizes risks to human health and the environment.

EPA enforces the requirements of FIFRA by assessing, as appropriate, civil penalties against individuals, companies, or organizations that violate its requirements. The EAB reviews appeals from administrative penalty cases brought by EPA against individuals, companies, or organizations that EPA believes have violated FIFRA. The EAB also reviews appeals pursuant to 40 C.F.R. part 164, which include proceedings arising from refusals to register a pesticide, cancellations of pesticide registrations, changes of pesticide classifications, suspensions of registrations, and other hearings under FIFRA.

## **Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act (RCRA) is the federal law that establishes the framework for a national system of solid waste control. Subtitle D of RCRA is dedicated to requirements for non-hazardous solid waste, and Subtitle C focuses on requirements for hazardous solid waste. Solid waste includes solids, liquids, and gases and must be discarded to be considered waste. RCRA authorizes EPA to impose stringent requirements on facilities that treat, store, or dispose of hazardous waste by means of a permit program. The public plays a key role in RCRA by providing comments on these permits. The EAB has the authority to review challenges to the terms of EPA-issued RCRA permits. The EAB also reviews appeals from administrative penalty cases brought by EPA against individuals, companies, or organizations that EPA believes have violated RCRA, including regulations regarding Underground Storage Tanks.

## **Safe Drinking Water Act**

The Safe Drinking Water Act (SDWA) is the federal law that safeguards the nation's drinking water. The underground injection control (UIC) program under the SDWA protects actual and potential sources of drinking water from hazardous substances by requiring any injection of pollutants that may impact a drinking water source to comply with the terms of a UIC permit. The EAB reviews challenges to the terms of EPA-issued UIC permits. The public plays a key role by providing comments on these permits. The EAB also reviews appeals from administrative penalty cases brought by EPA against individuals, companies, or organizations that EPA alleges have violated the SDWA, including underground injection well regulations and drinking water regulations.

## **Toxic Substances Control Act (TSCA)**

The Toxic Substances Control Act (TSCA) is the federal law that safeguards against unreasonable risks of harm to health or the environment from new and existing chemicals. TSCA regulates the use, storage, and disposal of toxic chemicals and authorizes EPA to require chemical manufacturers and processors to test certain chemical substances, maintain testing records, and report results to EPA. It also requires EPA to evaluate existing chemicals. TSCA also incorporates the Lead Disclosure Rule, which requires notification and disclosure of certain lead-based paint information and the Lead Paint Renovation, Repair, and Painting Rule (RRP Rule). EPA enforces the requirements of TSCA by imposing civil penalties on individuals, companies, or organizations that violate its requirements. The EAB reviews appeals from administrative penalty cases brought by EPA against individuals, companies, or organizations that EPA alleges have violated TSCA.

## **What is the Role of the Environmental Appeals Board (EAB)?**

The EAB, which was created in 1992, functions as an administrative appeals tribunal within EPA. It consists of Environmental Appeals Judges and a staff of lawyers and administrative support personnel who assist them.

The EAB's primary role is to resolve certain types of disputes between EPA (or state) offices and members of the public, private entities, or government entities under federal environmental laws. Both the environmental laws and EPA's regulations specify who may appeal an issue to the EAB and what types of issues may be raised. The EAB most often decides cases involving challenges to either EPA's assessment of financial penalties for violations of federal environmental laws or the terms of federal environmental permits. An enforcement case will not ordinarily reach the EAB until an EPA Administrative Law Judge or regional hearing officer has

issued a decision on the matter and someone who is adversely affected by that decision appeals the decision to the EAB. A permit case ordinarily reaches the EAB after a senior EPA official (or, in some permit cases, a state agency official with delegated authority to issue federal environmental permits) issues a permit decision and a petitioner appeals that permit decision.

The EAB also rules on petitions that members of the public (typically private or government entities) submit to the EAB seeking reimbursement of costs they incurred in complying with a cleanup order that EPA or another federal agency issued under CERCLA. The EAB has developed its [Revised CERCLA Guidance](#) for these cases, which is available on the EAB's website.

## **The EAB's Decisionmaking Process**

The EAB decides cases using a formal process that is largely governed by EPA regulations. Although a part of EPA, the EAB operates independently of the EPA offices that are parties to a case. This independence allows the EAB to reach decisions for or against any party to the appeal, including the underlying EPA office. The EAB gives equal consideration to the legal arguments made by members of the public and the legal arguments made by EPA lawyers, and the EAB will not communicate with one party about the merits of a case pending before the EAB without the other party being present. The Clerk of the Board, and in some cases EAB staff attorneys, are available, however, to answer general non-case-specific questions about EAB procedures that are not answered in this Guide or on the EAB website. EAB staff attorneys do not provide legal advice to the public and will not discuss the particulars of any matter before the EAB.

Generally, a panel of three Environmental Appeals Judges considers and decides each matter pending before the EAB, reaching a decision by majority vote. The EAB issues written

decisions that explain its reasoning. Each decision typically contains a discussion of the factual history of the case, the applicable law, the issues raised, and the EAB's rulings on the issues raised by the parties. The full text of each EAB decision appears on the EAB website. In addition, the most significant EAB decisions issued since March 1992 are published in bound volumes titled Environmental Administrative Decisions (E.A.D.). Additional information on how to access EAB decisions is available on page 38 of this Guide.

The Judges on the panel try to reach a decision that reflects the views and reasoning of all three Judges. However, a Judge may write a concurring opinion (a separate opinion written by a Judge who agrees with the conclusion reached by the majority but who wishes to state different reasons for reaching that conclusion) or a dissenting opinion (a separate opinion written by a Judge who disagrees with the conclusion reached by the majority).

