

ENVIRONMENTAL APPEALS BOARD CONSENT AGREEMENT AND FINAL ORDER PROCEDURES

Part 22 delegates to the Environmental Appeals Board the authority to ratify, on behalf of the Administrator, consent agreements and final orders (CAFOs) memorializing settlements between the Agency and respondents resulting from certain administrative enforcement actions. *See* 40 C.F.R. § 22.18(b). The Board's authority to ratify settlements initially derived from delegations from the Administrator to the Board delegating the authority to issue consent orders and final orders under specific environmental statutes. *See, e.g.*, Marine Protection, Research and Sanctuary Act (EPA Delegation 3-1-C); Federal Insecticide, Fungicide and Rodenticide Act (EPA Delegation 5-15-B); Clean Air Act (EPA Delegation 7-41-C); Solid Waste Disposal Act (EPA Delegations 8-9-C, 8-27, 8-44); and Toxic Substances Control Act (EPA Delegation 12-2-C). Under the terms of these delegations, the final orders may assess penalties and, in some circumstances, require compliance. These delegations were reflected in the revisions to part 22 when the Board was created.

To assist the Board in performing its ratification authority, the Board requests that any consent agreement that the Director of the Office of Civil Enforcement (OCE) or Acting Director of OCE is authorized to sign, which does not require concurrence by the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), be transmitted to the Board by an action memorandum signed by the Director of OCE or Acting Director of OCE, with a copy to the respondents. The Board requests that any consent agreement that the OECA Assistant Administrator or a representative of an OECA office other than OCE has signed, or consent agreement for which concurrence by the OECA Assistant Administrator is required, be transmitted to the Board by an action memorandum signed by either the OECA Assistant Administrator or the Deputy Assistant Administrator for OECA, with a copy to the respondents.

The consent agreement and action memorandum (along with a proposed final order and certificate of service) may be submitted to the Board in paper form (via hand-delivery or inter-office mail) or by e-mail to Clerk_EAB@epa.gov with "CAFO" in the subject line. The Board requests that the action memorandum include:

1. A non-CBI copy of the complaint, if one has been filed;

2. A detailed explanation of how the proposed agreement is consistent with the applicable penalty guidelines or, if not, why not; with a brief statement of the facts describing both the allegations of the complaint and how the settlement addresses each of the violations identified;
3. A summary of any human health or environmental concerns presented by the respondent's actions or why there are no concerns;
4. An explanation of how the order addresses the disposition of any substances or wastes identified in the complaint, or identified in the allegations in the consent agreement if no complaint has been filed, including any additional steps, if required, to address any past exposure to the environment;
5. A brief explanation of any past or pending actions involving this same respondent arising out of the same facts;
6. A statement of how the public interest is served by the agreement;
7. Copies of all policy documents relied upon in the assessment of a penalty, or, in the alternative, an identification of where such documents are publicly available;
8. For consent agreements addressing violations under Clean Water Act sections 309(g) and 311(b)(6)(B)(ii) and Safe Drinking Water Act section 1423(c), a copy of the public notice required by 40 C.F.R. § 22.45 (or, in the alternative, an identification of where such document is publicly available), and a statement that the required public notice complies with 40 C.F.R. § 22.45 and identifies all violations that the consent agreement addresses; and
9. A proposed final order with a certificate of service – following the Board's template (attached). Please provide the appropriate mailing and e-mail addresses on the draft certificate of service.

If the complaint, consent agreement, or any attachments contain confidential business information (CBI) or material claimed as CBI, at a minimum: (1) place in a separate envelope and hand-deliver to the Board copies of any documents containing CBI or claimed as CBI; and (2) label the envelope "This Envelope Contains Confidential Business Information (CBI) and/or Material Claimed as CBI: to be opened by the Clerk of the Board only." (Please note that in some instances, parties may need to take additional measures to protect CBI or material claimed as CBI, if required by applicable statute, regulation, or agency directive.) If possible, also place a stamp, watermark, or other prominent written notation on the first page and the back of the last page of the document(s) containing CBI or claimed as CBI that states: "This Document Contains Confidential Business Information (CBI) and/or Material Claimed as CBI." Do not transmit documents containing CBI or claimed as CBI through interoffice mail. For any such documents, also submit to the Board a copy of the documents with the CBI and CBI-claimed material redacted.

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____))
In re [Insert Case Name]))
) Docket No. [Insert OECA Docket #]
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FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA’s Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.¹

ENVIRONMENTAL APPEALS BOARD

Dated: _____

[Name of Lead Judge]
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges _____, _____, and _____.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing “Consent Agreement” and “Final Order,” in the matter of [Case Name], Docket No. [XXX], were sent to the following persons in the manner indicated:

By E-mail:¹

[LIST NAME(S), MAILING ADDRESS(ES), & E-MAIL ADDRESS(ES)]

[Name]
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code [XXXX]
Washington, DC 20460
E-mail: [Attorney e-mail]

[For CAFOs where complaint was filed]
Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW,
Mail Code 1900R
Washington, DC 20460
E-mail: OALJfiling@epa.gov; Yaeger.Ryan@epa.gov

Dated: _____

Clerk of the Board
[if service is by email] or
Annette Duncan
Administrative Specialist
[if service is by mail]

¹ If service is effectuated by any means other than email, please specify the means of service, e.g., First Class Mail or Interoffice Mail.