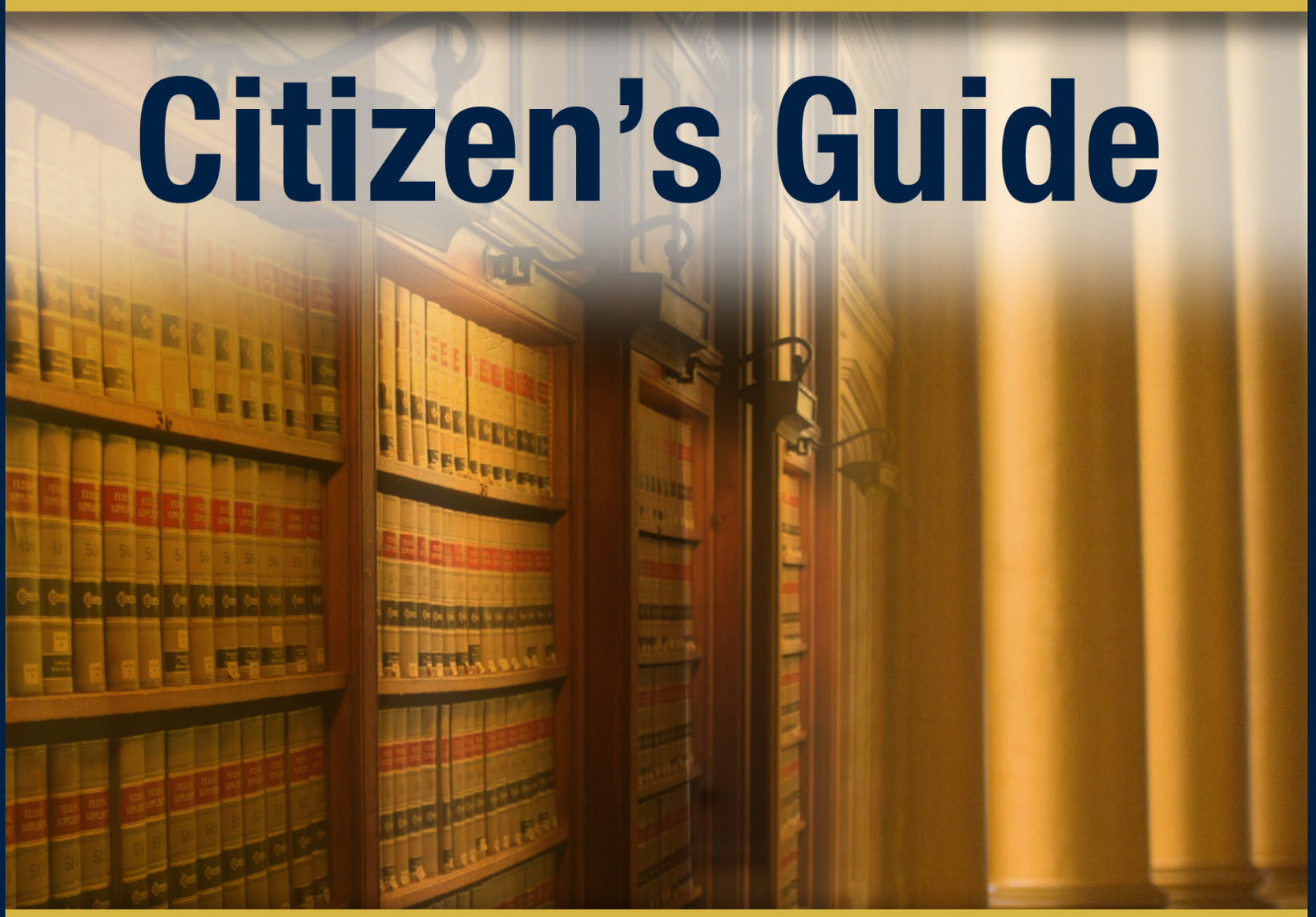
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Office of Administrative Law Judges

OCTOBER 2010

Citizen's Guide



This document is intended solely as guidance. The policies and procedures contained in this guidance do not constitute a rulemaking by the Agency, and this guidance may not be relied upon to create a substantive or procedural right or benefit enforceable at law by any person.

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I. Introduction

The United States Environmental Protection Agency ("EPA" or "Agency") is authorized by a variety of environmental laws to initiate enforcement proceedings against alleged violators of those laws. Should an alleged violator dispute the charges against it, the case may be heard by an Administrative Law Judge ("ALJ" or "Judge") from EPA's Office of Administrative Law Judges ("OALJ").

The purpose of this Guide is to serve as an aid to citizens without formal legal training who are participating or interested in cases pending before the ALJs. It provides a brief description of the major environmental laws administered by EPA and an overview of the role of the ALJs in assuring the proper and fair enforcement of those laws. It also provides general guidance on the practices and procedures that apply at different stages of enforcement proceedings before the ALJs.

While this Guide aims to answer the questions you may have should you find yourself involved in a case pending before an ALJ, it is not intended to provide a complete recitation or explanation of the practices and procedures observed in such proceedings. Accordingly, the Guide does not contain every detail, exception, or condition with respect to each topic addressed, and it should not be cited or relied upon as legal authority.

In order to gain a full understanding of the applicable practices and procedures, and participate effectively in proceedings before the ALJs, you should read this Guide together with the particular statutes and regulations at issue in the case, as well as the federal regulations that govern proceedings before the ALJs. These federal regulations, entitled the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), are found in the Code of Federal Regulations ("CFR") at 40 C.F.R. Part 22 and describe in greater detail the practices and procedures discussed in this Guide. Where applicable, the Guide identifies the section of the Rules of Practice that corresponds to a particular topic in order to direct readers to a source of more detailed information. If there are any discrepancies between this Guide and the Rules of Practice, follow the Rules of Practice.

The OALJ website at www.epa.gov/oalj provides a link to the Rules of Practice. It also features a searchable database of published decisions and orders issued by the ALJs, including those dating back to 1989, in chronological order, and those dating back to 1997, in alphabetical order by the name of the alleged violator involved. The EPA Environmental Appeals Board ("EAB") is the appellate body to which parties may appeal ALJ decisions. The EAB maintains an online database of its own decisions at www.epa.gov/eab/.

II. The Major Environmental Laws Administered by EPA

Over the years, Congress has enacted a number of environmental laws aimed at identifying and addressing risks to our health and the natural environment. These laws set forth Congress's goals for safeguarding our air, land, and water, and establish a legal framework for achieving these goals. They are published in the United States Code ("U.S. Code" or "U.S.C.") and are widely available through internet sources, such as the website of the Office of the Law Revision Counsel of the U.S. House of Representatives at uscode.house.gov.

The majority of environmental laws give EPA the authority and the duty to impose limitations on the release of certain pollutants into the environment; regulate certain activities that may pose a risk to our health or the natural environment; and take enforcement action against violators of the laws. To carry out these responsibilities, EPA develops and issues regulations setting forth such limitations and rules of conduct for persons involved in the activities regulated by the environmental laws. These regulations are published in Title 40 of the CFR and are also widely available through internet sources, such as Cornell Law School's website at www.law.cornell.edu/cfr.

The EPA website at www.epa.gov also provides a link to the United States Code and the Code of Federal Regulations, as well as a great deal of information about EPA, including guides to the laws EPA administers and a description of the activities of each of EPA's program offices.

A. Clean Air Act

The purpose of the Clean Air Act (CAA) is to protect and improve the quality of our air by limiting emissions of air pollutants. The Act directs EPA to identify air pollutants, to study the causes of air pollution, to evaluate the impact of air pollutants on our health, and to adopt national air quality standards for air pollutants that may endanger public health or welfare. The Act also includes certain licensing or permitting requirements, including, for example, the requirement that major sources of air pollution (such as factories and power plants) obtain preconstruction permits that set limits on the amount of each regulated pollutant the facility may emit. ALJs preside over administrative penalty cases brought by EPA against persons whom EPA believes have violated the Clean Air Act in some way.

B. Clean Water Act

The purpose of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA), is to protect United States waters from pollutants. The states have the primary responsibility for protecting U.S. waters. However, EPA (or a state approved for this purpose) has the responsibility to administer the CWA's National Pollution Discharge Elimination System (NPDES) permit program, which regulates discharges of pollutants into regulated waters. ALJs preside over administrative penalty cases brought by EPA against persons whom EPA believes have violated the Clean Water Act in some way, often for discharging pollutants or filling wetlands without a permit. However, only the EAB has the authority to review challenges to NPDES permits issued by EPA.

C. Federal Insecticide, Fungicide, and Rodenticide Act

The purpose of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is to prevent pesticides from causing unreasonable harm to our health or the environment. Every pesticide that is sold or distributed in the U.S. must be registered with EPA. The pesticide registrant must provide information to EPA that supports its claim that the chemicals used in the pesticide will not pose an unreasonable risk to people or the environment. Pesticides must have labels that explain how to use them and that contain warnings about the risks they pose. Certain particularly dangerous pesticides may only be applied by a government-certified applicator. The certification requirement is intended to assure that the applicator will use the pesticide in a way that minimizes any risk to our health and the environment. EPA enforces the requirements of FIFRA by assessing civil penalties against individuals, companies, or organizations that violate its requirements. ALJs preside over administrative penalty cases brought by EPA against persons whom EPA believes have violated FIFRA, usually under sections 12 (sale or distribution of unregistered, adulterated, or misbranded pesticide) and 13 (violations of a stop sale order).

D. Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) protects our land as a valuable natural resource by reducing land disposal of hazardous wastes and by minimizing the risks posed by hazardous waste disposal. RCRA authorizes EPA to regulate hazardous wastes from "cradle to grave" (that is, from the point of generation to the point of disposal). Most notably, RCRA authorizes EPA to impose stringent requirements on facilities that treat, store, or dispose of hazardous waste by means of a permit program. ALJs preside over administrative penalty cases brought by EPA against persons whom EPA believes have violated RCRA, usually under Subtitle C (for hazardous waste) or Subtitle I (for underground storage tanks).