The EAB's decision constitutes EPA's final decision on the dispute and is binding on the parties, unless reversed by a federal court (see next paragraph). Except for cases involving penalty assessments against other federal agencies, EAB decisions cannot be appealed to the EPA Administrator. However, a party may request the EAB to reconsider or clarify its final decision within 10 days of when it is issued. Such requests are made by filing a motion with the EAB. For more information on motions for reconsideration or clarification, see pages 22 (for enforcement appeals) or 28 (for permit appeals) below.

A party (other than EPA) who wishes to challenge an EAB decision may do so in federal court. The EAB's website lists and, when available, provides a copy of, all federal court decisions that have been issued following an appeal from an EAB decision and all pending appeals from EAB decisions to a federal court.

## Where Can I Find Filings in Cases Before the EAB?

The “EAB Dockets” section of the website categorizes all cases filed with the EAB into either [Active Dockets](#), [Closed Dockets \(since January 1, 2006\)](#), or [Closed Dockets \(March 1992 through December 31, 2005\)](#). [Active Dockets](#) contains an index of all filings in cases that are pending before the EAB and allows you to view and print most of the documents that have been filed in these cases. [Closed Dockets \(since January 1, 2006\)](#) lists all cases closed after January 1, 2006, and allows you to read and print most of the documents that have been filed in those cases. [Closed Dockets \(March 1992 through December 31, 2005\)](#) contains a list of all cases that were closed between March 1992, when the EAB was created, and December 31, 2005. It does not contain an index of filed documents. To obtain copies of documents filed with the EAB that are not available online you must contact the Clerk of the Board (see page 13).

## EAB Decisions Are Followed in Later Cases

When deciding a matter, the EAB generally adheres to the reasoning it applied in previous cases that involved similar factual circumstances or raised similar legal issues. If there are differences that require the EAB to reach a different result, the EAB will explain those differences in its opinion. Lawyers refer to this principle of decisionmaking by a Latin phrase, “*stare decisis*,” which means “to stand by things decided.” When a decisionmaking body like the EAB gives its prior decisions precedential value, members of the regulated communities can rely on these decisions to guide their conduct. Moreover, they can be assured of a fair decisionmaking process in which people who conduct themselves in the same way under similar circumstances will be treated the same way by the legal system. If you are participating in an EAB case or are deciding whether to file a case before the EAB, you should read carefully other EAB decisions that address issues similar to yours, as the EAB’s earlier rulings may apply to your case. The EAB’s website contains a link titled [Board Decisions](#) that provides a search function so that you can search both Published and Unpublished Decisions to find other EAB decisions that may apply to your case.

## Who Do I Contact If I Have Questions?

The Clerk of the Environmental Appeals Board maintains the EAB's docket, which is its administrative system for tracking pending matters. The Clerk also maintains records of closed cases. See the discussion on page 12 of this Guide for further information.

The Clerk is available to answer questions about procedures for filing documents with the EAB. The Clerk can be reached by email at [Clerk\\_EAB@epa.gov](mailto:Clerk_EAB@epa.gov) (with an underscore between Clerk and EAB) or by telephone at (202) 233-0122 from 8:30 a.m. to 12 p.m. and from 1 p.m. to 4:30 p.m., Monday through Friday (excluding Federal holidays).

You may read any public document that was filed in an EAB proceeding on the EAB's website, or, by appointment only, at the Clerk's office. You can access documents that have been filed in pending cases, and cases that were closed after January 1, 2006, using the link to [EAB Dockets](#) on the EAB website.

If you would prefer to view or obtain copies of documents at the Clerk of the Board's office, please call the Clerk to make an appointment. You may not make copies of documents, but you may ask the Clerk to make copies for you. The EAB provides the first 100 pages of copies at no charge. Beyond that, the cost of duplication of documents is \$.15 per page, or \$.30 per double-sided page. However, duplication costs may be waived when the total fee amounts to less than \$14.00.

## How and Where Should I File Documents with the EAB?

You may file documents with the EAB electronically, by mail, in person, and in limited circumstances, by facsimile. A document is considered filed when it is *received* by the Clerk of the Board. All filings must be served on the other parties to a dispute. Service requirements are discussed in more detail beginning on the bottom of page 18 and again on page 24.

Information on how to file your documents electronically is available in the [Electronic Filing](#) section on the EAB website. The EAB will consider a document that was filed electronically to be timely if the electronic receipt for the filed document shows that it was received by 11:59 p.m. Eastern Time on the day the document is required to be filed.

All documents sent through the U.S. Postal Service (except by U.S. Express Mail) MUST be addressed to the EAB's mailing address:

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
1200 Pennsylvania Avenue, NW  
Mail Code 1103M  
Washington, D.C. 20460-0001

All documents that you deliver in person or that you arrange to have delivered by courier (including delivery by U.S. Express Mail or a by commercial delivery service such as Federal Express or UPS) MUST be delivered to the EAB's hand-delivery address:

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
WJC East Building  
1201 Constitution Avenue, NW  
Room 3332  
Washington, D.C. 20004



Every envelope or package, whether mailed or hand-delivered, should bear a complete and accurate return address in the upper left-hand corner, and should clearly state the case name and any case number (if the Clerk of the Board has assigned one) in the lower left-hand corner.

A document is *not* considered timely if it is merely postmarked (mailed) by the filing deadline. Rather, if you send your petition through the U.S. Postal Service, it will be considered filed when the Clerk *receives* the document at the EAB *mailing* address. If you deliver your petition in person or arrange to have it delivered by courier, it will be considered filed when the Clerk *receives* the document at the EAB *hand-delivery* address.

