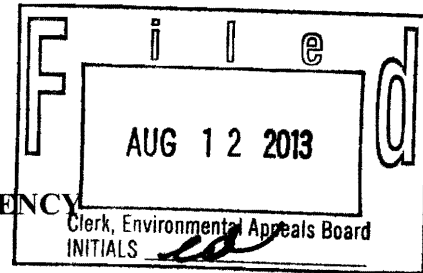


ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



**REVISED ORDER AUTHORIZING ELECTRONIC FILING IN PROCEEDINGS  
BEFORE THE ENVIRONMENTAL APPEALS BOARD UNDER 40 C.F.R. PART 22<sup>1</sup>**

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

*Per Curiam:*

The Consolidated Rules of Practice<sup>2</sup> state that the Environmental Appeals Board (“Board” or “EAB”) “may by order authorize \* \* \* electronic filing, subject to any appropriate conditions and limitations.” 40 C.F.R. § 22.5(a)(1). Pursuant to this authority, the Board authorizes electronic filing<sup>3</sup> in all cases currently or subsequently filed with the Board<sup>4</sup> that are governed by the Consolidated Rules of Practice, 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 proceedings before the Board other than those brought under 40 C.F.R. part 22. *See Revised Order Authorizing Electronic Filing in Proceedings Before the*

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<sup>1</sup> This order also applies to those other provisions in Title 40 that utilize 40 C.F.R. part 22 procedures. *See, e.g.*, 40 C.F.R. §§ 17.8, .21 (applications for awards under the Equal Access to Justice Act that require filing and service consistent with part 22); 40 C.F.R. § 66.91 (Clean Air Act enforcement appeals hearings governed by 40 C.F.R. part 22 in conjunction with supplemental regulations at 40 C.F.R. part 66).

<sup>2</sup> The full name of these rules is: “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.” *See generally* 40 C.F.R. pt. 22.

<sup>3</sup> 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 Consolidated Rules of Practice. *See* 40 C.F.R. § 22.5(a)(1).

<sup>4</sup> This order does not affect filing practice before Presiding Officers. *See* 40 C.F.R. § 22.3(a).

Environmental Appeals Board not Governed by 40 C.F.R. part 22 (Aug. 12, 2013), *available at* <http://www.epa.gov/eab>. The Board previously authorized electronic filing in matters governed by the Consolidated Rules of Practice in 2010. *See* Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board Under 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.<sup>5</sup> 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, in cases governed by 40 C.F.R. part 22, 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.<sup>6</sup> Anyone choosing to file electronically by utilizing the EAB eFiling System, must register through the Electronic Filing link on the Board's website at

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<sup>5</sup> 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](http://www.epa.gov/eab).

<sup>6</sup> The EAB eFiling System will generate an electronic receipt containing the date and time of the filing, and both the person submitting the document and the Clerk of the Board will receive a copy of this electronic receipt.

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.

The Consolidated Rules of Practice require that “any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative.” 40 C.F.R. § 22.5(c)(3). Utilization of the EAB eFiling System fulfills the signature requirement. 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. *Id.* The full name of the filing party, or of its attorney or other representative, should be typed or printed below the signature line of the electronically filed document.<sup>7</sup>

The Consolidated Rules of Practice require that “[t]he original and one copy of each document intended to be part of the record” be filed with the Board. 40 C.F.R. § 22.5(a)(1). A party, or its attorney or other representative, that files electronically is deemed to satisfy this requirement.

### **Limitations Regarding Length**

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

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<sup>7</sup> 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* 40 C.F.R. § 22.5(a)(3), (b).

table of authorities,<sup>8</sup> 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* 40 C.F.R. § 22.5(a)(1)<sup>9</sup>; *see also* EAB Practice Manual § II.I.2 (Jan. 2013), *available at* <http://www.epa.gov/eab> (providing separate addresses for the EAB depending on the method of filing). If the combined page length of all 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.<sup>10</sup> 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, or set of attachments, exceeding fifty (50) pages in length if a party, or its attorney or other representative,

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<sup>8</sup> *See* 40 C.F.R. § 22.5(a)(3), (c)(2).

<sup>9</sup> Filers should be aware that, as of the date of this order, the address provided in 40 C.F.R. § 22.5(a)(1)(2012) for hand deliveries is outdated. Consult the EAB's website at [www.epa.gov/eab](http://www.epa.gov/eab) or contact the Clerk of the Board for the correct address.

<sup>10</sup> 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.

fails to send or deliver a paper copy within one business day of the electronic filing.<sup>11</sup> *See* 40 C.F.R. § 22.5(c)(5).

### **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.<sup>12</sup> 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](http://www.epa.gov/eab) or contact the Clerk of the Board, 202-233-0122.

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<sup>11</sup> 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.

<sup>12</sup> A party 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 Consolidated Rules of Practice. *See* 40 C.F.R. § 22.5(d); *see also* 40 C.F.R. pt. 2.

**Further Information**

For further information, see the Board's website located at [www.epa.gov/eab](http://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](http://www.epa.gov/eab), contains more detailed information about procedures for filing documents before the Board.

So ordered.

Dated: August 12, 2013