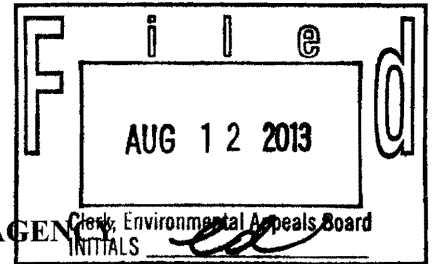


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



**REVISED ORDER AUTHORIZING ELECTRONIC FILING IN PROCEEDINGS
BEFORE THE ENVIRONMENTAL APPEALS BOARD NOT GOVERNED BY 40 C.F.R.
PART 22**

Before Environmental Appeals Judges Leslye M. Fraser, Randolph L. Hill, Catherine R. McCabe, and Kathie A. Stein

Per Curiam:

The Environmental Appeals Board (“Board” or “EAB”), pursuant to its authority delegated by the Administrator, 40 C.F.R. § 1.25(e),¹ authorizes electronic filing² in all cases³

¹ The Board exercises this delegated authority in several contexts. *See generally* 42 U.S.C. § 9606(b) (petitions for reimbursement of response costs pursuant to section 106(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”)); 40 C.F.R. pt. 27 (program fraud civil remedies); 40 C.F.R. pt. 60 (subpart AAA - standards of performance for new residential wood heaters); 40 C.F.R. pt. 71 (federal operating permit program under Title V of the Clean Air Act); 40 C.F.R. pt. 78 (appeal procedures for Acid Rain program); 40 C.F.R. pt. 85 (control of air pollution from mobile sources); 40 C.F.R. pt. 124 (procedures for issuing, modifying, revoking and reissuing, or terminating permits issued under several laws); 40 C.F.R. pt. 164 (rules of practice governing several types of non-enforcement hearings under the Federal Insecticide, Fungicide, and Rodenticide Act); 40 C.F.R. pt. 209 (rules of practice governing hearings for orders issued under section 11(d) of the Noise Control Act); 40 C.F.R. pt. 222 (action on ocean dumping permit applications under section 102 of the Marine Protection, Research, and Sanctuaries Act).

² This order does not mandate electronic filing. Rather, it authorizes the use of electronic filing in addition to those filing methods already authorized and enumerated in the regulations governing proceedings before the Board. *See, e.g.*, 40 C.F.R. § 27.26(a)(4) (discussing filing by mail); 40 C.F.R. § 85.1807(c) (same); 40 C.F.R. § 209.11(c) (same); *see also* 40 C.F.R. § 78.4(c) (referencing the Board’s authority to reject a filing that fails to comply with any requirement of part 78 and return it by mail).

³ This order does not affect filing practice before Presiding Officers. *See, e.g.*, 40 C.F.R. §§ 27.1, .18; 40 C.F.R. §§ 78.6(b), 78.13-.15; 40 C.F.R. § 85.1807; 40 C.F.R. § 222.6; *see also* 40 C.F.R. § 164.2 (regulations governing FIFRA non-enforcement hearings encompass Administrative Law Judges and Hearing Officers in addition to Presiding Officers); 40 C.F.R. §§ 209.3(b), .18 (initial hearings conducted by Administrative Law Judges).

currently or subsequently filed with the Board other than those brought under 40 C.F.R. part 22, and adopts the following conditions and limitations to facilitate electronic filing. A separate Board order addresses electronic filing in part 22 proceedings. *See Revised Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Under 40 C.F.R. Part 22* (Aug. 12, 2013), *available at* <http://www.epa.gov/eab>. The Board previously authorized electronic filing in 2010. *See Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Not Governed by 40 C.F.R. Part 22* (Jan. 28, 2010). Today's order revises and supercedes the January 28, 2010 order to reflect the August 12, 2013 migration from the Central Data Exchange (CDX) to the new EAB eFiling System.⁴ The conditions and limitations in today's order may be amended from time to time by further order of the Board. The Board may issue an order modifying these conditions and limitations in a specific case or class of cases if deemed appropriate in the exercise of its discretion. The Board, in its sole discretion, may revoke this authority at any time.

