



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Gary Powers and Angie Powers,) **Docket No. CWA-03-2023-0104**
)
Respondents.)

ORDER OF DESIGNATION

Administrative Law Judge Christine Donelian Coughlin of the United States Environmental Protection Agency (“EPA”), Office of Administrative Law Judges (“OALJ”), is hereby designated as the Administrative Law Judge to preside in this proceeding under Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), 40 C.F.R. Part 22.

Parties shall participate in this matter through the submission of documents in the manner described below. Future orders will instruct the parties on what documents to submit.

Filing: The Rules of Practice provide that the original and one copy of each document intended to be part of the record of this proceeding shall be filed with the Headquarters Hearing Clerk of the OALJ.¹ 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.² A document filed electronically is deemed to constitute both the original and one copy of the document.

¹ 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>.

² 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.

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.³

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁴ Electronically filed textual documents must be in Portable Document Format (“PDF”).

Alternatively, documents may be filed by U.S. mail or commercial delivery service, such as UPS or FedEx.⁵ 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

³ 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, 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.

⁴ 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 for instructions on alternative electronic filing methods.

⁵ Conversely, this Tribunal is not able to accept filings or correspondence by personal delivery due to the physical office of the Tribunal not being accessible to the public on a daily basis.

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.

Service: A copy of each document filed in this proceeding shall 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 (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>.⁶ 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 upon electronic transmission, upon mailing, or when placed in the custody of a commercial delivery service. 40 C.F.R. § 22.7(c). Additionally, in the interest of judicial efficiency, 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 (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>. 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.⁷

Certificate of Service: 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 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).

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.

⁶ The Rules of Practice authorize electronic service with the written consent of the party being served. 40 C.F.R. § 22.5(b)(2). 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. *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>.

⁷ 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 advise this Tribunal and all opposing parties.

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; 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 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.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: November 9, 2023
Washington, D.C.

In the Matter of *Gary Powers and Angie Powers*, Respondents.
Docket No. CWA-03-2023-0104

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order of Designation**, dated November 9, 2023, and issued by Chief Administrative Law Judge Susan L. Biro, 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

Copy by Regular and Electronic Mail to:
Stefania D. Shamet
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
Four Penn Center (MC 3RC60)
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852
Telephone: 215-814-2682
Email: shamet.stefania@epa.gov
For Complainant

Copy by Regular Mail to:
Gary Powers and Angie Powers
P.O. Box 285
Cowen, WV 26206
Respondents (pro se)

Dated: November 9, 2023
Washington, D.C.