E. Toxic Substances Control Act

The purpose of the Toxic Substances Control Act (TSCA) is to safeguard against unreasonable risks of harm to our health or the environment from toxic chemicals. TSCA does this by regulating the use, storage, and disposal of toxic chemicals. It authorizes EPA to require the testing of certain chemical substances and to require manufacturers and processors of those chemical substances to maintain records and submit reports to EPA. EPA enforces the requirements of TSCA by imposing civil penalties on individuals, companies, or organizations that violate its requirements. ALJs preside over administrative penalty cases brought by EPA against persons whom EPA believes have violated TSCA, usually under Subchapter I (control of toxic substances) or Subchapter IV (lead exposure reduction).

F. Emergency Planning and Community Right to Know Act

The purpose of the Emergency Planning and Community Right to Know Act (EPCRA), is to minimize the impact of chemical releases that pose threats to public health and the environment, and to provide information to the public about hazardous chemicals in their communities. EPCRA requires certain facilities that manufacture, use, or store toxic chemicals to file reports on their

releases of toxic chemicals into the environment. ALJs preside over administrative penalty cases brought by EPA against persons whom EPA believes have violated EPCRA, usually related to toxic chemical release forms, hazardous chemical inventory forms, material safety data sheets, or notification and planning requirements.

G. Safe Drinking Water Act

The purpose of the Safe Drinking Water Act (SDWA) is to safeguard the nation's drinking water supply. The underground injection control (UIC) program under the SDWA protects actual and potential sources of drinking water from hazardous substances by requiring that any injection of pollutants that may impact a drinking water source comply with the terms of a federal permit. Occasionally, EPA will seek an administrative penalty against persons EPA believes have violated the SDWA, most often drinking water regulations or underground injection well regulations.

H. Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also called Superfund) has two major purposes: first, to assure that releases of hazardous substances are cleaned up promptly; and second, to require those people or companies who generated, transported, and disposed of the hazardous substances to pay for the cleanup. Among other things, the Act authorizes EPA (and certain other federal agencies) to issue orders requiring a person or group of people to undertake specific actions to prevent or minimize a threat from the release of a hazardous substance or to clean up hazardous substances that have already been released. Occasionally, EPA will seek an administrative penalty against persons who have violated a CERCLA cleanup order. ALJs also preside over penalty actions against persons who have failed to report spills and accidents to the National Response Center under Section 103.

III. The Role of the ALJs

Based in Washington, D.C., the ALJs of EPA are experienced attorneys or hearing officers who are selected by the U.S. Office of Personnel Management from a single list of qualified candidates created for all of the various federal agencies as a result of a competitive, merit-based examination and application process. The primary role of the ALJs is to preside over the enforcement proceedings initiated by the Regional Offices[1] of EPA (and, on occasion, EPA headquarters) against those individuals, businesses, municipalities, and other entities subject to regulation under the environmental statutes and regulations that EPA administers. The ALJs preside over these proceedings – or, in other words, serve as the "Presiding Officers" – only after the particular office of EPA has filed a "Complaint" and the alleged violator has filed an "Answer."[2] In performing this function, the ALJs have the authority to, among other things,

[1] See Appendix 2 for a national map of all the EPA Regional Offices and their contact numbers.

[2] Until the alleged violator files an Answer, the Regional Judicial Officer at the office of EPA that filed the Complaint serves as the Presiding Officer. The various stages of an enforcement

consider and rule upon any factual or legal arguments raised by the parties.[3] The OALJ employs a number of staff attorneys and legal staff assistants to assist the ALJs.

The manner in which the ALJs render decisions in enforcement proceedings is a formal process that is largely governed by the Rules of Practice. During the course of these proceedings, the ALJs give equal consideration to the arguments raised by each party. To ensure their impartiality, the ALJs are strictly limited in their communications with the parties during the course of enforcement proceedings.[4] Parties are not permitted to contact an ALJ directly, either in person, by letter, by email, or by telephone, without the presence of the other parties. Rather, to communicate directly with the ALJ presiding over a case, parties are required to file and serve a "Motion."[5] After the other parties have had a certain period of time to respond, the presiding ALJ issues an "Order" ruling upon the Motion, a copy of which is provided to each party. On occasion, an ALJ may order the parties to participate in conference calls with the ALJ to discuss procedural or substantive matters. Because ALJs are prohibited from engaging in "*ex parte* communications" – or communications with one party to a case without the other party being present – with respect to any arguments raised by the parties,[6] all parties must be present for conference calls on substantive matters. Should a party have a question on a procedural or clerical matter, the party may contact by telephone or email the staff attorneys or legal staff assistant to the presiding ALJ. During such communications, parties are not permitted to discuss their arguments in the case. Parties also may not discuss any terms or offers of settlement, including monetary amounts, in any correspondence, motion, exhibit, attachment, or communication with the presiding ALJ, the ALJ's staff attorneys, or the ALJ's legal staff assistant.

The independence of the ALJs from the Agency is also essential for the fair and impartial resolution of enforcement proceedings. To that end, although the OALJ is an arm of the Office of the Administrator of EPA, it is independent of the EPA offices that are parties to the cases decided by the ALJs. Likewise, although the ALJs are technically employees of EPA, the terms and conditions of their federal employment are designed specifically to ensure that the ALJs retain complete decisional independence from the Agency and are insulated from any circumstances that could create bias in favor of the Agency. For example, the ALJs are not supervised in the substance of their work by any Agency personnel, and they cannot receive any incentives or rewards of any kind, monetary or otherwise, from the Agency for their work. In addition, the ALJs

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proceeding are discussed in greater detail in the section of this Guide entitled "Steps of an Enforcement Proceeding before an ALJ."

[3] Section 22.4(c) of the Rules of Practice, 40 C.F.R. § 22.4(c).

[4] Communications between the parties and the presiding ALJ are less restricted during "Alternative Dispute Resolution," which is discussed in greater detail in the section of this Guide entitled "Steps of an Enforcement Proceeding before an ALJ."

[5] Filing and service requirements are discussed in greater detail in the section of this Guide entitled "Submission of Documents." The filing and serving of Motions specifically are discussed in greater detail in the section of this Guide entitled "Motions."

[6] Section 22.8 of the Rules of Practice, 40 C.F.R. § 22.8.

are obligated to comply with judicial ethical standards, as well as federal government ethics laws and regulations. To further ensure the independence of the ALJs, the OALJ is physically isolated from the remainder of the Agency in separate offices located at 1099 14th Street, N.W., Suite 350, Washington, D.C. 20005.

IV. Submission of Documents

During the course of an enforcement proceeding, the parties are required by the Rules of Practice to submit certain documents. The presiding ALJ may direct the parties, either orally or in a written Order, to submit documents as well. The parties may choose to submit additional documents, such as Motions, in which the parties may request that the ALJ take a particular action in the proceeding.

A. Format of Submissions

The Rules of Practice list a number of requirements for the format of documents submitted by the parties:

- ☑ The top portion of the first page of the Complaint – including "United States Environmental Protection Agency," the name of the "Respondent," and the docket number of the case – is called the "caption." The first page of every document submitted in a case must bear the same caption that appears on the first page of the Complaint,[7] unless:
  - The caption on the first page of the Complaint contains the address of the Respondent. The caption placed on subsequently filed documents does not need to contain the address.
  - A party files a "Motion to Amend the Complaint" seeking to change the named Respondent, and the Presiding Officer issues an Order granting the Motion. The caption placed on subsequently filed documents must reflect the change in the name of the Respondent.
  - The Complaint lists multiple Respondents and one or more Respondents settle independently. Once the settling parties are dismissed, the caption can be changed to list only the remaining parties.

- ☑ Any legal briefs and memoranda longer than 20 pages must contain a table of contents and list of case citations (table of authorities) with page references.[8]

- ☑ The first document filed by a party must contain the name, address, and telephone number of the party, the party's attorney, or any other person authorized to represent the party.[9]

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[7] Section 22.5(c)(2) of the Rules of Practice, 40 C.F.R. § 22.5(c)(2).

[8] Section 22.5(c)(2) of the Rules of Practice, 40 C.F.R. § 22.5(c)(2).

[9] Section 22.5(c)(4) of the Rules of Practice, 40 C.F.R. § 22.5(c)(4).

- ☑ Every document submitted in a case must be signed by the party submitting it, or by the party's attorney or other representative.[10]

The parties are urged to comply with the following additional requirements:

- ☑ Documents should be printed only on a single side, with a margin of at least 1" at the top of each page, and with a page number at the bottom of each page.

- ☑ Documents should be double-spaced, with at least 12 point, Times New Roman equivalent font, including the footnotes.

- ☑ The first document filed by a party should contain the fax number and email address, if any, of the party, the party's attorney, or any other person authorized to represent the party.

Templates for documents routinely submitted to OALJ are attached to this Guide as Appendix 1. These templates are provided solely to serve as guides. The ALJs will accept documents that do not conform to these templates as long as the documents satisfy the requirements identified in the Rules of Practice.

B. Filing and Service Requirements

Every document that a party wishes the ALJ to consider must be both "filed" and "served." To "file" a document, a party is required to send the original and one copy of the document to the Hearing Clerk at the Regional Office of EPA that has brought the case.[11] The party may send documents by mail, courier, commercial delivery service, or hand delivery. A document is "filed" on the date it is received and stamped by the appropriate Regional Hearing Clerk. Every document that is filed becomes a part of the official case record, which is available to the public, unless the document is filed "under seal."[12] Parties may choose to file a document under seal when it contains confidential business information or personal information.[13]

On the same day that a party sends a document to the appropriate Regional Hearing Clerk for filing, the party must "serve" the document. To "serve" a document, the party is required to send a copy of the document to the ALJ and to the other parties in the case.[14] The party may send documents by mail, courier, commercial delivery service, or hand delivery.

