

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

In re:)	
)	
Dave Erlanson, Sr.,)	CWA Appeal No. 20-03
)	
CWA-10-2016-0109)	
)	

**ORDER VACATING DECISION TO DECLINE SUA SPONTE REVIEW, DOCKETING
APPEAL, AND ORDER TO SHOW CAUSE**

On October 7, 2020, Administrative Law Judge Christine Donelian Coughlin issued and served on the parties an Initial Decision and Order in the above-captioned case. After the time by which appeals must be filed had passed, the Environmental Appeals Board (“Board”) issued an order declining to review the case on its own initiative. Order Declining to Exercise Sua Sponte Review (Nov. 12, 2020); *see also* 40 C.F.R. §§ 22.30(a), (b). The Order stated that no appeal had been filed and that the Initial Decision and Order would become final on November 23, 2020. Order Declining to Exercise Sua Sponte Review at 1. The Board’s statement that no appeal had been filed was based on misinformation received from the EPA Mailroom, which erroneously informed the Board that no mail had been received relating to this matter.

On November 17, 2020, shortly after the Board issued its order declining to review the matter, the Board learned that Mr. Dave Erlanson, Sr. had mailed to the Board an appeal from the Initial Decision and Order and that his filing was received by the EPA mailroom on November 3, 2020, within the time allowed for filing an appeal. In light of this information, the Board is vacating its Order declining sua sponte review and docketing Mr. Erlanson’s appeal.

Additionally, having now read the document filed by Mr. Erlanson, the Board is requiring Mr. Erlanson to show cause as to why his appeal should not be dismissed for failure to comply with the requirements of 40 C.F.R. § 22.30(a)(1). The regulations governing appeals from initial decisions require the appellant to file a notice of appeal and accompanying appellate brief. *Id.* § 22.30(a)(1)(ii). The notice of the appeal “shall summarize the order or ruling” that is being appealed and the accompanying appellate brief “shall contain” a statement of the issues presented for review, argument on the issues presented and the relief sought, among other things. *Id.* § 22.30(a)(1)(iii). Mr. Erlanson’s filing consists of one paragraph stating:

Respondent disagrees with the decision and order handed down by the administrative judge in the matter cited above and seeks an appeal hearing. Respondent sees no reason to re-litigate the matter here in the petition for appeal and even a cursory reading of the record will show any judicially trained mind that an obvious controversy exists between the respondent[']s legal position and the EPA’s position.

An additional one-sentence paragraph states that the request does not foreclose other remedies. Mr. Erlanson did not identify any issues or arguments or otherwise comply with the applicable rules governing the content of an appeal to the Board set forth in 40 C.F.R. §§ 22.30(a)(1)(ii), (iii). The Board may dismiss appeals that fail to comply with the regulations governing appeals. *See* 40 C.F.R. § 22.4(a)(2).


Mr. Erlanson’s response to this Order to show cause as to why the appeal should not be dismissed for failure to comply with 40 C.F.R. part 22 must be received by the Board on or before **December 3, 2020**. *See* 40 C.F.R. § 22.4. EPA Region 10 must file its reply to Mr. Erlanson’s response, if any, on or before **December 11, 2020**. Going forward, we encourage all parties to use the EAB’s electronic filing system accessible on our website: www.epa.gov/eab (click on “Electronic Filing” Link in the left margin). Additionally, the parties should use email

to fulfill their service obligations. 40 C.F.R. § 22.5(b)(2) (stating that the Board may, by order, “authorize or require” service by email, “subject to any appropriate conditions and limitations.”); *see also* Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals at 1 (Sept. 21, 2020). Parties shall promptly file a notice with the Board informing the Board and the other parties if their email address changes.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: **11/20/2020**

By: 
Kathie A. Stein
Environmental Appeals Judge

¹ The three-member panel deciding this matter consists of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Vacating Decision to Decline Sua Sponte Review, Docketing Appeal, and Order to Show Cause* in the matter of *Dave Erlanson, Sr.*, CWA Appeal No. 20-(03), were sent to the following persons in the manner indicated:


By Electronic Mail:

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Dated: **Nov 20 2020**


Eurika Durr
Clerk of the Board