General Filing Requirements

Effective immediately, litigants may electronically file documents, including notices of appeal, motions, briefs, and accompanying attachments, utilizing the EAB eFiling System. To be considered timely, documents submitted electronically must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed with the Board.^{5,6} Anyone choosing to file

⁴ More information about the EAB eFiling System can be found by clicking on the Electronic Filing link on the Board's website at www.epa.gov/eab.

⁵ The EAB eFiling System will generate an electronic receipt containing the date and time
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electronically by utilizing the EAB eFiling System must register through the Electronic Filing link on the Board’s website at www.epa.gov/eab. Sending a document directly to the Board via e-mail, rather than through the EAB eFiling System, does not constitute electronic filing unless otherwise specified by the Board.

To the extent that the governing regulations require that any document filed in a proceeding shall be signed by the person making the filing, or by an attorney or other representative, utilization of the EAB eFiling System fulfills the signature requirement. *See, e.g.*, 40 C.F.R. § 27.26(a)(3) (requiring that “[e]very pleading and paper shall be signed * * * ”); 40 C.F.R. § 78.4(a) (stating that “[a]ll original filings made under this part shall be signed * * * ”); 40 C.F.R. § 124.19(i) (2013) (requiring that “[a]ll documents that are filed must be signed” and that “[c]ompliance with [EAB] electronic filing requirements constitutes compliance with applicable signature requirements”). By filing a document through the EAB eFiling System, a party, or its attorney or other representative, represents that the signatory has read the document, that to the best of his or her knowledge the statements made therein are true, and that the document is not interposed for delay. The full name of the filing party, or of its

⁵(...continued)

of the filing, and both the person submitting the document and the Clerk of the Board will receive a copy of the electronic receipt.

⁶ While deadlines are normally established by regulation, with respect to petitions for reimbursement filed under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), the Board has held that one of the four statutory prerequisites a petitioner must establish before the Board will consider the merits of a reimbursement request is that the petition was timely submitted. *See, e.g., In re Grand Pier Center, LLC*, 12 E.A.D. 403, 407 n.7 (EAB 2005); *In re A&W Smelters and Refiners, Inc.*, 6 E.A.D. 302, 315 (EAB 1996).

attorney or other representative, should be typed or printed below the signature line of the electronically filed document.⁷

Insofar as the corresponding regulations require that multiple copies of a document be filed, a party, or its attorney or other representative, that files a document electronically is deemed to satisfy this requirement. *See, e.g.*, 40 C.F.R. § 27.26(a)(1) (requiring two copies of each document in addition to the original); 40 C.F.R. § 78.4(d) (same); 40 C.F.R. § 85.1807(c) (same); 40 C.F.R. § 124.19(i)(2) (specifying the number of copies required based on the method of filing); 40 C.F.R. § 164.101(a)(3) (requiring five copies of all material filed); 40 C.F.R. § 209.11(a) (requiring two copies of each document in addition to the original).

Limitations Regarding Length

A party, or its attorney or other representative, that electronically files a document exceeding fifty (50) pages in length,⁸ exclusive of certificate of service, table of contents, subject

⁷ A party, or its attorney or other representative, filing electronically shall ensure that a certificate of service accompanies each document filed with the Board, and shall serve a copy of each document filed in the proceeding on each party. *See, e.g.*, 40 C.F.R. § 27.26(b) (“A party filing a document * * * shall, at the time of filing, serve a copy of such document on every other party.”); 40 C.F.R. § 78.4(e)(2) (“Every filing made under this part shall be accompanied by a certificate of service * * *.”); 40 C.F.R. § 85.1807(c)(2) (stating that at the same time a document is filed copies shall be served upon all other parties, and that it shall be accompanied by a certificate of service); 40 C.F.R. § 164.5(a) (same); 40 C.F.R. 124.19(i)(3) & (4) (same); 40 C.F.R. § 209.11(b) (same); 40 C.F.R. § 222.12(b)(5) (requiring a “certificate of service of the notice of appeal on all other parties to the adjudicatory hearing”).