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[10] Section 22.5(c)(3) of the Rules of Practice, 40 C.F.R. § 22.5(c)(3).

[11] Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

[12] Section 22.5(d)(1) of the Rules of Practice, 40 C.F.R. § 22.5(d)(1).

[13] This option is discussed in greater detail in the section of this Guide entitled "Steps of an Enforcement Proceeding before an ALJ."

[14] Section 22.5(b) of the Rules of Practice, 40 C.F.R. § 22.5(b).

The OALJ uses different addresses depending on the delivery method. Documents that a party sends using the U.S. Postal Service must be addressed to the OALJ's mailing address:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue N.W.
Mail Code 1900L
Washington, D.C. 20460-2001

Documents that a party hand delivers or sends using a courier or commercial delivery service (such as Federal Express or UPS) must be addressed to the OALJ's hand delivery address:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
1099 14th Street N.W.
Franklin Court Building, Suite 350
Washington, D.C. 20005

Every envelope or package should bear a complete and accurate return address in the upper left hand corner and should state the case name and number in the lower left hand corner.

Each document filed and served must contain as the last page a "certificate of service," which states the date on which the document was sent, a list of addresses to which it was sent, the method by which it was sent, and the signature and name of the person who sent it.[15] An example of a certificate of service is included in Appendix 1.

C. Timeliness of Submissions

In determining the timeliness of a particular document, the presiding ALJ relies on the official filing date, not the postmark date, of the document. Therefore, a party is obligated to send a document far enough in advance of a filing deadline set by the Rules of Practice or the presiding ALJ to be received by the appropriate Regional Hearing Clerk on or before that deadline. If a party sends a document to the appropriate Regional Hearing Clerk on or very close to the filing deadline, the party is strongly encouraged to fax a courtesy copy to the OALJ at (202) 565-0044.

[15] Section 22.5(a)(3) of the Rules of Practice, 40 C.F.R. § 22.5(a)(3).

To avoid missing a filing deadline, parties are also strongly encouraged to mark on their calendars all of the deadlines imposed by the Rules of Practice and the presiding ALJ in the case. The Rules of Practice contain a number of deadlines for the filing of documents. In computing any time period prescribed by the Rules of Practice, weekends and Federal holidays are included.[16] When the prescribed time period ends on a weekend or Federal holiday, the filing deadline is extended to the next business day.[17]

At any point during an enforcement proceeding, the parties may choose to "settle" the case, or resolve it on terms mutually agreeable to the parties, rather than proceed to an administrative hearing. Parties are obligated to comply with the filing deadlines set by the Rules of Practice and the ALJ presiding in the case even if they are simultaneously negotiating a settlement. Parties are also obligated to comply with the filing deadlines even if the other parties to the case have failed to comply or a Motion submitted by one of the parties is pending before the ALJ. The only circumstances under which the parties are not obligated to comply with a filing deadline are 1) the parties have drafted a "Consent Agreement and Final Order," in which the parties recorded the terms of a settlement agreement, obtained the appropriate signatures on the document, and filed it with the Regional Hearing Clerk on or before the filing deadline at issue; or 2) a party requested an extension of the filing deadline by filing and serving a document entitled "Motion for Extension of Time,"[18] and the ALJ granted the Motion.

When a party fails to submit a document by a filing deadline and neither of the foregoing exceptions is applicable, the presiding ALJ may issue an "Order to Show Cause" or a "Default Order." An Order to Show Cause directs the party to whom it was issued to explain why the party should not be held in "default," which means that the presiding ALJ assumes that the party failed to comply with the filing deadline because it does not wish to proceed with its case. A Default Order, when issued against the EPA, rules that Agency has waived its right to proceed with the case and dismisses the case with prejudice, which precludes EPA from bringing the case against the alleged violator at a later date.[19] When issued against the alleged violator, a Default Order rules that the party committed the alleged violations and requires it to pay the full amount of the penalty proposed by EPA within 30 days.[20]

Should a party wish the ALJ to consider a document after the filing deadline has passed, the party is required to file and serve the document accompanied by a separate document entitled "Motion for Leave to File Out of Time."[21]

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[16] Section 22.7(a) of the Rules of Practice, 40 C.F.R. § 22.7(a).

[17] Section 22.7(a) of the Rules of Practice, 40 C.F.R. § 22.7(a).

[18] This requirement is discussed in greater detail in the section of this Guide entitled "Motions."

[19] Section 22.17(a) of the Rules of Practice, 40 C.F.R. § 22.17(a).

[20] Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

[21] This requirement is discussed in greater detail in the section of this Guide entitled "Motions."

V. Steps of an Enforcement Proceeding before an ALJ

Enforcement proceedings begin when an office of EPA files a "Complaint," and end when either 1) the parties file a Consent Agreement and Final Order ("CAFO"), or 2) the presiding ALJ issues an "Initial Decision." In a CAFO, the parties record the terms of a settlement agreement and execute it with their signatures. In an Initial Decision, the presiding ALJ sets forth his or her ruling as to whether the alleged violator actually violated the law as charged in the Complaint and, if so, the amount of the penalty that must be imposed.

The steps that enforcement proceedings typically follow are described below. As noted above, the Presiding Officer will probably change between stages of the administrative proceeding from a Regional Judicial Officer, an ALJ if the parties elect to participate in Alternative Dispute Resolution, and an ALJ for litigation, depending on the particular stage of the enforcement proceeding.

A. Complaint

An enforcement proceeding begins when a Regional Office of EPA (and, on occasion, EPA headquarters) files a Complaint with the appropriate Regional Hearing Clerk.[22] The Complaint charges a "person," which may be an individual, business, municipality, or other entity, with a violation of an environmental law or regulation.[23] The Complaint also either proposes a monetary penalty to assess for the particular violation alleged or, where a specific penalty amount is not proposed, identifies the number of violations for which a penalty is sought and briefly explains the severity of each violation alleged.[24] The EPA office that filed the Complaint is called the "Complainant." The person charged with the violation is called the "Respondent."

In addition to filing the Complaint with the appropriate Regional Hearing Clerk, the Complainant has an obligation to serve a copy of the Complaint on the Respondent. The Complainant serves a copy of the Complaint on the Respondent by providing a copy of the Complaint to the Respondent either personally, by certified mail with return receipt requested, or by any commercial delivery service that provides written verification of delivery.[25]

The Rules of Practice require the Complaint to contain certain information.[26] The Complainant may amend the Complaint once, as a matter of right, at any time before the Respondent files an "Answer."[27] Until the Respondent files an Answer, the Regional Judicial

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[22] Section 22.13 of the Rules of Practice, 40 C.F.R. § 22.13.

[23] Section 22.14 of the Rules of Practice, 40 C.F.R. § 22.14.

[24] Section 22.14 of the Rules of Practice, 40 C.F.R. § 22.14.

[25] Section 22.5 of the Rules of Practice, 40 C.F.R. § 22.5.

[26] Sections 22.14(a) and (b) of the Rules of Practice, 40 C.F.R. §§ 22.14(a) and (b).

[27] Section 22.14(c) of the Rules of Practice, 40 C.F.R. § 22.14(c).

Officer acts as the Presiding Officer.[28] A Regional Judicial Officer is an attorney at the office of EPA that filed the Complaint who has not performed any prior investigative or prosecutorial functions in connection with the case. As the Presiding Officer, the Regional Judicial Officer is authorized to rule on any Motions filed by the parties at this stage of the proceeding.[29]

B. Answer

If you, as the Respondent, dispute any of the violations alleged or the monetary penalty proposed in the Complaint, you must file a written "Answer" with the appropriate Regional Hearing Clerk and serve a copy of the Answer on the Complainant within 30 days of being served the Complaint.[30] The Rules of Practice require the Answer to clearly and directly admit, deny, or explain each of the allegations contained in the Complaint.[31] You may not simply deny the entire Complaint in general. If you have no knowledge of a particular allegation, say so in the Answer and you will then be assumed to deny the allegation.[32] To satisfy these requirements, an Answer should list each of the numbered paragraphs in the Complaint and state for each paragraph that it is either "admitted," "denied," "denied for lack of knowledge," or, if none of those apply, provide an explanation for the paragraph.

In addition, the Rules of Practice require the Answer to describe any "defenses" to the allegations in the Complaint that the Respondent wishes to raise in the proceeding.[33] Defenses are any factual or legal arguments that the Respondent believes either 1) demonstrate that the Respondent did not commit the violations charged in the Complaint; 2) would prevent EPA from assessing a penalty in the amount proposed by the Complainant; or 3) would otherwise prevent EPA from assessing a penalty against Respondent.

The Rules of Practice also require the Answer to state whether the Respondent requests an administrative hearing.[34] An administrative hearing is very similar to a trial in federal court in that it is a formal process of presenting witness testimony and exhibits through direct and cross examination before an adjudicator. If you are the Respondent, you should request a hearing if you wish to present witnesses and/or evidence to an ALJ, and/or wish to cross examine any witnesses EPA may present. Even if you request a hearing, you may still settle the case at any point during the proceeding.[35] If you do not wish to settle the case but also do not wish to participate in a

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[28] Section 22.4(b) of the Rules of Practice, 40 C.F.R. § 22.4(b).

[29] Section 22.16(c) of the Rules of Practice, 40 C.F.R. § 22.16(c).

[30] Section 22.15(a) of the Rules of Practice, 40 C.F.R. § 22.15(a).

[31] Section 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b).

[32] Section 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b).

[33] Section 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b).

[34] Section 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b).