## **Enforcement and Permit Appeals: An Overview**

The two most common types of cases handled by the EAB, and the two types of cases in which members of the public are most likely to be involved, are appeals of administrative enforcement decisions and appeals of permit decisions. This Guide provides an overview and describes the steps that typically occur in those two types of cases. To familiarize yourself with both the procedures and the format and content requirements applicable to your appeal, you also should review the EAB's [Practice Manual](#), the [Standing Orders](#), and the [regulations governing appeals to the EAB](#). The regulations that govern appeals to the EAB are located in title 40 of the Code of Federal Regulations (C.F.R.) part 22 (administrative enforcement appeals), part 124 (most permit appeals), and part 71 (Clean Air Act Title V operating permit appeals).

### ***EAB Alternative Dispute Resolution (ADR) Program***

The EAB has a well-established Alternative Dispute Resolution (ADR) program to assist parties in resolving their disputes. ADR refers to voluntary techniques for resolving conflict with the help of a neutral third party. In appropriate cases, the EAB offers parties the option to

participate in ADR once an appeal is filed. The EAB's ADR program is completely voluntary. If the parties agree to pursue ADR, an EAB Judge is assigned to the matter and acts as a neutral evaluator/mediator. An EAB Attorney may also participate as a neutral co-mediator. The primary purpose of the ADR program is to provide a neutral, confidential forum for the settlement of cases before the EAB. If the parties are successful in reaching a mutually agreeable resolution to the dispute, they will sign a written agreement and the matter will be removed from the EAB's docket. If ADR does not resolve the case or if, for any reason, one or both parties or the Settlement Judge decides not to continue with ADR, the matter will be returned to the EAB's active docket. When a matter is returned to the EAB's active docket, neither the EAB Judge nor the EAB Attorney who worked on the ADR will participate in any way in the EAB's resolution of the matter. More information about the EAB's ADR program is available on the EAB's website at the [Alternative Dispute Resolution \(ADR\)](#) link.

### ***Appeals from Administrative Enforcement Decisions***

An EAB enforcement appeal is a formal challenge to an initial decision that an EPA Administrative Law Judge (ALJ) or regional hearing officer issued in an administrative enforcement proceeding. Typically, an EPA Regional Office (or occasionally an EPA headquarters office) begins an enforcement proceeding by filing a complaint alleging that a person (which could be a person, corporation, partnership, governmental body, or other organization) violated an environmental law or regulation. The complaint generally proposes to assess a monetary penalty for the violation(s) and, where necessary, to require the entity to take action to remedy the violation(s). The EPA office that filed the complaint is called the "Complainant." The entity who is charged with the violation is called the "Respondent." For example, a complaint may allege that a Respondent violated FIFRA by selling pesticides that were not labeled with adequate instructions for use. As another example, a complaint may allege that a Respondent violated RCRA by improperly disposing of hazardous waste. The Respondent

may dispute the charges in the complaint, and/or the amount of the proposed monetary penalty, by filing an Answer.

The case is usually assigned to either an ALJ or regional hearing officer, who reviews the written legal arguments (called “briefs”) that both parties have submitted. If the ALJ or regional hearing officer determines that the case presents factual issues that are important to a decision in the case, he or she will schedule a hearing, during which each side may present witnesses and introduce documentary evidence. He or she then issues a decision that resolves the issues in the case, based on the parties’ briefs and the evidence introduced at the hearing. The ALJ or regional hearing officer’s decision is called an “Initial Decision.”

Within the timeframe specified in the regulations, both the Complainant and the Respondent have the right to appeal the Initial Decision to the EAB. The Respondent may challenge the ALJ or regional hearing officer’s findings and conclusions about liability for the violations, the amount of the penalty, or both. The Complainant may argue that the ALJ or regional hearing officer acted in error when he or she concluded that the Respondent did not violate the law, or may argue that he or she should have assessed a different penalty. The Respondent may argue that Respondent did not violate the law or that the ALJ or regional hearing officer assessed too high a monetary penalty for the violation. The general steps in the enforcement appeals process are described beginning on page 18 of this Guide. If no one files an appeal, the EAB may decide to review the decision on its own initiative – what is referred to as “sua sponte” review. If no one appeals the Initial Decision, and the Board does not exercise sua sponte review, the Initial Decision becomes a final EPA decision after the designated time period, usually forty-five days.

## *Steps in an Administrative Enforcement Appeal*

### **Step 1: Appellant Files and Serves a Timely Notice of Appeal with the EAB**

A person who wishes to challenge an Initial Decision by an ALJ or regional hearing officer initiates the appeal by filing a Notice of Appeal with the Clerk of the Board. The Clerk logs in the appeal and assigns it an appeal number. The “appellant” (party filing the appeal) may be either the person against whom the proceeding was brought (the Respondent) or the EPA office that filed the Complaint (the Complainant). The “appellee” is the party against whom the appeal is filed. In some cases, both parties may file appeals. The Notice of Appeal must comply with federal regulations that govern enforcement appeals, known as the Consolidated Rules of Practice, or “CROP.” The CROP are published in the Code of Federal Regulations at title 40, part 22 (40 C.F.R. pt. 22) and are available on the internet at <https://www.ecfr.gov> or on the EAB’s website at the [Regulations Governing Appeals](#) link. Some of the CROP’s requirements related to notices of appeal are summarized below.

