

# ENVIRONMENTAL APPEALS BOARD

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

## ABOUT THE BOARD:

The Environmental Appeals Board (“EAB”) serves as the Agency’s administrative appellate tribunal and resolves appeals, petitions for review, and other requests for a decision delegated to it by the Administrator. Appeals to the EAB involve the review of decisions made under all major environmental statutes that EPA administers and include review of federal permit decisions, appeals from enforcement decisions issued by the Office of Administrative Law Judges and Regional Judicial Officers, and petitions for reimbursement under section 106(b) of CERCLA. At the request of the Administrator, the EAB also decides, makes recommendations, or serves as a factfinder on other issues the Administrator deems appropriate. In many cases, the EAB holds oral argument which is open to the public both in person and virtually. EAB decisions serve as precedent to provide consistency in the administration of environmental regulations and greater clarity of requirements for both agency decisionmakers and outside stakeholders. The EAB’s decisions and case filings are widely available to the public pursuant to law.

The EAB furthers the agency’s mission to protect public health and the environment by ensuring that Agency decision-making is fair, transparent, and supported by the record. Administrative adjudication by the EAB provides a cost-effective opportunity for review of Agency actions by resolving disputes efficiently and avoiding protracted federal court review. In over 90% of matters decided by the EAB, no further appeal is taken to federal court, providing a final resolution to the dispute. Less than 1% of the EAB’s final decisions have been reversed by federal courts.

The EAB has developed a unique Alternative Dispute Resolution (ADR) Program to assist parties in resolving disputes before the EAB. The ADR Program has fostered participants’ success in achieving a fast resolution of issues with satisfying and enduring solutions by, in part providing an early neutral evaluation of cases and expediting return to the active docket if resolution of the pending matter is not achieved. Since its inception, the EAB’s ADR program has successfully resolved more than 90% of its ADR cases.

The EAB is recognized as a model of excellence for environmental adjudication. Judges and counsel to the EAB have shared their expertise on environmental adjudication both domestically and internationally in specialized trainings, conferences, and seminars with judges, attorneys, environmental specialists, local, state and federal government officials, and civil society organizations.

## KEY POINTS:

The EAB was established by rule in 1992 as an impartial body, independent of other EPA components outside of the immediate Office of the Administrator, to conduct full and fair adjudications and to “allow for a broader range of input and perspective in administrative decisionmaking,” to “lend greater authority to the agency’s decisions” and to “inspir[e] confidence in the fairness of Agency adjudications.” 57 Fed. Reg. 5320, 5321-22 (Feb. 13, 1992).

- The EAB reports to the Administrator on substantive matters delegated to the EAB. In 2013, the organization itself was relocated to OMS for certain administrative purposes.
- The EAB is a four-member tribunal all of whom are attorneys appointed by the Administrator, report to the Administrator, and are Career Reserved members of the Senior Executive Service. Collectively, the judges bring a variety of perspectives to the EAB, having previously worked in other EPA offices and programs, private practice, the Department of Justice, and state government. Cases are assigned on a neutral basis, the judges sit in panels of three, and decisions are made by a majority of the panel. The fourth judge serves as a neutral mediator in the EAB’s ADR process when needed.
- Administrative management of the EAB is shared equally among the judges, with the “lead” for administrative matters rotating on an annual basis.

- In addition to the four judges, the EAB currently has five experienced environmental counsel, one entry level Honors Attorney, a Clerk of the EAB and one administrative professional. There are currently two senior counsel vacancies.
- By ensuring consistency in the application of legal requirements, providing a cost-effective opportunity for review of Agency actions, and resolving disputes efficiently, the EAB avoids protracted federal court review and expedites environmental permitting and compliance.
- Principles that guide EAB adjudication are transparency/public access, impartiality, full and fair hearings, and adjudicatory consistency, thus providing predictability for regulated communities.
- The EAB observes rules against *ex parte* (one-sided) communication related to the merits of pending cases with individual parties (including prohibiting *ex parte* communication related to the merits of pending cases with EPA offices appearing before the EAB, such as OGC, OECA, ORC, and program offices).

#### ONGOING/UPCOMING ISSUES FOR FY2025:

City and County of San Francisco (Supreme Court granted certiorari May 28, 2024; Oral Argument held October 16, 2024).

The EAB will continue to evaluate the impacts of recent Supreme Court decisions in: *SEC v. Jarkesy* and *Loper Bright Enterprises v. Ramando*.

#### KEY EXTERNAL STAKEHOLDERS:

<input type="checkbox"/> Congress	<input checked="" type="checkbox"/> Industry	<input checked="" type="checkbox"/> States	<input checked="" type="checkbox"/> Tribes	<input type="checkbox"/> Media	<input checked="" type="checkbox"/> Other Federal Agency
<input checked="" type="checkbox"/> NGO	<input checked="" type="checkbox"/> Local Governments	<input checked="" type="checkbox"/> Public			

#### MOVING FORWARD:

Moving forward the EAB will continue to adjudicate Agency appeals fairly and efficiently, under all statutes while serving the Agency's mission to protect public health and the environment. With a four-judge Board, the EAB will continue offering ADR through the EAB's unique and highly successful ADR program. And the EAB will continue to be available to share its adjudication expertise both domestically and internationally.