[35] Section 22.18(b) of the Rules of Practice, 40 C.F.R. § 22.18(b).

hearing, the parties may request that the designated ALJ conduct a "paper hearing," in which the presiding ALJ makes a decision on disputed issues in the case based solely on documents submitted by the parties. The presiding ALJ may conduct a "paper hearing" when the parties file a motion explaining why they do not want or need to present the oral testimony of witnesses at a hearing or to cross examine another party's witnesses. "Paper hearings" are not common in enforcement proceedings.

Should the Respondent wish to request that the Complaint be dismissed, the Respondent is required to file a separate document entitled "Motion to Dismiss."[36] A general request in an Answer for dismissal of the Complaint typically does not satisfy the requirements for Motions to Dismiss, and thus, neither the Complainant nor the ALJ respond to such requests.

Upon receiving an Answer from the Respondent, the Regional Hearing Clerk forwards the Complaint, Answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge ("Chief Judge") at the OALJ.[37] At this point, the Regional Judicial Officer ceases to be the Presiding Officer, and "the proceeding before an ALJ" commences.

C. Alternative Dispute Resolution

The first step taken by the Chief Judge is to send a letter to each party inviting the parties to participate in Alternative Dispute Resolution ("ADR"), a voluntary process for resolving the case on terms mutually agreeable to the parties with the assistance of a neutral ALJ. As noted above, the parties may choose to settle the case at any point during an enforcement proceeding, but the ADR process provides the assistance of a neutral ALJ for a limited period of time early in the proceeding.

The ALJ typically conducts the ADR process by speaking with the parties jointly by telephone. The ALJ may also speak with each party separately, which is only permissible during ADR and is not permissible if the parties are in litigation. During any discussions with the ALJ, a party may request that the ALJ confidentially evaluate its position and the likelihood that it would prevail at a hearing. The ALJ may request that the parties exchange information and produce documents to facilitate settlement. Any information or documents disclosed during this process are treated confidentially and, because they are not filed, do not become part of the official case record, and cannot be viewed by any future ALJ conducting litigation with the parties.

Should a party file a Motion during the ADR process upon which the other parties agree, the ALJ may refer it to the Chief Judge for issuance of an Order. Should a party file a Motion during the ADR process that is contested by the other parties, a ruling on the Motion will be issued by either the Chief Judge or the ALJ assigned to preside after the ADR period is terminated.

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[36] This requirement is discussed in greater detail in the section of this Guide entitled "Motions."

[37] Section 22.21(a) of the Rules of Practice, 40 C.F.R. § 22.21(a).

To participate in the ADR process, each party is required to affirmatively assent by emailing, calling, or faxing the legal staff assistant of the Chief Judge before the deadline set forth in the invitation letter. Should any party fail to respond by this deadline, the parties will be treated as having declined to participate in ADR and the case will be assigned for litigation. When all parties affirmatively assent to participate, the Chief Judge assigns an ALJ to conduct the ADR process. The process automatically terminates after 60 days. The ALJ may request that the Chief Judge extend ADR for up to 60 days, but under no circumstances may ADR continue for longer than four months. A party may also request that the Chief Judge terminate ADR at any time. Should the parties fail to reach a settlement prior to the termination of ADR, the Chief Judge assigns the case to a different ALJ for resolution of the case through litigation. Because the ADR process is confidential, the ALJ serving as a neutral does not communicate any information about the case to the ALJ subsequently assigned for litigation. Any notes, documents, or other writings created or exchanged during the ADR process are destroyed by the neutral ALJ at the time the case is referred to the Chief Judge for designation of a different ALJ for litigation.

Those parties who decline to participate in the ADR process, or who fail to reach a settlement prior to the termination of ADR, are encouraged to initiate or continue to engage in settlement negotiations during the litigation process.[38] If the parties decline to participate in ADR when it is initially offered and decide later in the proceeding that they wish to try ADR, the parties may file and serve a joint Motion on the litigation ALJ requesting the appointment of a neutral ALJ. Such Motions are rarely granted. However, if sufficiently compelling circumstances warrant, the litigation ALJ will refer the case to the Chief Judge for appointment of a neutral ALJ.

Whether the parties settle a case during or outside the ADR process, the settlement agreement is known as a Consent Agreement and Final Order ("CAFO"). To be complete, a CAFO must be signed by all of the parties, as well as reviewed, approved, and signed by the Regional Administrator of the EPA office that initiated the proceeding.[39] Finally, the CAFO must be filed with Regional Hearing Clerk. This process may take several days or even weeks. Therefore, parties are encouraged to begin any final attempt to settle a case several weeks in advance of a hearing.

D. Assignment of ALJ for litigation

If the parties decline to participate in ADR or fail to reach a settlement prior to the termination of ADR, the Chief Judge issues an "Order of Designation," in which the Chief Judge designates himself or herself or another ALJ to serve as the Presiding Officer for litigation of the case. Parties are expected to begin actively preparing for the hearing as soon as the Chief Judge assigns the case to an ALJ for litigation.

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[38] Section 22.18(b)(1) of the Rules of Practice, 40 C.F.R. § 22.18(b)(1).

[39] Section 22.18(b)(2) of the Rules of Practice, 40 C.F.R. § 22.18(b)(2).

E. Prehearing Information Exchange

Shortly after the Chief Judge designates an ALJ to preside over the litigation of the case, the ALJ issues a "Prehearing Order" directing the parties to prepare for the hearing and setting specific deadlines for prehearing procedures. The prehearing procedures applicable in enforcement proceedings are designed to have the parties compile and share information so that surprises at the hearing are avoided. In other words, the mechanisms in a Prehearing Order should ensure that parties will, in advance of the hearing, have not only adequate notice of the contested issues in the case, but also the opportunity to thoroughly prepare to address those issues at the hearing. To that end, the Rules of Practice require each party to submit a "Prehearing Information Exchange" or "Prehearing Exchange."[40] The Prehearing Exchange in enforcement proceedings is equivalent to "discovery" in federal court cases. To make sure that the parties share the information as directed, the Prehearing Order directs that at the hearing, the parties will be prohibited from presenting any information that they did not previously exchange.[41]

Parties must carefully comply with the instructions given to them in the Prehearing Order for their own case. Each Prehearing Order may be different. However, the parties typically must include the following information in their Prehearing Exchanges:

- ☑ **Witnesses.** The parties must identify the witnesses they intend to call to testify at the hearing in support of their cases and provide a brief narrative summary of each witness's expected testimony.[42] The narrative summary should state the witness's job title, his or her relationship to the case, the contested issues that he or she will address in his testimony, and whether the witness is a "fact witness," an "expert witness," or both. A fact witness testifies as to what he or she personally observed. An expert witness provides opinions regarding a subject in which he or she has specialized knowledge based on his or her education, experience, or training. For each fact witness, the narrative summary should state the facts to which the witness will testify. For each expert witness, the narrative summary should state the subject of expertise to which he or she will testify and the opinion he or she will provide. The Prehearing Order typically requires parties to include a resume or curriculum vitae for any expert witness a party intends to call at hearing. If the Respondent does not intend to call any witnesses to testify, it is required to state in its Prehearing Exchange that no witnesses will be called.[43] If the Respondent intends only to cross examine the witnesses called by the Complainant, the Respondent is required to state that intention in its Prehearing Exchange.

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[40] Section 22.19(a)(1) of the Rules of Practice, 40 C.F.R. § 22.19(a)(1).

[41] Section 22.19(a)(1) of the Rules of Practice, 40 C.F.R. § 22.19(a)(1).

[42] Section 22.19(a)(2) of the Rules of Practice, 40 C.F.R. § 22.19(a)(2).

[43] Section 22.19(a) (2) of the Rules of Practice, 40 C.F.R. § 22.19(a)(2).

- ☑ **Exhibits.** The parties must provide copies of all of the exhibits they intend to introduce into evidence at the hearing in support of their case.[44] Each exhibit should be labeled numerically or alphabetically (e.g. "Exhibit 1" or "Exhibit A") and separated by dividers with tabs marking the exhibit labels. The pages of each exhibit should be numbered if not already numbered. If the Respondent does not intend to introduce any exhibits into evidence at the hearing, it is required to state that no exhibits will be introduced.

- ☑ **Penalty.** If the Complainant proposed a specific penalty amount in the Complaint, the Complainant must explain in its Prehearing Exchange how it calculated the proposed penalty, and the Respondent must explain in its Prehearing Exchange why the proposed penalty should be reduced or eliminated.[45] If the Complainant did not propose a specific penalty amount in the Complaint, each party must include in its Prehearing Exchange any factual information it considers relevant to the assessment of the penalty, and within 15 days of the Respondent filing its Prehearing Exchange, the Complainant must file a document specifying a proposed penalty and explaining how the proposed penalty was calculated.[46]

- ☑ **Hearing Location.** Each party is required to identify the city or county in which it would prefer the hearing to be held.

- ☑ **Time Needed.** Each party is required to estimate the amount of the time needed to present its direct case.

- ☑ **Specific Responses.** Each party is required to respond to any specific questions addressed to it in the Prehearing Order.

Like any other document a party wishes the Presiding Officer to consider, each party's Prehearing Exchange must be filed with the appropriate Regional Hearing Clerk and served on the other parties and the presiding ALJ. The parties are obligated to file and serve their Prehearing Exchanges on or before the dates set forth in the Prehearing Order, even if the parties are simultaneously negotiating a settlement or have drafted a CAFO; the other parties in the case have failed to comply with the filing deadlines for their Prehearing Exchanges; or a Motion submitted by one of the parties is pending before the presiding ALJ. The presiding ALJ may issue an Order to Show Cause or a Default Order as a result of a party's failure to file and serve a complete Prehearing Exchange by the filing deadline. A party is not required to file and serve its Prehearing Exchange by the deadline set in the Prehearing Order only when 1) the parties have obtained the appropriate signatures on a CAFO and filed it with the Regional Hearing Clerk on or before the filing deadline for its Prehearing Exchange; or 2) the presiding ALJ has granted the party's Motion for Extension of Time to file the Prehearing Exchange.