The Clerk of the Board must *receive* a Notice of Appeal within 30 days from the date the Initial Decision was served for the appeal to be timely. The EAB enforces this deadline strictly. Under EPA’s regulations, the Initial Decision may be served U.S. mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), any reliable commercial delivery service, or electronic means (including but not necessarily limited to facsimile and email). The regulations contain specific rules for how to calculate the 30-day period of time in which to file the appeal, depending on how the Initial Decision was served.

You must allow enough time for the Clerk of the Board to *receive* your Notice of Appeal before the 30-day filing deadline. If you choose to file hard copies of your Notice of Appeal, address them either to the EAB’s mailing address or to its hand-delivery address, as appropriate, based on your chosen filing method. The Notice of Appeal must also be served on all other parties,

either 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 email if service by such electronic means is consented to in writing. You must provide proof of service on all parties by appending to the Notice of Appeal a certificate of service that states the name, date, and manner of service for each party (or party representative) served, as well as the electronic, mailing, or hand delivery address of each party (or party representative) served, as appropriate. In addition to reading the regulations, follow the instructions in the [“How and Where Should I File Documents with the EAB?”](#) section on page 14 of this Guide to ensure that you timely file your Notice of Appeal. The EAB’s [Practice Manual](#) includes a template for a certificate of service and other helpful information regarding service requirements.

The CROP do not prescribe a specific form for a Notice of Appeal. However, the regulations do specify the information that must be included and the types of issues that may be raised. The CROP also contain instructions for the form and content of the appellate brief, the document that contains the factual and legal arguments that support the Notice of Appeal. The EAB’s [Practice Manual](#) contains templates for a Notice of Appeal and appellate brief that you can use as models in drafting your own Notice of Appeal and appellate brief.

## **Step 2:      Participants Respond to the Notice of Appeal**

Once a party has filed an appeal, any other participant in the case may file a response to the appellate brief. The response brief must be limited to the arguments that were raised in the appellate brief and must be filed within the time period allowed by the regulations. If either side wants to file additional briefs, it first must request and receive permission from the EAB. 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.

### **Step 3:      **Motions Practice****

Throughout the appeals process, you may need to make requests to the EAB. For example, you may need to request more time to file a document, or you may wish to request oral argument if you did not make that request in your notice of appeal. Parties make requests to the Board by filing motions. As a general matter, all motions should comply with the requirements set forth in the CROP. Before you file any motion with the EAB, you must contact the other party or parties in the case to find out if they concur or object to your motion. Your motion must indicate that you contacted the other party or parties, and it must indicate the other party or parties' response(s). The [Regulations Governing Appeals](#) page has a link to the [CROP](#) for more information on filing motions.

### **Step 4:      **Oral Argument****

In your appeal or your response to an appeal, you may request to present oral argument before a panel of EAB Judges. You may also request to present oral argument by filing a separate motion. The EAB may grant or deny your request, or, in some cases, the EAB may schedule an oral argument on its own initiative. See page 34 of this Guide and the [Frequently Asked Questions](#) link on the EAB's website for more information about oral arguments before the EAB.

### **Step 5:      **The EAB Deliberates the Issues****

The Clerk of the Board uses a neutral assignment system to assign the case to a panel of EAB Judges. The EAB considers briefs that were submitted by the participants and reviews relevant portions of the Administrative Record. The Administrative Record consists of the transcript of any hearing held by the ALJ or regional hearing officer, and any documents submitted

by the parties that are included in the record during the proceedings before the ALJ or regional hearing officer.

The CROP provide that the Complainant has “the burdens of presentation and persuasion,” regarding both liability and the appropriateness of the monetary penalty. In general terms, the Complainant’s “burden of presentation” means that it is the Complainant’s obligation in the first instance to present factual evidence that a violation occurred and to demonstrate why the recommended penalty amount is appropriate. The Complainant’s “burden of persuasion” means that it is the Complainant’s obligation to present evidence and arguments that are more persuasive than those of the Respondent for the ALJ or the EAB to decide in the Complainant’s favor. The EAB’s review of an Initial Decision is “*de novo*,” meaning the EAB has the authority to set aside the ALJ’s factual findings and legal conclusions and to reach its own determination as to whether the Respondent is liable for the violations charged in the Complaint. The EAB, however, may defer to the ALJ’s factual findings that are based on the testimony of witnesses, because the ALJ will have had an opportunity to observe them and evaluate their credibility.

The CROP authorize the EAB to set aside the ALJ’s recommended penalty and to determine on its own an appropriate penalty amount. However, the EAB has stated in its decisions that it will not ordinarily substitute its judgment as to an appropriate penalty amount for the judgment of the ALJ unless the ALJ has made a clear error in applying any applicable penalty guidelines, has not given sound reasons for deviating from them, or has not adequately explained the penalty assessment.

#### **Step 6:      The EAB Issues a Decision**

After reviewing the relevant materials, the EAB may decide to (1) uphold Initial Decision; (2) fully or partially reverse and remand (send back for further action) the Initial Decision to the

ALJ or regional hearing officer who issued it; or (3) reverse the Initial Decision and issue a new decision. The EAB issues its decision and serves a copy of the decision on each party in the case. The EAB may serve parties by U.S. mail, any reliable commercial delivery service, or electronic means (including but not necessarily limited to facsimile and email). Generally, if the EAB determines that the decision addresses a new issue or explains the EAB's reasoning in a way not previously stated, the EAB will issue the decision as a published decision. The EAB will issue decisions based on well-developed, previously stated EAB precedent as unpublished decisions. All decisions — published and unpublished — are available on the EAB website at [www.epa.gov/eab](http://www.epa.gov/eab). Individual copies of EAB decisions also may be obtained from the Clerk of the Board and are commercially available through LexisNexis™ and Westlaw.™

The EAB's decision is final and may not be appealed to the EPA Administrator except in limited circumstances where another federal agency is a party. However, a party may file a motion for reconsideration with the EAB within 10 days of when the EAB serves a final decision. A motion for reconsideration must set forth the matters that the party believes the EAB erroneously decided, as well as the nature of those errors. See the [Regulations Governing Appeals](#) page on the EAB's website for more information on motions for reconsideration. In addition, any party other than EPA has a right to appeal the EAB's decision to a federal court. The environmental statute at issue determines the court in which the appeal must be filed and the standard of review that the court must apply.