⁸ Certain parts of Title 40 of the Code of Federal Regulations contain other filing requirements regarding length that still apply to documents filed electronically. *See, e.g.*, 40 C.F.R. § 85.1807(u)(4) (stating that a brief in excess of forty pages shall not be filed without leave of the Environmental Appeals Board); 40 C.F.R. § 124.19(d)(3) (limiting the length of petitions and response briefs); 40 C.F.R. § 209.31(d) (stating that a brief in excess of forty pages
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index, and table of cases,⁹ shall send a paper copy of the document by U.S. mail, or by hand, courier, or commercial delivery service, within one business day of the date of the electronic filing. *See* EAB Practice Manual § II.I.2 (Jan. 2013), *available at* www.epa.gov/eab (providing separate addresses for the EAB depending on the method of filing). If the combined page length of all of the attachments submitted in support of a brief or motion exceeds fifty (50) pages, the requirement to submit a paper copy within one business day applies to the entire set of attachments.¹⁰ Any paper copy submitted subsequent to an electronic filing must be accompanied by a signed certification stating that it is identical to the filed electronic copy. The Board may exclude from the record any electronically filed document exceeding fifty (50) pages

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shall not be filed without leave of the Environmental Appeals Board); 40 C.F.R. § 222.12(b), (d) (stating that both the notice of appeal and any memorandum filed in response thereto shall be “no more than 40 pages in length”).

⁹ *See, e.g.*, 40 C.F.R. § 78.4(e)(2) (requiring a certificate of service); 40 C.F.R. § 85.1807(c)(2), (u)(3) (requiring a certificate of service, subject index, a table of cases, and a proposed form of rule or order in any appeal brief filed); 40 C.F.R. § 164.101(a)(1) (requiring proposed findings of fact, conclusions, orders or rulings when filing an appeal); 40 C.F.R. § 124.19(d) (specifying the content and form of briefs including required tables); 40 C.F.R. § 124.19(i)(4) (requiring a certificate of service); 40 C.F.R. § 209.31 (requiring a subject index, table of cases, and a proposed form of rule or order in any appeal brief filed).

¹⁰ For the purpose of complying with the requirement to submit a paper copy, as described above, the timeliness of the submission will be determined by the postmark, if the paper copy is sent via U.S. mail. If the paper copy is delivered by courier or commercial delivery service, the timeliness of the submission will be determined by the verified time when the courier or commercial delivery service took possession of the document. If a document is delivered by hand, the timeliness of the submission will be determined by the date stamp placed on the document when it is received by the Board.

in length if a party, or its attorney or other representative, fails to send or deliver a paper copy of the document within one business day of the electronic filing.¹¹ *See, e.g.*, 40 C.F.R. § 78.4(c).

Confidential Business Information and Other Private Information

Because documents uploaded onto the Board's eFiling system will be available to the public as part of an electronic docket, filers may not upload any confidential business information. The Board will consider any claim of confidentiality for any business information to be waived if such information is uploaded using this system.¹² 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 confidential business information or other private materials, please visit the e-filing page on the EAB website at www.epa.gov/eab or contact the Clerk of the Board, 202-233-0122.

¹¹ With the exception of attachments, when filing multiple documents, such as a notice of appeal and an appeal brief, paper copies need not be submitted if each document is filed separately and does not exceed fifty (50) pages. If a single document, or an attachment or set of attachments, is more than fifty pages, it may not be electronically filed in sections to avoid the requirement for submitting a paper copy. Such lengthy document may, however, be electronically filed in sections for technical reasons. If a document in excess of fifty pages is electronically filed in sections for technical reasons, the filer must still submit a paper copy.

¹² A party, or its attorney or other representative, submitting business information to the Board for which a claim of confidentiality is made must do so by filing paper copies of the document in the manner described in the applicable regulations. *See, e.g.*, 40 C.F.R. § 85.1808 (procedures for submitting confidential information in proceedings regarding an EPA-ordered automobile recall for failure to meet emissions standards under the Clean Air Act); *see also* 40 C.F.R. pt. 2.

Further Information

For further information, see the Board's website located at www.epa.gov/eab, in particular the Frequently Asked Questions and Electronic Filing web pages. The Board's Practice Manual, also available at www.epa.gov/eab, contains more detailed information about procedures for filing documents before the Board.

So ordered.

Dated: August 12, 2013