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[44] Section 22.19(a)(2) of the Rules of Practice, 40 C.F.R. § 22.19(a)(2).

[45] Section 22.19(a)(3) of the Rules of Practice, 40 C.F.R. § 22.19(a)(3).

[46] Section 22.19(a)(4) of the Rules of Practice, 40 C.F.R. § 22.19(a)(4).

In addition to laying out the requirements of a Prehearing Exchange, a Prehearing Order will set the requirements for what is called "motion practice," or the proper way to make requests of the Judge or another party by the filing of a motion. For example, after the parties have submitted their Prehearing Exchanges, a party may want to file and serve a document entitled "Motion *in Limine*" in order to ask the Judge to prevent another party from introducing certain testimony or an exhibit at the hearing, on the basis that it is irrelevant, immaterial, unduly repetitious, unreliable, or lacking in probative value. (Note that the ALJs prefer, however, to postpone ruling on the admissibility of proposed testimony or exhibits until the hearing.)

After the parties have submitted their Prehearing Exchanges, a party may seek additional information that could help its case from another party and its proposed witnesses. First, the party should courteously ask the other party for the information. The Respondent may also request information from the Complainant by submitting a written request pursuant to the Freedom of Information Act ("FOIA") at www.epa.gov/foia. Should the other party fail to provide the requested information voluntarily, the Rules of Practice allow the party to seek the requested information by filing and serving a document entitled "Motion to Compel Discovery."[47] Also, the ALJ may have the authority to issue a subpoena, if authorized by the statute at issue.

Occasionally, a party is required to submit a document in its Prehearing Exchange or in response to a request for information by another party that contains "confidential business information." Confidential business information is information that a business considers confidential and actively protects, information that is not required to be disclosed by statute, and information that if made public would likely result in substantial harm to the business's competitive position. To prevent confidential business information from becoming available to the public, the party may file and serve a document containing such information under seal by sending a copy of it to the Regional Hearing Clerk, the other parties, and the presiding ALJ in a separate sealed envelope, marked "confidential business information." The party should attach to the outside of the envelope 1) a cover letter requesting that the enclosed information be treated as confidential business information and that Complainant refer it to the appropriate office of EPA for a determination that it is entitled to confidential treatment pursuant to 40 C.F.R. Part 2 Subpart B; and 2) a copy of the document with the confidential business information "redacted," or deleted. The party may delete the information either by making a copy with the information blocked out or by deleting the information and inserting the words "confidential business information deleted" in brackets in those areas where the information occurs in the document. A party may file and serve documents that contain personal information, such as social security numbers or personal income tax returns, in the same manner.

Unless the appropriate office of EPA determines that the information is not entitled to confidential treatment, the presiding ALJ stores the sealed envelope submitted by the party in a

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[47] Motions to Compel Discovery are discussed in greater detail in the section of this Guide entitled "Motions."

locked cabinet, protected from public disclosure and accessible only to the ALJ and certified staff of the OALJ, and reviews the document in his or her chambers as necessary. The redacted document is available to the public.[48] If any confidential business information may be addressed at the hearing, the party may file and serve a document entitled "Motion for a Protective Order" requesting that parts of the hearing be closed to the public and that those parts of the record be protected from unauthorized disclosure.

As noted above, a party is prohibited from either calling a witness to testify at the hearing whose name and summary of expected testimony it did not previously exchange or introducing an exhibit for admission into evidence at the hearing that it did not previously exchange.[49] Accordingly, if a party learns that any information contained in its Prehearing Exchange or a response to a request for information is incomplete, inaccurate, or outdated, the party must promptly supplement or correct its Prehearing Exchange or the response.[50] The presiding ALJ typically requires a party to file a document entitled "Motion to Supplement the Prehearing Exchange,"[51] along with the additional or corrective information. However, if the hearing is less than 15 days away, supplementation of the Prehearing Exchange is only possible if you provide a very compelling reason why the information has not been provided sooner.[52] Where the party did not supplement its Prehearing Exchange promptly or where the information contained in its Prehearing Exchange is not incomplete, outdated, or inaccurate, the presiding ALJ may deny the Motion, particularly when the party filed the Motion in bad faith, in an effort to delay the proceeding, or in an effort to unduly prejudice the other parties

By exchanging information at this stage of the proceeding, each party is merely proposing that it will present that information at the hearing in support of its case. The information will not necessarily be "admitted into evidence," or accepted by the presiding ALJ into the official case record for consideration when it is introduced by the party at the hearing, however. It also cannot be treated as an evidentiary fact in subsequent motions. In order for the presiding ALJ to admit information into evidence in enforcement proceedings, a party is required to elicit witness testimony demonstrating that the information is relevant, material, not unduly repetitious, reliable, and of "probative value," or useful for proving an element of the party's case.[53]

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[48] Section 22.5(d)(4) of the Rules of Practice, 40 C.F.R. § 22.5(d)(4).

[49] Section 22.19(a)(1) of the Rules of Practice, 40 C.F.R. § 22.19(a)(1).

[50] Section 22.19(f) of the Rules of Practice, 40 C.F.R. § 22.19(f).

[51] Motions to Supplement the Prehearing Exchange are discussed in greater detail in the section of this Guide entitled "Motions."

[52] Section 22.22(a)(1) of the Rules of Practice, 40 C.F.R. § 22.22(a)(1).

[53] Section 22.22(a)(1) of the Rules of Practice, 40 C.F.R. § 22.22(a)(1).

F. Order Scheduling Hearing

Shortly after the parties file and serve their Prehearing Exchanges, the presiding ALJ issues an "Order Scheduling Hearing," in which the ALJ directs the parties to prepare a joint list of "stipulations," or matters upon which the parties agree. Because the time allotted for a hearing is limited, parties are strongly encouraged to stipulate (agree) to any matters that cannot reasonably be contested in order to ensure that the hearing is efficient, concise, and focused solely on those issues actually disputed by the parties. Parties may stipulate to facts; the authenticity,[54] content,[55] and/or admissibility[56] of exhibits; and any written direct testimony of a witness that a party submitted in its Prehearing Exchange.[57] Parties are required to record these stipulations in a document entitled "Joint Stipulations," which both parties sign. The parties are then required to file and serve it, like any other document submitted in the course of the proceeding, by the deadline set by the presiding ALJ in the Order Scheduling Hearing or, in some cases, the Prehearing Order. If the parties are unable to stipulate to any facts, exhibits, or testimony, the parties are required to file a statement to that effect by the deadline. Should the parties agree to additional stipulations after the deadline, the parties may file and serve those stipulations any time before the hearing or offer the stipulations at the hearing.

The Order Scheduling Hearing also sets the date, time, and location of the hearing. The presiding ALJ is required to provide the parties at least 30 days notice of the time and place of the hearing.[58] In choosing the location of the hearing, the ALJ considers the preferences stated by the parties in their Prehearing Exchanges. Typically, however, the ALJ decides to conduct the hearing in a federal or state courthouse located in the county where the Respondent resides or conducts the business that is the subject of the Complaint, or in another county requested by the Respondent,

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[54] A stipulation as to an exhibit's authenticity is an agreement that the exhibit is a genuine copy and that no questions exist as to what it is, who wrote it, when or where it was written, and whether it has been altered. Unless the parties have stipulated to the authenticity of an exhibit, a party is obligated to establish its authenticity at the hearing by eliciting witness testimony that demonstrates that the exhibit is what the party says it is. Thereafter, the ALJ will admit the exhibit into evidence if it meets the relevance standard.

[55] A stipulation as to an exhibit's content is an agreement that what appears on or is written in the document is true and accurate.

[56] A stipulation as to an exhibit's admissibility is an agreement that the exhibit is relevant, material, not unduly repetitious, reliable, and of probative value to an issue in the case and may be admitted by the ALJ into evidence.

[57] Pursuant to Section 22.22(c) of the Rules of Practice, 40 C.F.R. § 22.22(c), a party may seek to admit into evidence at a hearing the written testimony of a witness, in lieu of oral direct testimony, as long as the witness is present at the hearing and available for cross examination. Like other testimony and exhibits the party intends to present at the hearing, the written testimony must be included in the party's Prehearing Exchange.

[58] Section 22.21(b) of the Rules of Practice, 40 C.F.R. § 22.21(b).

depending on the location of the parties' witnesses and counsel.[59] The ALJ also typically schedules the hearing to begin no earlier than 9:00 a.m. and to continue no later than 5:00 p.m. However, the ALJ may schedule the hearing to begin earlier and/or continue later for the convenience of the parties or the witnesses, or to ensure that the hearing concludes before the courtroom reservation ends.

G. Prehearing Conference

Commonly, about a month prior to the hearing, the presiding ALJ or one of his or her staff attorneys conducts a "Prehearing Conference" by telephone with the parties. The purpose of the Prehearing Conference is to discuss the upcoming hearing and any inquiries the parties may have.[60] In particular, the ALJ or his or her staff attorney may inquire as to the progress the parties have made in settling the case; familiarize the parties with the procedures applicable during the hearing; inquire as to the accommodation necessary for the parties or witnesses at the hearing, such as a translator or wheelchair access; and identify the contested issues to be addressed at the hearing.[61]

H. Evidentiary Hearing

As noted above, an administrative hearing is the equivalent of a trial in federal court in that it is a formal process of presenting witness testimony and exhibits in an orderly and efficient manner through direct and cross examination before an adjudicator. Administrative hearings are generally open to the public, unless a party has filed, and the ALJ has granted, a Motion for a Protective Order to close to the public those parts of the hearing in which the party intends to present confidential business information. A court reporter is required to be present at the hearing in order to transcribe the words spoken by the presiding ALJ, the parties, and the witnesses into written form.[62] The Regional Hearing Clerk typically reserves a court reporter.

