



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

**In the Matter of:**

**Emrich Aerial Spraying LLC,**

**Respondent.**

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**Docket No. FIFRA-07-2022-0133**

**PREHEARING ORDER**

As the parties have previously been notified, I am designated to preside over this proceeding. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice” or “Rules”). The parties are advised to familiarize themselves with the applicable statute(s), regulation(s), and Rules of Practice. Orders and decisions issued by the Administrative Law Judges are accessible on the website for the Office of Administrative Law Judges (“OALJ”) at [www.epa.gov/alj](http://www.epa.gov/alj).

**Settlement.** U.S. Environmental Protection Agency (“Agency” or “EPA”) policy encourages settlement of a proceeding without the necessity of a formal hearing, and the procedures regarding settlements are set forth in Section 22.18 of the Rules of Practice. *See* 40 C.F.R. § 22.18. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding. With these considerations in mind, the parties are directed to engage in a settlement conference on or before **August 25, 2023**, and attempt to reach an amicable resolution of this matter. Without mentioning any specific terms of settlement, Complainant shall file a Status Report regarding this conference and the status of settlement on or before **September 1, 2023**. If the case is settled, a fully-executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk no later than **September 22, 2023**, and a courtesy copy shall be filed with the Headquarters Hearing Clerk.

In the event that a fully-executed Consent Agreement and Final Order is not filed on or before **September 22, 2023**, the parties must prepare for hearing and shall strictly comply with the following prehearing requirements of this Order. *The pendency of settlement negotiations or the existence of a settlement in principle does not constitute a basis for failing to strictly comply with those requirements. Only the filing with the Regional Hearing Clerk of a fully-executed Consent Agreement and Final Order, or an order of the undersigned, excuses noncompliance with filing deadlines.*

**Preliminary Statement.** No later than **September 1, 2023**, each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned a Preliminary Statement identifying (1) whether the party prefers for the hearing in this matter to

be held in person or by videoconference; (2) the party's preferred location of the hearing in the event that it is held in person<sup>1</sup>; and (3) a valid email address at which the party is able to accept service of orders and decisions issued by this Tribunal and service of documents filed by other parties.<sup>2</sup>

**Prehearing Exchange.** This Order is issued pursuant to Section 22.19(a) of the Rules of Practice. *See* 40 C.F.R. § 22.19(a). In accordance with that provision, the parties are hereby directed to engage in the following prehearing exchange of information:

1. Each party shall file with the Headquarters Hearing Clerk, serve on the opposing party, and serve on the undersigned:

(A) a list of names of the witnesses intended to be called at the hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness; or a statement that no witnesses will be called.

(B) a list of all exhibits, numbered in sequential order, that the party intends to produce at the hearing, along with a copy of each exhibit marked for identification as follows:

- i. Complainant's exhibits shall be identified as "CX."
- ii. Respondent's exhibits shall be identified as "RX."
- iii. Each exhibit shall be labeled numerically with the corresponding exhibit number on each page of the exhibit. For example, the first exhibit provided by Complainant shall be labeled on each page of the exhibit as "CX 1." The label for each exhibit shall be located at the bottom (footer) of the document and aligned to the right margin.
- iv. Any exhibit consisting of more than one page shall include page numbers at the bottom (footer) of each page, aligned to the right margin. The pages shall be numbered consecutively as follows: "Page X of [total of] Y," with "Page X" representing the page number in sequence beginning from the number 1 and "[total of] Y" representing the total number of pages in the exhibit. For example,

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<sup>1</sup> The Rules of Practice provide that the hearing shall be held in the county where the respondent resides or conducts the business that the hearing concerns, in the city in which the complainant is located, or in Washington, D.C., unless the presiding judge determines that there is good cause to hold it another location or by telephone. 40 C.F.R. §§ 22.21(d), 22.19(d).