### ***Appeals from Permit Decisions***

A permit appeal is a challenge to a decision issuing or modifying an environmental permit or license, or denying a permit application. The permit holder (known as the "permittee") or permit applicant, or any other interested person who objects to some aspect of the permit decision and who meets certain threshold requirements summarized below, may file a petition asking the EAB



to review a permit decision. For example, the permittee or permit applicant may argue that particular permit provisions – such as discharge limitations or monitoring requirements – are too restrictive, while the permit applicant may challenge a decision not to issue a permit. A private citizen (or a group of citizens), non-governmental entity, municipality, or any other interested person or group may file a petition and argue that the terms of the permit are too lenient, too stringent, or that the permit should not be issued at all.

Even if you meet all the prerequisites for filing a petition, the EAB may still dismiss or deny your petition. The EAB typically will review a permit decision only if the petition demonstrates that the permit issuer made a “clearly erroneous” finding of fact or legal conclusion, or that an issue concerns an exercise of EPA discretion or an important policy consideration exists that the EAB in its discretion should review.

The EAB typically decides the merits of the appeal based on the petition and reply, if any, the permit issuer’s response, the permittee’s response (if not the petitioner), and the timely-filed briefs of any other participant. Additionally, the EAB may consider “amicus curiae” (which means “friend of the court”) briefs filed by any interested person. Because additional briefing is at the EAB’s discretion, all substantive arguments must be included in your petition for review, and the EAB encourages participants to provide all necessary support for their arguments at the time the petition for review is submitted. The EAB may deny review of the petition, or the EAB may rule in the petitioner’s favor (i.e., grant the petition) and overturn the permit or return the permit to the permit issuer for further action.

## *Steps in a Permit Appeal*

### **Step 1: A Member of the Public Files and Serves a Petition for Review**

Anyone who wishes to challenge a permitting decision initiates the appeal by filing a petition for review with the Clerk of the Board and serving a copy of the petition for review on the permit issuer and the permittee. The permit challenger, known as the “petitioner,” may be an individual, a citizen’s group or other organization, a business entity, or the permittee. The party filing the petition is known as the “petitioner.” The petition must comply with the requirements contained in the regulations that govern permit appeals. Most permit appeals are governed by regulations that are published at 40 C.F.R. part 124, and more specifically, 40 C.F.R. section 124.19. These regulations are available at [www.ecfr.gov](http://www.ecfr.gov) or in the [Regulations Governing Appeals](#) section of the EAB’s website.

There are several threshold requirements that a petitioner must meet. To be timely, a petition for review of a permit decision must be filed before the deadline established by the regulations. For permit appeals governed by part 124, a petition must be *received* by the Clerk of the Board within 30 days after the permit issuer served notice of a final permit decision. A petitioner must also serve a copy of the petition on the Regional Administrator and the permit applicant (if the applicant is not the petitioner). Several methods of service are permissible, including service by first class U.S. mail, by any reliable commercial delivery service, or, if agreed to by the parties, by facsimile or email. For more information, see the instructions in the “[How and Where Should I File Documents with the EAB?](#)” section on page 14 of this Guide to ensure that you timely file your petition.

In most circumstances, the you must satisfy several other prerequisites before the EAB will consider your petition. First, you must establish “standing” by showing that you participated previously in the permit review process, either by speaking at a public hearing or by submitting

written comments on the draft permit. Your participation during the comment period preserves your opportunity to file an appeal if you wish to challenge the permit decision. The public comment period provides an important opportunity for you to raise objections to the draft permit and to provide the permit issuer with any pertinent information that supports those objections. Your comments should be as specific as possible because you typically may only raise on appeal an issue that you (or another commenter) specifically raised during the public comment period. This regulatory requirement is intended to ensure that the petitioner has a sufficient interest in the permit to be allowed to file an appeal.

Second, you may raise only the specific issues that were previously raised during the Region's permit review process, either by you or another commenter. This regulatory requirement ensures that the permit issuer had an opportunity to consider the petitioner's arguments and respond to them before issuing the final permit, which in turn fosters a predictable permit process designed to conclude in a reasonable period of time. Allowing issues to be raised for the first time on appeal would impede these objectives. A limited exception to these threshold requirements may occur when the terms of the permit have changed significantly between the draft permit and the final permit such that the petitioner did not previously have an opportunity to provide comments or otherwise register concerns with the permit issuer. See the regulatory requirements at title 40 of the Code of Federal Regulations, [section 124.19\(a\)](#), for more specific information.

Third, your petition to the EAB requesting review of the permit decision must identify the permit conditions you are contesting or any other specific challenge you are making to the permit decision. You must set forth clearly, with legal and factual support, your arguments for why the permit decision should be reviewed. In most cases, you also must show that your arguments were raised earlier in the permitting process, prior to your appeal. Additionally, it is important that you explain why the permit issuer's responses to those earlier contentions were inadequate. The

permit issuer's responses to public comments are generally summarized in a document labeled "Response to Comments," or "Responsiveness Summary." You must explain to the EAB why the reasons the permit issuer gave in the Response to Comments or Responsiveness Summary do not justify the conclusion reached by the permit issuer. Simply repeating or incorporating by reference the comments that you made during the public comment period will *not* lead to a successful appeal. One of the most common reasons that permit appeals are dismissed or denied is because the petitioner merely repeats comments made previously to the permit issuer during the public comment period without explaining why the permit issuer's response to those comments was clearly erroneous or otherwise warrants review.

