

OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C.



**STANDING ORDER AUTHORIZING FILING AND SERVICE BY E-MAIL
IN PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, set forth at 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), state that “[t]he Presiding Officer . . . may by order authorize . . . electronic filing, subject to any appropriate conditions and limitations,” and “may by order authorize . . . electronic service, subject to any appropriate conditions and limitations.” 40 C.F.R. § 22.5(a)(1), (b)(2). Pursuant to this authority, the Chief Administrative Law Judge hereby authorizes the filing and service of documents by e-mail, other than the complaint, rulings, orders, and decisions, in all cases currently before or subsequently transferred to the Office of Administrative Law Judges (“OALJ”) that are governed by the Consolidated Rules of Practice¹ and adopts the following conditions and limitations to facilitate filing and service by e-mail.²

¹ The authority granted by this Order shall also apply to proceedings under those other provisions in Title 40 that expressly utilize 40 C.F.R. Part 22 procedures. See, e.g., 40 C.F.R. Part 17 (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). This Order shall not apply to proceedings under other provisions in Title 40 that do not expressly incorporate the Part 22 procedures. See, e.g., 40 C.F.R. Part 7 (nondiscrimination in programs or activities receiving federal assistance from the EPA); 40 C.F.R. Part 27 (administrative procedures for imposing civil penalties and assessments pursuant to the Program Fraud and Civil Remedies Act of 1986, 31 U.S.C. §§ 3801–3812); 40 C.F.R. Part 78 (providing that the Environmental Appeals Board may refer an appeal under the Acid Rain program to the Chief Administrative Law Judge to conduct an evidentiary hearing to resolve disputed facts); 40 C.F.R. Part 85 (public hearings conducted under the mobile sources of air program); 40 C.F.R. Part 164 (rules of practice governing several types of non-enforcement hearings under the Federal Insecticide, Fungicide, and Rodenticide Act); 40 C.F.R. Part 209 (rules governing proceedings under the Noise Control Act of 1972).

² This Standing Order does not require the use of e-mail for filing or service in lieu of other methods for filing and/or service. Rather, it authorizes the use of e-mail *in addition to* those methods already authorized and enumerated in the Consolidated Rules of Practice. 40 C.F.R. § 22.5(a)(1), (b)(2). For documents filed through those non-electronic means, the inked date stamp physically applied by the Office of Administrative Law Judges to the paper copy of the documents will continue to serve as the official record of the date and time of filing. The Office of Administrative Law Judges is open to receive such paper filings between 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Any paper document received by the Office of

The conditions and limitations set forth herein may be amended or revoked generally or in regard to a specific case or group of cases by further order of the Chief Administrative Law Judge in her sole discretion at any time. In addition, the Administrative Law Judge presiding in a specific case may issue an order modifying these conditions and limitations if deemed appropriate in his or her discretion.

Filing of Documents by E-Mail

The Consolidated Rules of Practice, as modified by the current Headquarters Hearing Clerk Pilot Program (*see* www.epa.gov/oalj), require that “[t]he original and one copy of each document intended to be part of the record shall be filed with the [Headquarters] Hearing Clerk when the proceeding is before” an Administrative Law Judge.³ 40 C.F.R. § 22.5(a); *see* Memorandum from John Reeder, Deputy Chief of Staff, AO, & Lawrence Starfield, Principal Deputy Assistant Admin., OECA, Pilot Program to Migrate Certain Regional Hearing Clerk Functions to the Headquarters Hearing Clerk (Apr. 27, 2012) (available at http://www.epa.gov/oalj/orders/HrgClerk_PilotProject_Memo.pdf) (hereinafter cited as the “Starfield Memorandum”). **A document is considered filed when the Headquarters Hearing Clerk receives it.** 40 C.F.R. § 22.5(a)(1). Documents must be signed, must be accompanied by a certificate of service, and may be submitted to the Headquarters Hearing Clerk for filing in person, by mail, by courier, or by commercial delivery service. *Id.* Pursuant to this Order, documents may also be electronically submitted to the Headquarters Hearing Clerk for filing by e-mail, subject to the conditions and limitations set forth below.

Any party choosing to submit a document to the Headquarters Hearing Clerk by e-mail for filing must address the e-mail to OALJfiling@epa.gov.⁴ The subject line of the e-mail shall include the name and docket number of the proceeding. Documents submitted by e-mail must be in Portable Document Format (“PDF”), and must contain a contact name, phone number, mailing address, and e-mail address of the filing party or its authorized representative. All documents submitted for filing, regardless of submission method, must be signed and must be accompanied by a certificate of service in accordance with Section 22.5 of the Consolidated Rules of Practice.