<sup>2</sup> The Rules of Practice authorize electronic service of documents filed by the parties (other than the complaint) with the written consent of the party being served. 40 C.F.R. § 22.5(b). However, the Rules of Practice also provide that this Tribunal may by order authorize service by email subject to any appropriate conditions and limitations. *Id.* Pursuant to that authority, this Tribunal authorizes parties to utilize email to fulfill their service obligations without first obtaining the written consent of the party being served, and parties are strongly encouraged to serve each other by email. *See* Revised Order Urging Electronic Filing and Service (June 22, 2023), available at <https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf>. In the interest of judicial efficiency, it will also be this Tribunal's practice to serve the parties solely by email henceforth in this proceeding. If it is impossible for a party to receive service electronically, e.g., the party does not have any access to a computer, the party shall so state in its Preliminary Statement, and the party shall provide a valid address at which it may be served by regular U.S. mail or commercial delivery service.

to identify the third page of Complainant's first exhibit, which has five pages total, the bottom of the page shall read "CX 1 Page 3 of 5."

(C) a statement specifying the amount of time needed to present its direct case, *see* 40 C.F.R. §§ 22.21(d), 22.19(d), and indicating whether the services of an interpreter are necessary with regard to the testimony of any witness(es). If the services of an interpreter are necessary, the statement shall also indicate the language that is to be interpreted.

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

(A) documentation showing that service of the Complaint<sup>3</sup> was completed in accordance with Section 22.5(b)(1) of the Rules of Practice, 40 C.F.R. § 22.5(b)(1).

(B) a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent's Answer.

(C) all factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty.

(D) a copy, or a statement of the internet address (URL), of any EPA guidance documents and/or policies, including any updates or revisions to such guidance and/or policies, and any preambles to regulations that Complainant has relied upon with regard to the allegations set forth in the Complaint.

(E) a detailed explanation of the factors considered and methodology utilized in calculating the amount of the proposed penalty, in accordance with the criteria set forth in the particular statute authorizing this proceeding and any policies referenced in the

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<sup>3</sup> By letter dated July 28, 2023, the Regional Hearing Clerk referred this matter to this Tribunal for adjudication, forwarding two documents titled Complaint and Notice of Opportunity for Hearing: one marked by the Regional Hearing Clerk as filed on May 2, 2023, and the other marked by the Regional Hearing Clerk as filed on June 5, 2023. The filename for the Complaint filed on June 5, 2023, indicates that the Complaint was "reissued." Each Complaint is accompanied by a Certificate of Service ("COS"). The two Complaints are identical except for the stated date of filing with the Regional Hearing Clerk and the addresses to which the COS says the Complaint was directed for service. The undersigned therefore surmises that Complainant re-filed the entire Complaint on June 5, 2023, to ensure that the associated COS correctly reflected the address at which Respondent was served.

As used herein, the term "Complaint" will refer to the Complaint filed on May 2, 2023. The applicable Rules of Practice specify that "[a]ny proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14." 40 C.F.R. § 22.13(a). The Rules further provide that "[a] document is filed when it is received by the appropriate Clerk." 40 C.F.R. § 22.5(a)(1). This proceeding was therefore commenced on May 2, 2023, with the filing of the Complaint with the Regional Hearing Clerk, which remains operative unless withdrawn. *See* 40 C.F.R. § 22.14(d) (providing for pre-answer withdrawal of complaints). This does not prohibit Complainant from providing proof that the Complaint was appropriately served in the manner stated in its June 5, 2023, COS—which the Tribunal will construe as a correction to the May 2, 2023, COS—nor does it impact the Complaint's date of service. *See* 40 C.F.R. § 22.7(c) ("Service of the complaint is complete when the return receipt is signed.").

proposed civil penalty section of the Complaint.

3. In addition, Respondent shall submit the following as part of its Prehearing Exchange:

(A) a copy of any documents in support of the denials made in its Answer.

(B) a copy of any documents in support of any asserted affirmative defenses and an explanation of the arguments in support of any such affirmative defenses.

(C) all factual information Respondent considers relevant to the assessment of a penalty and any supporting documentation.

(D) if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of all documents upon which it intends to rely in support of such position.

4. Finally, Complainant shall submit as part of its Rebuttal Prehearing Exchange:

(A) a statement and/or any documents in response to Respondent's Prehearing Exchange as to provisions 3(A) through 3(D) above.