Parties are expected to thoroughly organize their cases, witnesses, and exhibits prior to the start of the hearing. Each party should prepare five complete sets of the exhibits it intends to introduce into evidence at the hearing: one set for itself; one for the presiding ALJ; one for the opposing party; one for witnesses to use during their testimony; and one for the court reporter, who transmits it to the Regional Hearing Clerk to be retained in the official case file. Parties should carefully review each set of exhibits prior to the hearing to confirm that the sets are complete and that the documents are legible. Exhibits should be identified as "Complainant's" or "Respondent's" and labeled numerically or alphabetically (e.g. "Respondent's Exhibit 1" or "Respondent's Exhibit A"). Exhibits which both parties intend to use may be identified as "Joint" and labeled numerically or alphabetically (e.g. "Joint Exhibit 1" or "Joint Exhibit A"). Exhibits

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[59] Section 22.21(d) of the Rules of Practice, 40 C.F.R. § 22.21(d).

[60] Section 22.19(b) of the Rules of Practice, 40 C.F.R. § 22.19(b).

[61] Section 22.19(b) of the Rules of Practice, 40 C.F.R. § 22.19(b).

[62] Section 22.25 of the Rules of Practice, 40 C.F.R. § 22.25.

should be separated by dividers with tabs marking the exhibit labels, and the first page of each exhibit should also be marked with the exhibit label. Parties are strongly encouraged to keep the same labels on the exhibits as they had in the parties' Prehearing Exchanges, even if this practice results in gaps in the exhibit labels. In addition, the pages of each exhibit should be numbered if not already numbered.

Once the hearing commences, parties are expected to arrive in the courtroom every day at least half an hour before the hearing is scheduled to begin in order for any preliminary matters that arise to be handled expeditiously and not delay the start of the hearing for the day. Parties are also expected to wear business dress attire and maintain appropriate civility and decorum at the hearing. In addition, each party is expected to stand when questioning a witness, making "objections," protesting the admissibility of evidence, or otherwise addressing the presiding ALJ.

Each party may make an "opening statement," in which the party outlines the case for the ALJ. The Complainant delivers its opening statement first. The Respondent may deliver its opening statement immediately following the Complainant, or before Respondent presents its case.

Following the opening statements, the Complainant presents it case to the ALJ through the "direct examination," or questioning, of its witnesses. Direct examination is performed to elicit facts and introduce exhibits through a witness's testimony, in order for the facts and the exhibits to be admitted into evidence. After Complainant examines its first witness, the Respondent may "cross examine" that witness.[63] During cross examination, the Respondent should ask questions that elicit facts favorable to the Respondent, and/or that damage (or "impeach") the credibility of the witness, in order to weaken any testimony unfavorable to the Respondent. Following cross examination, the Complainant may choose to perform a "redirect examination" of that witness, which offers the witness the opportunity to explain any damaging testimony that the Respondent elicited on cross examination. This process may be repeated for each of Complainant's witnesses.

Next, the Respondent presents its case in the same fashion. Often, the simplest way for each party to present the facts and exhibits in support of its case is in chronological order. Whatever method a party uses, it must ensure that it has established through the testimony of its witnesses the fundamental elements (who, what, where, when, and how) of its case.

During the course of the hearing, the ALJ may admit into the record the facts and exhibits presented through the testimony of each party's witnesses as long as they were previously exchanged by the parties and are relevant, material, not unduly repetitious, reliable, and of probative value to the issues disputed by the parties.[64] While each party is questioning a witness, the opposing party may object to the admissibility of the facts or the exhibits being introduced by asserting that the testimony or exhibits were not previously exchanged by the parties or challenging their relevance, materiality, repetitiveness, reliability, and probative value. Typically,

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[63] Section 22.22(b) of the Rules of Practice, 40 C.F.R. § 22.22(b).

[64] Section 22.22(a)(1) of the Rules of Practice, 40 C.F.R. § 22.22(a).

the presiding ALJ will immediately rule on the objection and either admit the challenged facts or exhibits into evidence or deny them.

Following the presentation of their cases, the parties may deliver "closing arguments," in which the parties reiterate the evidence presented in support of their cases. Typically, however, the presiding ALJ prefers the parties to submit "post-hearing briefs" in place of closing arguments and sets a schedule for the filing of these documents at the close of the hearing.

I. Post-hearing Briefs

Some time after the conclusion of the hearing, the court reporter will provide the transcript of the hearing to the Regional Hearing Clerk and the presiding ALJ.[65] The Regional Hearing Clerk subsequently notifies the parties of the availability of the transcript and provides a copy to each party who pays for the cost of reproduction.[66] The presiding ALJ will require the parties to file and serve their post-hearing briefs no earlier than 30 days after the transcript is available to the parties.[67] In the post-hearing briefs, parties are expected to reiterate their arguments and identify the evidence admitted at the hearing that supports those arguments. In doing so, they should cite to the transcript and the exhibits as much as possible.[68]

J. Initial Decision

In the Initial Decision, the presiding ALJ sets forth his or her rulings on any factual issues disputed by the parties; on whether, based on those factual determinations, the Respondent violated the provisions of law and/or regulations as alleged in the Complaint; and on any civil penalty to impose against the Respondent for violations found to have occurred.[69] In arriving at these decisions, the presiding ALJ considers whether, based on the evidence presented by the parties at the hearing, each party satisfied its "burden of presentation" and "burden of persuasion." A party's burden of presentation is the burden of providing a certain quantity of evidence in support of its case. A party's burden of persuasion is the burden of providing a certain quality of evidence in support of its case. In enforcement proceedings before the ALJs, the burden of persuasion is "preponderance of the evidence,"[70] meaning that a party is required to show that at least slightly more than 50 percent of the evidence (a preponderance) weighs in its favor. The Complainant has the burden of presentation and persuasion that the violations occurred as charged in the Complaint

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[65] Section 22.25 of the Rules of Practice, 40 C.F.R. § 22.25.

[66] Section 22.25 of the Rules of Practice, 40 C.F.R. § 22.25.

[67] Section 22.26 of the Rules of Practice, 40 C.F.R. § 22.26.

[68] Section 22.26 of the Rules of Practice, 40 C.F.R. § 22.26.

[69] Section 22.27(a) of the Rules of Practice, 40 C.F.R. § 22.27(a).

[70] Section 22.24(b) of the Rules of Practice, 40 C.F.R. § 22.24(b).

and that the proposed penalty is appropriate.[71] The Respondent has the burden of presentation and persuasion for any defenses it raised to the allegations set forth in the Complaint.[72]

The process of evaluating the evidence with regards to these standards and then drafting the Initial Decision is laborious, and the parties should not expect the ALJ to issue it until several months after the hearing, depending on the complexity of facts and law in controversy. The Initial Decision becomes the final decision of EPA 45 days after its service upon the parties, and either party may appeal the Initial Decision.

K. Appeal

A party who objects to a ruling or the recommended penalty contained in the Initial Decision may appeal it to the Environmental Appeals Board ("EAB"). The EAB functions as an administrative appeals court within EPA. It consists of four Environmental Appeals Judges and a staff of attorneys and support personnel who assist them.

In order to request a review of a ruling or the recommended penalty, a party is required to file a notice of appeal and an accompanying appellate brief with the EAB within 30 days after the Initial Decision has been served on the parties.[73] The EAB may also choose to review an Initial Decision on its own initiative.[74] The practices and procedures applicable in a proceeding before the EAB are described in detail in the Citizen's Guide and Practice Manual available at the EAB website at http://www.epa.gov/eab/.

VI. Motions

At any stage of an enforcement proceeding, a party may request that the ALJ take a particular action in an enforcement proceeding by submitting a written document entitled "Motion for [the particular action the party wishes the Judge to take]," e.g. Motion for an Extension of the Proceedings, Motion to File Out of Time, Motion to Dismiss, Motion to Strike Affirmative Defenses, etc. Like any other document a party wishes the Judge to consider, motions must be filed with the Regional Hearing Clerk and served on the other parties and the Judge's office.

A. Format of Motions

Motions must be formatted in the same manner as other documents submitted during the course of an enforcement proceeding, as explained above. See the Prehearing Order and the Rules of Practice for specific instructions. The Rules of Practice require the following of all motions:

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[71] Section 22.24(a) of the Rules of Practice, 40 C.F.R. § 22.24(a).

[72] Section 22.24(a) of the Rules of Practice, 40 C.F.R. § 22.24(a).

[73] Section 22.30(a)(1) of the Rules of Practice, 40 C.F.R. § 22.30(a)(1).

[74] Section 22.30(b) of the Rules of Practice, 40 C.F.R. § 22.30(b).

☑ The party submitting the Motion, the "moving party," must explicitly state the action that the party wishes the Judge to take and provide specific reasons for the request.[75]

☑ The moving party must attach to the Motion any documents upon which the moving party relies as support for the Motion.[76]

The parties are urged to follow these additional requirements as well:

☑ Before submitting a Motion, the moving party should contact the other parties in the case to ask whether they agree with the request made in the Motion. The moving party should then note the other parties' response in the Motion itself. However, remember that consent of the other parties does not assure that the ALJ will grant the Motion.

☑ Any documents attached to the Motion should be labeled numerically or alphabetically (e.g. "Attachment 1" or "Attachment A").

☑ The moving party does not need to attach another copy of a document mentioned in the Motion if that document was already submitted in the case, but be sure that you refer to that document clearly.

B. Responses to Motions

When a party files a Motion and the other party opposes it, the other party is required to file and serve a written "Response,"[77] which conforms to the same requirements for other documents set forth above. The Response must be received within 15 days of the Motion's filing (20 days if the Motion was served by first class mail). The Response must be accompanied by any documents upon which the party relies as support for the Response,[78] labeled numerically or alphabetically (e.g. "Attachment 1" or "Attachment A"), unless a particular document was already submitted in the case.