## **Step 2:      Response Briefs Filed**

The Clerk of the Board logs in the appeal and assigns it an appeal number. The permit issuer, permit applicant (if the permit applicant is not the petitioner), and the State or Tribal authority where the permitted facility or site is located, or is proposed to be located, then have the opportunity to respond to the petition. Additionally, any interested person may file a brief as "amicus curiae," or friend of the court, and a petitioner in most cases may file a reply. If the EAB determines that additional briefing is necessary, the EAB may order the parties, including the petitioner, to file additional briefs.

## **Step 3:      Motions Practice**

During the appeal process, you may need to file a motion. For example, you may need to request more time to file a document, or you may wish to request oral argument if you did not make that request in your petition for review. Parties may make requests to the EAB by filing a motion. As a general matter, your motion should comply with the requirements set forth in the regulations at 40 C.F.R. section 124.19. Before you file any motion before the EAB, you must contact the other party or parties in the case to find out if they concur or object to your motion.

You must state in your motion the attempt you made to contact the party or parties, and any response(s) you obtained. The [Regulations Governing Appeals](#) page has a link to [40 C.F.R. section 124.19](#) for more information on filing motions.

#### **Step 4: Oral Argument**

You may request to present oral argument before a panel of EAB Judges. That request may be made in your petition for review or by separate motion. The EAB may grant or deny your request, or, in some cases, the EAB may schedule an oral argument on its own initiative. There is a presumption against oral arguments in Prevention of Significant Deterioration permit cases because of the expedited statutory deadline for issuing a final decision. See page 34 of this Guide and the [Frequently Asked Questions](#) link on the EAB's website for more information about oral arguments before the EAB.

#### **Step 5: The EAB Deliberates the Issues**

After an appeal is filed and an appeal number is designated, the Clerk of the Board uses a random assignment system to assign the case to a panel of EAB Judges. The EAB reviews the briefs submitted by the parties, the documents in the Administrative Record, and the transcript from oral argument, if one was held, when preparing its written opinion.

#### **Step 6: The EAB Issues a Decision**

After reviewing all the relevant materials, the EAB may (1) issue an order denying review of the petition; (2) remand the permit, or portions of the permit, to the permit issuer and require the permit issuer to adjust permit terms or to provide a better explanation for a challenged permit condition; or (3) issue a decision on the merits of the appeal and not remand (send back) the proceedings to the permit issuer.

The EAB issues its decision and serves a copy of the decision on each party in the case. The EAB may serve parties by U.S. mail, any reliable commercial delivery service, or electronic means (including but not necessarily limited to facsimile and email). Generally, if the EAB determines that the decision addresses a new issue or explains the EAB's reasoning in a way not previously stated, the EAB will issue the decision as a published decision. The EAB will issue decisions based on well-developed, previously stated EAB precedent as unpublished decisions. All decisions — published and unpublished — are available on the EAB website at [www.epa.gov/eab](http://www.epa.gov/eab). Individual copies of EAB decisions also may be obtained from the Clerk of the Board and are commercially available through LexisNexis™ and Westlaw.™

The EAB's decision is final and may not be appealed to the EPA Administrator except in limited circumstances where another federal agency is a party. However, a party may file a motion for reconsideration or clarification with the EAB within 10 days of when the EAB serves a final decision. A motion for reconsideration must set forth the matters that the party believes the EAB erroneously decided, as well as the nature of those errors. Similarly, a motion for clarification must set forth with specificity the portion(s) of the decision for which the party seeks clarification, as well as the reason such clarification is necessary. See the [Regulations Governing Appeals](#) page on the EAB's website for more information on motions for reconsideration or clarification. In addition, any party other than EPA has a right to appeal the EAB's decision to a federal court. The environmental statute at issue determines the court in which the appeal must be filed and the standard of review that the court must apply.

## **Resolving Disputes Informally**

The EAB encourages parties to explore alternative methods of resolving their disputes without a formal legal proceeding. The EAB has an Alternative Dispute Resolution (ADR)

program that is available in most appeals. To learn more about the EAB's ADR program, see page 15 above, or visit the [Alternative Dispute Resolution \(ADR\)](#) link on the EAB website ([www.epa.gov/eab](http://www.epa.gov/eab)), or address your questions to the Clerk of the Board by email at [Clerk\\_Board@epa.gov](mailto:Clerk_Board@epa.gov) (with an underscore between Clerk and EAB) or by telephone at (202) 233-0122.

In addition, the parties to an appeal may also choose to settle their dispute on their own, without assistance from the EAB. The EAB ordinarily will grant a request to stay (postpone) a proceeding if the parties are engaged in settlement discussions. Parties seeking to stay proceedings before the EAB must file a timely motion to the EAB setting forth the reasons for the request.



## **Can I Represent Myself or Do I Need to Hire a Lawyer?**

You may represent yourself in a proceeding before the EAB. The regulations do not require that you be represented by a lawyer. If you decide to represent yourself, the EAB Judges will make an effort to give full weight to your arguments, even if you do not express them using legal terminology. However, you will still be required to comply with statutory and regulatory deadlines and other legal requirements that apply to your case.