The prehearing exchanges called for above shall be filed pursuant to the following schedule:

**September 22, 2023**

Complainant's Initial Prehearing Exchange

**October 13, 2023**

Respondent's Prehearing Exchange

**October 27, 2023**

Complainant's Rebuttal Prehearing Exchange

Section 22.19(a) of the Rules of Practice provides that, except in accordance with Section 22.22(a), any document not included in the prehearing exchange shall not be admitted into evidence, and any witness whose name and testimony summary are not included in the prehearing exchange shall not be allowed to testify. 40 C.F.R. § 22.19(a). Therefore, each party is advised to thoughtfully prepare its prehearing exchange.

In general, hearings are scheduled following the submission of the prehearing exchanges. The parties will be provided with adequate notice of the scheduled hearing to enable them to meet the remaining deadlines contained in this Order.

**Supplement to Prehearing Exchange.** Any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rules of Practice, must be filed with an accompanying *motion to supplement the prehearing exchange* only when supplementation is sought within 60 days of the scheduled hearing.

**Motions.** Prior to filing any motion, the moving party must contact all other parties to determine whether the other parties have any objection to the granting of the relief sought in the motion, and the motion shall state the position of the other parties. The mere consent of the other parties to the relief sought does not assure that the motion will be granted. Furthermore, all motions must be submitted in sufficient time to permit the filing of a response and a reply, as well as the issuance of a ruling on the motion, before any relevant deadline set by this or any subsequent order. *See generally* 40 C.F.R. §§ 22.16(b), 22.7(c). *Motions not filed in a timely manner may not be considered.*

*Joint motions for the appointment of a neutral*, filed pursuant to Section 22.18(d)(3) of the Rules of Practice, will not be entertained prior to the deadline for Complainant's Rebuttal Prehearing Exchange and shall be filed no later than seven days after that deadline. *Dispositive motions* regarding liability, such as a motion for accelerated decision or motion to dismiss under Section 22.20(a) of the Rules of Practice, must be filed within 30 days after the due date for Complainant's Rebuttal Prehearing Exchange. *Non-dispositive motions*, such as motions for additional discovery, motions for subpoenas, and motions in limine, must be filed no later than 60 days prior to the scheduled hearing.

Pursuant to Section 22.16(d) of the Rules of Practice, a party may submit a written request for oral argument upon filing a motion, a response to a motion, or a reply. 40 C.F.R. § 22.16(d). The requesting party shall identify whether it wishes for the oral argument to be held by videoconference or in person and the preferred location for the argument in the event that it is held in person. A request for oral argument may be granted, in the undersigned's discretion, where further clarification and elaboration of arguments would be of assistance in ruling on the motion.

**Default and Opportunity for a Hearing.** The Complaint in this matter gave Respondent notice and opportunity for a hearing, in accordance with Section 554 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 554. Respondent's Answer to the Complaint contained a request for a hearing. In this regard, Section 554(c)(2) of the APA sets out that a hearing be conducted under Section 556 of the APA. 5 U.S.C. § 554(c)(2). Section 556(d) provides that a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. 5 U.S.C. § 556(d). Thus, Respondent has the right to defend against Complainant's charges by way of direct evidence, rebuttal evidence, or through cross-examination of Complainant's witness(es). Respondent is entitled to elect any or all three means to pursue its defenses.

*Respondent is hereby notified that its failure to comply with the prehearing exchange requirements set forth herein may result in the entry of a default judgment against it. Complainant is notified that its failure to file its prehearing exchange in a timely manner can result in a dismissal of the case with prejudice.*

**Filing and Service.** The Rules of Practice provide that the original and one copy of each document intended to be part of the record of this proceeding (excluding a fully-executed Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk) shall

be filed with the Headquarters Hearing Clerk of the OALJ.<sup>4</sup> 40 C.F.R. § 22.5(a)(1). The Rules of Practice further provide that this Tribunal may authorize filing by an electronic filing system, *id.*, which it did by Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, available on the OALJ's website at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-efiling.pdf>.

Electronic filing is strongly encouraged. To file a document electronically, the document shall be submitted to the Headquarters Hearing Clerk using the OALJ E-Filing System, a web-based tool that can be accessed by visiting the OALJ's website at [www.epa.gov/alj](http://www.epa.gov/alj).<sup>5</sup> A document filed electronically is deemed to constitute both the original and one copy of the document.