C. Replies to Responses

The party who filed the original Motion has the opportunity to respond to any Response from the opposing party. This response is called the Reply. A Reply is not required. If the moving party chooses to file a Reply, it must be received with 10 days of the Response's filing (15 days if the Response was served by first class mail). The Reply should address only those issues raised in the Response and should not expand the scope of the Motion or add new issues.

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[75] Sections 22.16(a)(2) and (3) of the Rules of Practice, 40 C.F.R. §§ 22.16(a)(2) and (3).

[76] Section 22.16(a)(4) of the Rules of Practice, 40 C.F.R. § 22.16(a)(4).

[77] Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b).

[78] Section 22.16(b) of the Rules of Practice, 40 C.F.R. § 22.16(b).

D. Orders on Motions

Once the Reply has been received (or the time period to submit a Reply has expired) the ALJ may issue an Order on the Motion, which decides whether the requested action will be taken. Orders may grant or deny a Motion in its entirety, or the ALJ may grant part of the requested relief and deny the rest. The OALJ makes every attempt to decide Motions quickly; however, nothing in the Rules of Practice requires the ALJ to rule on a Motion before the hearing. Sometimes the ruling on a Motion may be significantly delayed, particularly if the issue addressed in the motion does not need immediate consideration, or if the ALJ is waiting on other related information or filings before making his or her determination.

Parties should not ignore any intervening deadlines simply because it is waiting for an Order on a previously filed Motion. The deadlines still apply. (This is true even where the Motion seeks an extension of time for some purpose.) If you wish to confirm that the ALJ has received the Motion or any other document filed, you may contact the OALJ.

E. Motions Commonly Submitted in Enforcement Proceedings

The parties may submit a wide variety of Motions during the course of an enforcement proceeding, including the following:

1. Motion for Extension of Time

If there is an approaching deadline and you do not believe you can meet that deadline, you must ask for additional time. This request usually must come in the form of a Motion for Extension of Time. In the Motion you should explain why more time is necessary and why you are not able to comply with the original deadline. If all parties agree to your Motion for Extension, it has a greater likelihood of being granted. ****Do not file a Motion for Extension if the deadline has already passed.** If the deadline has passed, you must first file a Motion for Leave to File Out of Time.

2. Motion for Leave to File Out of Time

If you have already missed a deadline, but still wish to submit something to the ALJ, you must file a Motion for Leave to File Out of Time. In it you must ask the ALJ for permission to file a something outside the normal time period allowed for such filings. The justification for missing a deadline must be greater than the justification for getting an extension of time.

3. Motion to Amend the Complaint/Answer

Before you file an Answer, the EPA may amend its Complaint once without asking permission from the Judge. Once an Answer has been filed, and the case has been transferred to the OALJ, any party that wishes to make changes to their pleadings (Complaint or Answer) must have permission to do so. If you wish to amend your Answer, you must file a Motion for Leave to Amend [Respondent's] Answer. In that Motion, you should explicitly state the changes you wish to make and explain why these changes are necessary. You must submit a Proposed Amended

Answer as an attachment to the Motion so that the parties and the ALJ can see exactly how you wish to alter the pleadings. It is important to be specific when seeking changes to the pleadings because these documents set the basic parameters of the case and affect the burdens on each party and the relief that may be requested.

If you received an Amended Complaint, you must file an Answer to the Amended Complaint, even if you do not intend to change any of your responses.

4. Motion to Supplement the Prehearing Exchange

Before the hearing, you will be given ample time to submit all the documentary evidence you intend to present at hearing as well as a list and description of the witnesses you wish to have testify (and a summary of their intended testimony). This Prehearing Exchange will be specified in the Prehearing Order issued early in the case by the Presiding ALJ. In some cases, new information comes to light or you must correct outdated information after you have already filed your Prehearing Exchange. In these instances, you may wish to supplement your Prehearing Exchange.[79] To do so, you must file a Motion to Supplement the Prehearing Exchange, which must have the new documents or witness information attached. You must also explain why this information was not provided during the original Prehearing Exchange. If the hearing is less than 15 days away, you do not need to file a separate Motion to Supplement, but you must provide a very compelling reason why the information has not been provided sooner.

5. Motion for Discovery

Unlike Federal Court, discovery in administrative proceedings is limited.[80] The Prehearing Exchange serves as the main way the parties share information before hearing. In some cases, however, it may be appropriate for the ALJ to order additional discovery. If you believe that your case requires additional information that you cannot obtain from the opposing party voluntarily or was not included in its Prehearing Exchange, you will need to file a Motion for Other Discovery (or Motion to Compel Discovery) in order to get permission to ask the other party to produce the information you seek. The ALJ may only grant such a Motion if it will not cause unreasonable delay or an unreasonable burden on the other party, and the information sought is relevant to the case and most reasonably obtained from the opposing party who has refused to provide it voluntarily.

In some cases, it may be appropriate to question the other party's witness before the hearing (usually an oral deposition). In order to justify a deposition, the moving party must also

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[79] As explained earlier, any document or witness not identified in the Prehearing Exchange may be excluded at hearing unless the party who offers that evidence has a particularly good justification for the failure to include the evidence in the Prehearing Exchange.

[80] Section 22.19(e) of the Rules of Practice, 40 C.F.R. § 22.19(e).

show that the information it seeks can't be obtained through an alternative method or that there is a substantial reason to believe that the testimony won't be preserved until the hearing.

In some cases, the statute that EPA seeks to enforce will give the ALJ authority to issue subpoenas (orders compelling the attendance of a witness or the production of documents). A Motion for Other Discovery and Subpoena must not only meet the requirements of Section 22.19(e)(1), but the Motion must show the necessity of a subpoena as well. For witnesses summoned by subpoena, the moving party will pay the expenses, fees, and mileage incurred.

No party may ask the ALJ to order the production of information developed for settlement purposes.

The Rules of Practice don't affect a party's right to seek request Agency records under the Freedom of Information Act ("FOIA"). However, the parties should recognize that FOIA requests take significant time and the ALJ will not stay the proceeding while you wait for a FOIA request to be answered.

If you receive a Motion to Compel Discovery, you must respond to the Motion and produce the requested information.[81] If you do not, the ALJ may find that the information you have withheld is adverse to your position, exclude the information from evidence at hearing, or even issue a Default Order against you. If you feel that the information sought is not relevant, the request is too big a burden, or the request doesn't comply with the Rules of Practice, you must state so in your Response. If you fail to respond at all, the ALJ may find that you have waived your right to object.

6. Motion for Accelerated Decision

Accelerated Decision is the administrative equivalent of Summary Judgment in Federal Court.[82] A Motion for Accelerated Decision asks the ALJ to decide part or all of the case based solely on the documentation and argument submitted to date. Such a Motion may be granted where the parties do not dispute the real facts at issue in the case. Although such Motions are rarely granted, they may be appropriate where the parties' only disagreement is a matter of law, which the ALJ can decide without the aid of any factual witnesses of documentary evidence.

If you believe the dispute is one that can be resolved by a Judge deciding "what the law means" as opposed to what actually happened in a certain situation, then you may file a Motion for Accelerated Decision and ask the ALJ to rule on all or part of the pending issues in the case. If you receive a Motion for Accelerated Decision and feel that there are factual issues that must be worked out at hearing, you should submit a Response and explain the basis for your belief. If you

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[81] If, however, you receive this request prior to the Prehearing Exchange deadline(s), you may file a Response opposing the Motion on the basis that it is premature. See Rule 22.19(e)(1).

[82] Section 22.20(a) of the Rules of Practice, 40 C.F.R. § 22.20(a).

admit that the violation occurred and that you are responsible for it, but you dispute the assessment of a penalty (or the amount of the proposed penalty), simply state that in your Response.

Where a genuine issue of material fact is demonstrated by a Response, the ALJ must deny the Motion and wait until hearing to resolve the dispute. You may include a sworn statement ("affidavit") from a potential witness with your Response as support for your position.

7. Motion to Dismiss

If you believe that the administrative proceeding against you was improperly stated in the Complaint (either in part or as a whole) you may file a Motion to Dismiss.[83] The Motion to Dismiss is only appropriate where the Agency has failed to state the basic requirements of the claim against you. When reviewing a Motion to Dismiss, the ALJ must assume that everything in the Complaint is true. Only if the allegations in the Complaint are incomplete, improper, or fail to actually state a cause of action against you, may the ALJ grant such a Motion. You may attach documents to your Motion to demonstrate that the Agency's allegations, even if true, will not place liability on you. Remember, that bankruptcy, insolvency, lack of knowledge of the law, or lack of intent to violate the law, are not adequate reasons to dismiss a complaint.

8. Motion for Default

Where a party has failed to do something it is required to do (file a document, participate in a call, appear at hearing, respond to a motion, etc.) the other party may file a Motion for Default. If granted, a Motion for Default ends the case and places liability on the defaulting party for anything that was accurately alleged in the Complaint. If you receive a Default Order, you will be required to pay the full amount of the penalty proposed within 30 days. This is a harsh consequence and all effort should be made to avoid such an Order. If you receive Motion for Default (or an Order to Show Cause from the ALJ) you must file a Response explaining why you have not completed the required action. This Response must be filed with 15 days (20 days if service of the Motion was by mail). If you receive an Order to Show Cause from the ALJ, your response must be *received* by the ALJ before the deadline set forth in the Order.[84]

VII. Frequently Asked Questions

Here, the Guide seeks to answer questions frequently asked by parties and the public about enforcement proceedings before the ALJs:

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[83] Section 22.20(a) of the Rules of Practice, 40 C.F.R. § 22.20(a).

[84] Section 22.17 of the Rules of Practice, 40 C.F.R. § 22.17.