Administrative Law Judges after 4:30 p.m. Eastern Time may be treated as having been filed the next business day.

³ **In an exception to this rule, any Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, not the Headquarters Hearing Clerk.** *See* Memorandum from Susan L. Biro, Chief Administrative Law Judge, OALJ, Amendment of Hearing Clerk Pilot Procedures as to CAFOS (Mar. 14, 2013) (available at http://www.epa.gov/oalj/orders/HrgClerk_PilotProject_Memo_Amendment.pdf).

⁴ **Electronic files exceeding 50 MB must be separated into files under 50 MB each or submitted on a compact disk (“CD”) by mail, courier, or personal delivery.**

To be considered timely, documents submitted by e-mail to OALJfiling@epa.gov for filing must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed. An e-mail and any attached documents shall be deemed to have been filed at the time and date of electronic reception as recorded by the Office of Administrative Law Judges' e-mail system. Documents submitted by e-mail for filing shall be deemed to constitute both the original and one copy of the document, in satisfaction of the duplicate-filing requirement of Section 22.5(a)(1) of the Consolidated Rules. *See* 40 C.F.R. § 22.5(a)(1) (must file original and one copy of each document). Documents submitted by e-mail shall also be deemed served on the presiding Administrative Law Judge. *See* 40 C.F.R. § 22.5(b).

Please note that documents sent to the e-mail address of a staff member within the Office of Administrative Law Judges, or to any e-mail address other than OALJfiling@epa.gov, **shall not** be accepted for filing, and shall not be deemed served on the presiding Administrative Law Judge.

IMPORTANT INFORMATION REGARDING Confidential Business Information and Personally Identifiable Information

The Office of Administrative Law Judges is **NOT** equipped either to accommodate or to protect the privacy of Confidential Business Information (“CBI”) or Personally Identifiable Information (“PII”) contained in documents submitted to the Headquarters Hearing Clerk by e-mail for filing. Whenever a document is submitted by e-mail to OALJfiling@epa.gov for filing, the presiding Administrative Law Judge will consider all claims to confidentiality WAIVED. A party submitting information to the Office of Administrative Law Judges for which a claim of confidentiality is made must do so by filing paper copies of that information in the manner described in the Consolidated Rules of Practice, as modified by the Headquarters Hearing Clerk Pilot Project. *See* 40 C.F.R. § 22.5(d); the Starfield Memorandum; *see also* 40 C.F.R. Part 2. However, a redacted version of the document alleged to contain CBI or PII may be submitted by e-mail for filing so long as the party claiming confidentiality also files the unredacted version in accordance with the aforementioned requirements. *See* 40 C.F.R. § 22.5(d). For more information, please refer to the Office of Administrative Law Judges' Privacy Act Statement & Notice of Disclosure of Confidential and Personal Information (June 19, 2013) (available at http://www.epa.gov/oalj/orders/13-06-19_PrivacyActStatement_NoticeOfDisclosure.pdf).

Service of Documents by E-Mail

The Consolidated Rules of Practice require that “[a] copy of each document filed in the proceeding shall be served on the Presiding Officer . . . and on each party.” 40 C.F.R. § 22.5(b). Pursuant to this Order, filed documents other than the complaint, rulings, orders, and decisions may be served by e-mail, in addition to the other methods of service identified in Section 22.5(b)(2) of the Consolidated Rules of Practice, subject to the conditions and limitations set forth below.

The subject line of the e-mail shall include the name and docket number of the proceeding. Documents served by e-mail must be in Portable Document Format ("PDF"), and must contain a contact name, phone number, mailing address, and e-mail address of the serving party or its authorized representative. All documents, regardless of the method of service, must be signed and must be accompanied by a certificate of service in accordance with Section 22.5 of the Consolidated Rules of Practice. Service of documents by e-mail is complete upon electronic transmission. Documents submitted by e-mail to OALJfiling@epa.gov for filing shall be deemed served on the presiding Administrative Law Judge.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: November 21, 2013
Washington, D.C.

In the Matter of Ms. Dessie L. Brumfield, Respondent
Docket No. TSCA-05-2010-0014

CERTIFICATE OF SERVICE

I certify that the foregoing **Standing Order Authorizing Filing And Service By E-Mail In Proceedings Before The Office Of Administrative Law Judges**, dated November 21, 2013, was sent this day in the following manner to the addressees listed below:



Maria Whiting-Beale
Staff Assistant

Dated: November 21, 2013

Copy By Regular Mail To:

Jeffrey M. Trevino, Esquire
Associate Regional Counsel
U.S. EPA
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3590

Ms. Dessie L. Brumfield
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Milwaukee, WI 53290