Any party seeking to file electronically must first register with the OALJ E-Filing System at <https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf/HomePage?ReadForm>. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time that party will be able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered "filed" at the time and date of electronic receipt, as recorded by the OALJ E-Filing System immediately upon receipt. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the presiding judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.<sup>6</sup>

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.<sup>7</sup> Electronically filed textual documents must be in Portable Document Format ("PDF"). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as

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<sup>4</sup> Pursuant to the Pilot Program to Migrate Certain Regional Hearing Clerk Functions to the Headquarters Hearing Clerk, the OALJ and the Headquarters Hearing Clerk shall maintain the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information on the Pilot Program, see the OALJ's website at <https://www.epa.gov/alj/administrative-law-judges-pilot-program-migrate-certain-regional-hearing-clerk-functions>.

<sup>5</sup> The parties are hereby advised that the OALJ will be launching a new electronic filing system in 2023. Details about the new system will be communicated to the parties in advance of it becoming operational.

<sup>6</sup> The emailed electronic receipt will be the filing party's only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ's E-Docket Database webpage, available at [https://yosemite.epa.gov/oarm/alj/alj\\_web\\_docket.nsf](https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf), or on the Agency's Administrative Enforcement Dockets webpage, available at <https://yosemite.epa.gov/oa/rhc/epaadmin.nsf>, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

<sup>7</sup> If a party's multimedia file exceeds 70 megabytes, the party may contact the Headquarters Hearing Clerk at (202) 564-6281 or [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov) for instructions on alternative electronic filing methods.

copies of proposed exhibits submitted as part of party's prehearing exchange, should be filed separately as an attachment. When a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable, with each document appropriately bookmarked within the file. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, documents may be filed by U.S. mail or commercial delivery service, such as UPS or FedEx.<sup>8</sup> However, a document submitted by those means is not considered "filed" until the Headquarters Hearing Clerk physically receives it, as reflected by the date stamp applied to the document by the Headquarters Hearing Clerk. The Tribunal's ability to receive filings and correspondence by U.S. mail and commercial deliveries on a daily basis is limited. Thus, timely receipt and filing of a document submitted by U.S. mail or commercial delivery service is not assured.

If a party nevertheless opts to file by U.S. mail or commercial delivery service, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by calling the Headquarters Hearing Clerk at (202) 564-6281. To file a document using U.S. mail or commercial delivery service, the document shall be sent to the following address:

Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Attn: Mary Angeles, Headquarters Hearing Clerk  
Mail Code 1900R, WJC East Mailroom 1309  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Regardless of the method of filing, all filed documents must be signed in accordance with 40 C.F.R. § 22.5(c) and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be "served" by the filing party on the presiding judge and on all other parties. 40 C.F.R. § 22.5(b). While the Rules of Practice allow for documents to be served by various means, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve documents on all opposing parties by email only, *see Revised Order Urging Electronic Filing and Service*.<sup>9</sup> Documents filed electronically through the OALJ E-Filing System are deemed to have also been served electronically on the presiding judge. To serve a document on the presiding judge by U.S. mail or commercial delivery service, the address listed above shall be used. Service will be considered complete

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<sup>8</sup> On the other hand, this Tribunal is not able to accept filings or correspondence by personal delivery due to the physical office of the OALJ not being accessible to the public on a daily basis.

<sup>9</sup> As previously stated, this Tribunal authorizes parties to utilize email to fulfill their service obligations without first obtaining the written consent of the party being served. *See Revised Order Urging Electronic Filing and Service*.

upon electronic transmission, upon mailing, or when placed in the custody of a commercial delivery service. 40 C.F.R. § 22.7(c). Additionally, as previously stated, all orders and documents issued by this Tribunal will henceforth be served on the parties by electronic means only. *See Revised Order Urging Electronic Filing and Service.* If a party's email address on record changes during the proceeding, the party shall promptly file and serve a notice informing this Tribunal and all opposing parties of the change.

Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on the presiding judge and each other party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 22.5(a)(3).