The Clerk of the Board and the staff attorneys to the EAB are available to answer general questions about EAB procedures. Staff attorneys do not provide legal advice to the public and will not discuss a matter before the EAB, so they cannot discuss the merits of your particular case with you or give you guidance on how to argue your case.

If your case involves complex legal issues it may be in your interest to have a lawyer represent you. A lawyer may be better able to understand the specialized language used in legal arguments and will be familiar with the legal research tools that help identify relevant EAB and court opinions issued in other cases. A lawyer also may be able to give you advice as to which of your arguments are likely to be persuasive.

Before you decide whether to hire a lawyer, you may want to read some of the EAB's decisions in cases that are similar to your own and decide whether you will be comfortable and effective as a "*pro se* litigant" (a participant who is self-represented).

## **How Can I Effectively Participate in an EAB Proceeding?**

- ✓ Comply with all EAB deadlines for submitting documents. Review the "[How and Where Should I File Documents with the EAB?](#)" section of this Guide beginning on page 14 to ensure you timely file documents.
- ✓ Read all relevant EAB opinions. The EAB's decisions serve as "precedents" for future EAB decisions. If you will be participating in a case pending before the EAB, or are trying to decide whether to appeal to the EAB, reading these opinions will help you evaluate the persuasiveness and merits of your arguments. If you find opinions that support your case, you should reference them in your brief and



explain why the EAB's reasoning in the opinion also applies to your case. If you find opinions that do not support your case, explain any differences between your case and the opinion to distinguish your case from the previous EAB "precedents." Make sure your legal brief addresses the key arguments raised by the other party or parties.

- ✓ Consult the appendix to the [EAB Practice Manual](#) for templates that you can use as a model in drafting documents you file with the EAB. The templates include, for example, a sample Notice of Appeal and a sample Petition for Review of a Permit Decision.
  
- ✓ In an enforcement case:
  - Read the regulations at 40 CFR part 22, which govern enforcement proceedings before the EAB. Do not rely solely on EPA guidance documents because they do not have the force of law.
  
  - State the relief you want. Your arguments will be more effective if you clearly state what you want the EAB to do. Let the EAB know whether you want it to reverse a finding of liability for all of the allegations in the complaint or for only some of them. If you want the EAB to reduce the penalty you were assessed, state what you would consider an appropriate penalty and why.
  
  - Direct the EAB to the factual evidence in the record (documents or testimony by witnesses) that supports your argument.

- Explain why the decision you are appealing is based on a legal error. For example:
  - ❖ Does the decision conflict with previously-issued decisions of the EAB?
  - ❖ Does the decision conflict with a statute or regulation?
  
- ✓ In a permit case:
  - Read the regulations at 40 C.F.R. part 124, and in particular section 124.19, which govern permit proceedings before the EAB. Do not rely solely on EPA guidance documents, which do not have the force of law.
  
  - Participate actively in the permit proceeding before the permit is issued. Raise all of your concerns about a permit during the public comment period on the draft permit so that the permit issuer has an opportunity to address them. Issues that could have been raised during the public comment period but were not raised are waived and cannot be appealed later. Be specific in your comments or concerns.
  
  - In your petition for review, identify the specific permit conditions or other specific problem with the permit decision that you are challenging.
  
  - Clearly set forth the factual and legal support for why the EAB should review the permit.
  
  - Identify the specific findings of fact or conclusions of law that you are challenging and explain why they are clearly erroneous.

- Identify the comment or comments on the draft permit in which you or another commenter raised the issue you are now raising on appeal, and provide specific references to the Administrative Record.
  
- If the permit issuer responded to your issue in its response to comments, identify the response and explain why the permit issuer's response to public comments did not provide an adequate answer to the concerns raised by the public comments.
  
- If your issue was not raised in public comments, explain why it could not have been raised at that time.
  
- As appropriate, propose alternative permit conditions to the conditions that you oppose.

## COMMON PITFALLS TO AVOID

- ✓ **Missing the filing deadline for your notice of appeal or petition for review of a permit decision**
- ✓ **Not pointing out relevant EAB decisions that support your position**
- ✓ **Avoiding references to relevant EAB decisions that do not support your position, instead of distinguishing your case from other decisions**
- ✓ **In a permit proceeding:**
  - ☛ **Not participating actively in the comment period on the draft permit**
  - ☛ **Not including in the petition for review all of the challenges to a permit decision because new arguments cannot be raised in later filings**
  - ☛ **Not explaining why the permit issuer's response to comments on the draft permit did not adequately address your concerns**

## Should I Ask for an Oral Argument or Should I Rely Solely on My Written Brief?

An oral argument is a hearing conducted by the panel of EAB Judges deciding the appeal. At oral argument, each party is given the opportunity to explain further its positions. An appellate

hearing of this kind is not an opportunity to present new arguments or to offer additional evidence or witness testimony in your case. Generally, on appeal the evidence considered is limited to the evidence that informed the decision being appealed. An appellate oral argument is an opportunity for you or your advocate to explain why the legal position you have taken in your briefs is the correct one.

Oral arguments typically take place in the U.S. EPA Administrative Courtroom, 1201 Constitution Avenue, NW, U.S. EPA East Building, Washington, D.C., Room 1152. Oral arguments are open to the public. A schedule of oral arguments may be obtained from the EAB website at the [Upcoming Oral Arguments](#) link or from the Clerk of the Board. If you would like to attend an oral argument, please contact the Clerk of the Board at least one week before the argument. This advance notice is required for security reasons so that attendees' names may be placed on an admittance list to enter the building.

