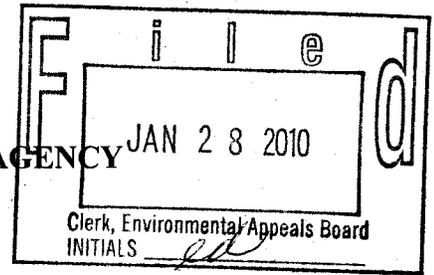


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



ORDER AUTHORIZING ELECTRONIC FILING IN PROCEEDINGS BEFORE THE ENVIRONMENTAL APPEALS BOARD UNDER 40 C.F.R. PART 22¹

Before Environmental Appeals Judges Edward E. Reich, Charles J. Sheehan, Kathie A. Stein, and Anna L. Wolgast

Per Curiam:

The Consolidated Rules of Practice² 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 hereby authorizes electronic filing³ in all cases currently or subsequently filed with the Board⁴ 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. The Board has issued a separate order addressing electronic filing in proceedings before the Board other than those brought under

¹ 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).

² The full name of the Consolidated Rules of Practice 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.

³ 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).

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

40 C.F.R. part 22. *See* Order Authorizing Electronic Filing in Proceedings Before the Environmental Appeals Board not Governed by 40 C.F.R. part 22 (Jan. 28, 2010), *available at* <http://www.epa.gov/eab>. These conditions and limitations 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 exhibits, utilizing the Central Data Exchange (“CDX”).⁵ 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.⁶ Anyone choosing to file electronically⁷ should register with

⁵ The Environmental Protection Agency has created the Central Data Exchange (“CDX”), a single portal that allows users to register and then submit information electronically to a number of Agency programs. The Board utilizes this portal to allow for the electronic submission of documents. More information about CDX can be found on its website at <http://cdx.epa.gov>.

⁶ The CDX 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.

⁷ Until now, a person could submit documents electronically using CDX, but in order for any document to be considered “filed” with the Board, a paper copy of the submission, sent by mail or hand delivery, was required, although electronic submission of the document excused parties from the requirement of submitting multiple copies. *See* 40 C.F.R. § 22.5(a)(1). With this order, any electronic submission filed in accordance with its terms will be considered “filed” with the Board.

CDX through its website at <http://cdx.epa.gov>. A motion and associated brief may be electronically filed together, but exhibits or attachments filed in support of a brief, motion, or other document should be submitted separately from the brief or motion. Where there are multiple exhibits or attachments, they should be filed together in a single electronic file to the extent technically practicable. Sending a document directly to the Board via e-mail, rather than through the CDX portal, 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 CDX system fulfills the signature requirement. By filing a document through the CDX 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.⁸

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.

⁸ 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).

Limitations Regarding Length

A party, or its attorney or other representative, that electronically files a document that exceeds fifty (50) pages in length, inclusive of the certificate of service, table of contents, and table of authorities,⁹ but exclusive of exhibits or attachments, 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); *see also* EAB Practice Manual at 9-10 (June 2004), *available at* <http://www.epa.gov/eab/pmanual.pdf> (providing separate addresses for the EAB depending on the method of filing). If the combined page length of all of the exhibits or 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 exhibits or 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, or set of exhibits or attachments, exceeding fifty (50) pages in length if a party, or its attorney or other representative, fails to send or deliver a paper copy within one business day of the electronic filing. *See* 40 C.F.R. § 22.5(c)(5).¹¹

⁹ *See* 40 C.F.R. § 22.5(a)(3), (c)(2).

¹⁰ For purposes of this order only, if the paper copy is sent via U.S. mail, the timeliness of the submission will be determined by the postmark. 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.

¹¹ With the exception of exhibits or 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

Confidential Business Information

The Board will consider business confidentiality claims waived when a document is electronically filed. 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, 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: January 28, 2010

filed separately and does not exceed fifty (50) pages. If a single document, or an exhibit or set of exhibits, 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.