*The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Regional Hearing Clerk.*

**Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure.** All information filed with the OALJ becomes part of the official case record, which is made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information ("CBI") or sensitive Personally Identifiable Information ("PII") pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

Where filing a document containing such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or sensitive PII present in the document filed. If the filing party wishes for the presiding judge to view and consider the CBI or PII in making a ruling or rendering a decision, the filing party *must* follow the procedures specified in the Privacy Act Statement & Notice of Disclosure of Confidential and Personal Information, available on the OALJ's website at [https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19\\_privacyactstatement\\_noticeofdisclosure.pdf](https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19_privacyactstatement_noticeofdisclosure.pdf); in 40 C.F.R. § 22.5(d)(2); and in 40 C.F.R. Part 2 in order to protect the given information against public disclosure. The OALJ E-Filing System is not equipped to accommodate or protect the privacy of CBI or sensitive PII. Thus, the filing party must not file any unredacted version of a document containing CBI or sensitive PII through the OALJ E-Filing System. Rather, the filing party must file the unredacted version of the document in accordance with the aforementioned procedures either by U.S. mail or commercial delivery service sent to the address listed above or by contacting the Headquarters Hearing Clerk at (202) 564-6281 or [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov) for instructions on alternative electronic filing methods.


*To the extent that any person fails to adhere to the aforementioned procedures, that person thereby waives any claims to confidentiality and consents to public disclosure by EPA, including posting on the Internet, of all information claimed to be entitled to confidential*



treatment. Submission of such information through the OALJ E-Filing System will also be considered a waiver of confidentiality.

**Contact Information.** For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Stefanie Neale, Attorney-Advisor, at (202) 760-0710 or neale.stefanie@epa.gov.

**SO ORDERED.**

  
Christine Donelian Coughlin  
Administrative Law Judge

Dated: August 8, 2023  
Washington, D.C.

In the Matter of *Emrich Aerial Spraying LLC*, Respondent.  
Docket No. FIFRA-07-2022-0133

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Prehearing Order**, dated August 8, 2023, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.

  
\_\_\_\_\_  
Mary Angeles  
Paralegal Specialist

Original by OALJ E-Filing System to:  
Mary Angeles, Headquarters Hearing Clerk  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
[https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf)

Copy by Regular and Electronic Mail to:  
Katherine Kacsur  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
Email: [kacsur.katherine@epa.gov](mailto:kacsur.katherine@epa.gov)  
*Counsel for Complainant*

Tiernan T. Siems  
Sarah K. Dagel  
Erickson | Sederstrom, P.C.  
10330 Regency Parkway Drive  
Omaha, NE 68114  
Email: [tsiem@eslaw.com](mailto:tsiem@eslaw.com)  
Email: [sdage@eslaw.com](mailto:sdage@eslaw.com)  
*Counsel for Respondent*

Dated: August 8, 2023  
Washington, D.C.

**OFFICE OF ADMINISTRATIVE LAW JUDGES  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**WASHINGTON, D.C.**

**GUIDANCE ON USE OF OALJ E-FILING SYSTEM**

The Office of Administrative Law Judges (“OALJ”) utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to [oaljfilng@epa.gov](mailto:oaljfilng@epa.gov) or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at [www.epa.gov/alj](http://www.epa.gov/alj). Documents filed electronically are deemed to constitute both the original and one copy of the document and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at <https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf>. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon receipt by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format (“PDF”).

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party’s prehearing exchange of information, should be submitted separately as an attachment. When a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable, with each document appropriately bookmarked within the file. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits should be submitted together as

one attachment consisting of a single electronic file, to the extent technically practicable, with each of the 12 exhibits bookmarked within the file.

The OALJ E-Filing System is not equipped to accommodate or protect the privacy of confidential business information (“CBI”) or sensitive personally identifiable information (“PII”) that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to view and consider the CBI or sensitive PII contained in the document, the party shall also file an unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified in the Privacy Act Statement & Notice of Disclosure of Confidential and Personal Information, available on the OALJ’s website at [https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19\\_privacyactstatement\\_noticeofdisclosure.pdf](https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19_privacyactstatement_noticeofdisclosure.pdf); in 40 C.F.R. § 22.5(d)(2); and in 40 C.F.R. Part 2. The party may contact the Headquarters Hearing Clerk at (202) 564-6281 or [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov) for instructions on alternative electronic filing methods for the unredacted version of the document. To the extent that any person files any unredacted CBI or sensitive PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.