



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Evergreen Development, Inc., and) Docket No. CWA-07-2022-0134
Mark Schmidt,)
)
Respondents.)

ORDER OF DESIGNATION

Administrative Law Judge Christine Donelian Coughlin, U.S. Environmental Protection Agency (“EPA”), Washington, D.C., is hereby designated as the Administrative Law Judge to preside in this proceeding under 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.¹ Future orders will instruct the parties on what documents to submit.

Filing: As provided in 40 C.F.R. § 22.5(a), 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.² 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.³ A document filed electronically is deemed to constitute both the original and one copy of the document.

¹ The parties are advised to visit the website for this Tribunal, EPA’s Office of Administrative Law Judges (“OALJ”), at <https://www.epa.gov/alj/filing-and-service-during-covid-19> for the most current guidance on filing and service procedures in light of the ongoing COVID-19 pandemic.

² Pursuant to the Headquarters Hearing Clerk Pilot Project, the OALJ and Headquarters Hearing Clerk shall keep 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, see the OALJ’s website at www.epa.gov/alj.

³ More information about electronic filing may be found in the 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>. The parties are hereby advised that the OALJ will be adopting 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 a document electronically must first register to use the OALJ E-Filing System. 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 reception, as recorded by the OALJ E-Filing System immediately upon reception. 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.⁴

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.⁵ Electronically filed textual documents must be in Portable Document Format (“PDF”).

Alternatively, if a party is unable to file a document utilizing the OALJ E-Filing System, e.g., the party lacks access to a computer, the party may file the document by U.S. mail or facsimile.⁶ U.S. mail is currently being delivered to this Tribunal at an offsite location on a weekly basis only, and documents sent by facsimile will also be received offsite. To file a document using U.S. mail, the document shall be sent to the following mailing address:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave. NW

⁴ 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.

⁵ If a party’s multimedia file exceeds 70 megabytes, the party may save the file on a compact disc and send it by U.S. mail to the mailing address identified in this Order, or the party may contact the Headquarters Hearing Clerk at (202) 564-6281 for instructions on alternative electronic filing methods.

⁶ Because of the ongoing COVID-19 pandemic, this Tribunal’s ability to receive filings and correspondence by U.S. mail and facsimile is limited. If a party is without access to a computer and must file documents by U.S. mail or facsimile, 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.

At this time, the Tribunal is not able to accept filings or correspondence by courier or commercial delivery service, such as UPS, FedEx, and DHL. Likewise, the physical office of the OALJ is not currently accessible to the public, and the Tribunal is not able to receive documents by personal delivery. *See* Order Urging Electronic Service and Filing (April 10, 2020), available at https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_order_urgening_electronic_service_and_filing.pdf.

Mail Code 1900R
Washington, DC 20460

Facsimile may be used to file a document if it is fewer than 20 pages in length. To file a document using facsimile, the document shall be sent to this Tribunal's offsite location at (916) 550-9639. A document submitted by U.S. mail or facsimile is considered "filed" when the Headquarters Hearing Clerk physically receives it, as reflected by the inked date stamp physically applied by the Headquarters Hearing Clerk to the paper copy of the document.

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 ordinarily allow documents to be served by U.S. mail, commercial delivery service, or personal delivery, as well as by facsimile or email if service by those electronic means is consented to in writing, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve all documents on opposing parties by electronic means only, *see* Order Urging Electronic Service and Filing (April 10, 2020), available at https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf. 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 facsimile, the mailing address or facsimile number listed above shall be used. Service will be considered complete upon mailing or upon electronic transmission. 40 C.F.R. § 22.7(c).


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 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 of a document containing such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or 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 a rendering a decision, the filing party *must* follow the procedures specified on the OALJ's website at www.epa.gov/alj and in 40 C.F.R. Part 2 to protect the given information against public disclosure. *To the extent that any person fails to adhere to those procedures and files any unredacted CBI or PII pertaining to themselves or their client, that person thereby waives any*

claims to confidentiality and consents to public disclosure by EPA, including posting on the Internet, of all such information.

SO ORDERED.




Susan L. Biro
Chief Administrative Law Judge

Dated: February 6, 2023
Washington, D.C.

In the Matter of *Evergreen Development, Inc., and Mark Schmidt*, Respondents.
Docket No. CWA-07-2022-0134

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order of Designation**, dated February 6, 2023, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


Alyssa Katzenelson
Staff Attorney

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

Copy by Electronic and Regular Mail to:
Shane McCoin
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219
Email: mccoin.shane@epa.gov
Counsel for Complainant

Jovan W. Lausterer
Bromm, Lindahl, Freeman-Caddy & Lausterer
551 North Linden Street
P.O. Box 277
Wahoo, NE 68066
Email: jlaus@wahoolaw.com
Counsel for Respondents

Dated: February 6, 2023
Washington, D.C.