Upon request, the EAB can arrange for parties in a case to use EPA's videoconferencing equipment to participate in an oral argument, instead of traveling to Washington, DC. The Clerk of the Board can provide additional information about videoconferencing.

If you think that an oral argument will benefit your case, you should request one as part of your appeal or file a motion requesting that the EAB schedule one. Your motion will be more effective if you explain which issues you would like to discuss at an argument and why you think that an oral argument would help the EAB to resolve them. The decision whether to hold an argument is within the EAB's discretion. The EAB generally will hold an argument when the argument will help the EAB understand better the issues raised in the briefs, and contribute to an improved decisionmaking process. The EAB may schedule an oral argument on its own initiative in the absence of a request. Orders scheduling oral argument may also specify the issues on

which the EAB would like to hear argument. Note, however, that there is a presumption against oral argument in Prevention of Significant Deterioration permit cases because of the expedited statutory timeframe for issuing a final decision.

## Where Can I Learn More About the EAB?

The EAB website, [www.epa.gov/eab](http://www.epa.gov/eab), is the best source of information about the most current EAB procedures and about recent EAB decisions. The website includes:

- **[EAB Dockets](#)** This webpage provides access to both Active and Closed Dockets. [Active Dockets](#) contains an index to documents filed in cases pending before the EAB, and the complete text of most documents; [Closed Dockets \(since January 1, 2006\)](#) contains an index to documents filed in cases closed after January 1, 2006, and the complete text of most documents; and [Closed Dockets \(March 1992 through December 31, 2005\)](#), contains a list of cases that were closed before January 1, 2006.
- **[Regulations Governing Appeals](#)** This webpage provides access to the full text of regulations that govern EAB cases as well as information on any recent revisions to those regulations.
- **[Standing Orders](#)** The EAB's [Standing Orders](#) govern practice before the EAB.
- **[EAB Guidance Documents](#)** The EAB's Guidance Documents include the Practice Manual, the Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions, and this Citizen's Guide. The EAB Practice Manual contains information about the statutes, regulations, and standing orders that govern practice before the EAB, and the procedures followed by the EAB in resolving disputes. An Appendix to the Practice

Manual contains sample documents that you can use as a guide to prepare the documents you submit to the EAB. The Revised Guidance on Procedures for Submission and Review of CERCLA Section 106(b) Reimbursement Petitions explains the EAB's procedures for CERCLA reimbursement proceedings.

- [EAB Published Decisions](#) This webpage contains the complete text of all published decisions the EAB has issued. It also contains lists of EAB published decisions that are arranged alphabetically, chronologically and by statute. You also can use the "search" function to search for a specific topic the EAB has addressed in a published decision.
- [EAB Unpublished Final Orders](#) This webpage contains the text of unpublished final orders the EAB has issued since November 1996.
- [Frequently Asked Questions](#) This webpage contains answers to frequently asked questions about EAB procedures.
- [Federal Court Review](#) This webpage contains a table, [EAB Decisions Reviewed by the Federal Courts](#), that lists the subsequent history of EAB decisions that have been affirmed or reversed by a federal district court or federal circuit court of appeals, and when available, a link to the federal court decision. A companion table lists appeals from [EAB decisions that are currently pending in federal court](#).
- [Alternative Dispute Resolution \(ADR\)](#) This webpage contains information about the EAB's voluntary Alternative Dispute Resolution (ADR) program.

## Where Can I Read the Decisions the EAB Has Issued?

The full text of EAB decisions appear on the EAB's website. In addition, EAB decisions issued since March 1992 are published in bound volumes titled Environmental Administrative Decisions (E.A.D.). Copies of the E.A.D. are available at "federal depository libraries." These libraries, which are located throughout the United States, provide free public access to a large number of federal publications. Trained librarians are available at these libraries to help members of the public find and use documents. The website <https://www.fdlp.gov/about-the-fdlp/federal-depository-libraries> contains a list of federal depository libraries.

## How Do I Reference, or Find, an EAB Decision?

The EAB has adopted an official form of citation for its opinions. A form of citation is a standardized way to reference a legal opinion. A published decision of the EAB should be cited by reference to the Environmental Administrative Decisions (E.A.D.) volume and page where it appears and the year the decision was issued. As an example, *In re ConocoPhillips, Inc.*, 13 E.A.D. 768 (EAB 2008), refers to an opinion the EAB issued in 2008 that can be found in volume 13 of the E.A.D., beginning on page 768. Prior to publication of a significant decision in the bound volume E.A.D., the EAB issues a slip opinion, an individual EAB decision that is published separately on the EAB's website soon after it is rendered. A slip opinion may be cited by reference to the appeal number assigned to the case by the Clerk of the Board, a notation that it is a slip opinion, and the complete date of the opinion. An example of a citation to a slip opinion is *In re West Bay Exploration Co.*, UIC Appeal No. 15-03, slip op. at [page #] (EAB July 26, 2016). An unpublished opinion should be cited by reference to the appeal number assigned to the case by the Clerk of the Board, the complete date of the opinion, and the title of the order. An example of a citation to an order the EAB does not intend to publish is *In re American Airlines, Inc.*, RCRA Appeal No. 10-01 (EAB April 4, 2011) [Title of Decision, e.g., Order Dismissing Petition for



Review]. Additional information about citing EAB opinions can be found in the EAB Practice Manual available on the [EAB Guidance Documents](#) page of the EAB's website.

## Conclusion

The EAB hopes that you have found this Guide to be a useful introduction to the administrative appeals process of the U.S. Environmental Protection Agency. If there are additional topics that you believe should be addressed in this Guide, please direct your ideas to the Clerk of the Board, using the contact information on page 13. Your suggestions are welcome.