A. Am I required to hire a lawyer to represent me in an enforcement proceeding?

You are not required to hire a lawyer to represent you in an enforcement proceeding.[85] You may represent yourself or have a non-lawyer representative. For example, a corporate officer may represent a Respondent that is a corporation and a partner may represent a Respondent that is a partnership. When you represent yourself or are represented by a non-lawyer in an enforcement proceeding, you are appearing "pro se." You or your non-lawyer representative is expected to comply with the same ethical standards required of attorneys, as well as the Rules of Practice and Orders issued by the Presiding Officer. The staff attorney of the presiding ALJ may answer any questions you or your representative have about applicable procedures, but the staff attorney is prohibited from providing legal advice on your case.

While you are not required to hire a lawyer to represent you, doing so can be extremely beneficial, particularly if the Complainant files any Motions or your case proceeds to a hearing. Numerous rules of procedure and evidence apply in enforcement proceedings, and a party's case may be substantially affected by a violation of these rules.

B. How can I be an effective participant in an enforcement proceeding?

You can be an effective participant by:

- ☑ Reading the Rules of Practice, which govern enforcement proceedings before the ALJs. Do not rely solely on guidance documents issued by the OALJ, such as this Guide, because they are provided for informational purposes only and are not binding legal authority.

- ☑ Complying with all of the deadlines set by the Rules of Practice and the ALJ.

- ☑ Consulting the templates included in Appendix 1 of this Guide for forms that you can use as a model in drafting documents you wish to file and serve in an enforcement proceeding.

- ☑ Ensuring that the factual evidence that supports your argument is entered into the record and considered by the ALJ. Provide the names of witnesses, summaries of their expected testimony, and intended exhibits in your Prehearing Exchange and then present the witnesses' testimony and the exhibits at the hearing in an orderly fashion.

- ☑ Reading and identifying for the ALJ any legal authority that supports your argument, including statutes, regulations, and cases. Official, published decisions issued by the EAB serve as "precedent" for ALJs, in that they are usually binding upon subsequent rulings issued by the ALJs. While rulings issued by other ALJs are not binding, they are often considered persuasive. ALJs also may look to decisions issued by federal courts for guidance.

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[85] Section 22.10 of the Rules of Practice, 40 C.F.R. § 22.10.

C. How long do enforcement proceedings take?

Section 555(b) of the Administrative Procedure Act, 5 U.S.C. § 555(b), requires each federal agency to conclude a matter before it "within a reasonable time." Pursuant to that provision, OALJ has a policy of completing its cases within 18 months of receiving cases from the Regional Hearing Clerk. In setting the schedule for prehearing procedures and the date of the hearing, the ALJ will endeavor to process cases swiftly in order to render an Initial Decision within 18 months of receiving the case. The ALJs do not tolerate attempts by parties to delay enforcement proceedings; this includes filing baseless motions or making frivolous arguments.

D. On whom do I serve documents?

If you file a document with the Regional Hearing Clerk before the Answer is filed, you should serve the Motion on the other parties and the Regional Judicial Officer. If you file a document with the Regional Hearing Clerk after the Answer is filed but before the Chief Judge has designated an ALJ to act as Presiding Officer, you should serve the Motion on the other parties and the Chief Judge. If you file a document with the Regional Hearing Clerk after the Chief Judge has designated ALJ for litigation, you should serve the Motion on the other parties and the litigation ALJ.

VIII. Conclusion

The OALJ hopes that you have found this Guide to be a useful introduction to the practices and procedures applicable in enforcement proceedings before the ALJs at EPA. You are encouraged to direct any comments, concerns, questions, or suggestions related to the practices and procedures that apply in proceedings before the ALJs and/or this Guide to OALJ's Managing Attorney, Steven Sarno, at sarno.steven@epa.gov or (202) 564-6245.

Appendix 1:

Document Templates

The OALJ has developed templates for documents routinely filed and served during enforcement proceedings. These templates are provided solely for the guidance of participants in these proceedings. The ALJs will accept documents that do not conform to these templates as long as the documents satisfy the requirements identified in the Rules of Practice.

The following templates are set forth below:

A. Caption
B. Answer
C. Certificate of Service
D. Motion for Extension of Time
E. Motion - Other
F. Prehearing Exchange
G. Subpoena

Template A: Caption

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
[RESPONDENT'S NAME],	**)**	**Docket No. [INSERT NUMBER]**
	)	
Respondent.	**)**	

[DOCUMENT TITLE]

Template B: Answer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
[RESPONDENT'S NAME],	**)**	**Docket No. [INSERT NUMBER]**
	)	
Respondent.	**)**	

ANSWER

Comes now Respondent [insert name], [by and through its counsel], and in Answer to the Administrative Complaint states as follows:

1. Respondent [admits/denies/has no knowledge of] the truth of the allegations made in Paragraph 1 of the Complaint.

[INSERT HERE INDIVIDUAL RESPONSES TO EACH AND EVERY NUMBERED PARAGRAPH OF THE COMPLAINT]

Affirmative Defenses

[INSERT HERE IN SEPARATELY NUMBERED PARAGRAPHS RESPONDENT'S DEFENSES TO THE CLAIMS RAISED IN THE COMPLAINT]

Request for Hearing

Respondent hereby requests a hearing in this matter.

_____
Signature of Respondent

_____
Job Title

_____
Date

Template C: Certificate of Service

CERTIFICATE OF SERVICE

I certify that the foregoing **[INSERT TITLE OF DOCUMENT HERE]**, dated _____, was sent this day in the following manner to the addressees listed below:

Original by Regular Mail to: Regional Hearing Clerk
U.S. EPA - Region __
[INSERT ADDRESS HERE]

Copy by Regular Mail and facsimile to:

Attorney for Complainant: [INSERT NAME AND ADDRESS HERE]

Presiding Judge: The Honorable _____
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Ave. NW
Mail Code 1900L
Washington, D.C. 20005

_____
[INSERT YOUR NAME AND ADDRESS HERE]

Dated: [INSERT DATE HERE]

Template D: Motion for Extension of Time

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
[RESPONDENT'S NAME],	**)**	**Docket No. [INSERT NUMBER]**
	)	
Respondent.	**)**	

MOTION FOR EXTENSION OF TIME

Comes now Respondent [insert name], [by and through its counsel], pursuant to Section 22.7(b) of the Rules of Practice, 40 C.F.R. § 22.7(b), and respectfully requests a ____day extension of time to file its [INSERT NAME OF DOCUMENT HERE] and as good cause therefore states as follows:

[INSERT HERE PARAGRAPH EXPLAINING
THE REASON YOU REQUIRE AN EXTENSION]

Prior to filing this Motion, the undersigned contacted the opposing party as to the extension requested herein and said opponent indicated that it [does/does not] oppose the Motion.

_____
Signature of Respondent

_____
Date

Template E: Motion - Other

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
[RESPONDENT'S NAME],	**)**	**Docket No. [INSERT NUMBER]**
	)	
Respondent.	**)**	

MOTION FOR [THE PARTICULAR ACTION THE PARTY WISHES THE JUDGE TO TAKE]

Comes now Respondent [insert name], [by and through its counsel], pursuant to Section 22.16(a) of the Rules of Practice, 40 C.F.R. § 22.16(a), [OR OTHER RULE AS APPLICABLE] and respectfully requests [INSERT THE PARTICULAR ACTION THE PARTY WISHES THE JUDGE TO TAKE HERE] and as grounds therefore states as follows:

[INSERT HERE PARAGRAPH EXPLAINING
WHY YOU ARE ENTITLED TO THE ACTION YOU SEEK]

Prior to filing this Motion, the undersigned contacted the opposing party as to the extension requested herein and said opponent indicated that it [does/does not] oppose the Motion.

_____
Signature of Respondent

_____
Date

Template F: Prehearing Exchange

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
[RESPONDENT'S NAME],	**)**	**Docket No. [INSERT NUMBER]**
	)	
Respondent.	**)**	

RESPONDENT'S PREHEARING EXCHANGE

Comes now Respondent [insert name], [by and through its counsel], and in response to the Prehearing Order issued in this matter, respectfully submits its Prehearing Exchange, stating as follows:

(A) The names of all expert and other witnesses intended to be called at hearing with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called:

[INSERT LIST AND SUMMARIES HERE]

(B) List of all exhibits intended to be introduced into evidence:

[INSERT NUMBERED LIST HERE AND
ATTACH COPY OF EACH EXHIBIT LISTED]

(C) Statement of Respondent's views on the appropriate place of hearing and an estimate of the time needed to present its direct case:

> The undersigned respectfully suggests that the hearing in this matter be held in [INSERT NAME OF PLACE HERE] and anticipates that presentation of its case will take ___ hours/days. Translation services [ARE/ARE NOT] necessary for testimony and language to be translated is _____.

(D) Response to any other specific requests for information or documents made in the Prehearing Order:

[INSERT EACH REQUEST AND
RESPONSE THERETO HERE]

_____
Signature of Respondent

_____
Date

Template G: Subpoena

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
[RESPONDENT'S NAME],	**)**	**Docket No. [INSERT NUMBER]**
	)	
Respondent.	**)**	

SUBPOENA/SUBPOENA DUCES TECUM

TO: **[**INSERT HERE NAME, TITLE AND ADDRESS OF PERSON TO WHOM THE SUBPOENA IS ADDRESSED]

YOU ARE HEREBY COMMANDED, pursuant to [INSERT APPLICABLE STATUTORY PROVISION AUTHORIZING SUBPOENA, *e.g.* Section 307(a) of the Clean Air Act, 42 U.S.C. § 7607(a)]**,** and Section 22.43(c) of the Rules of Practice, 40 C.F.R. § 22.43(c), TO APPEAR IN PERSON at the following place and times:

DATE AND TIMES: [INSERT DATES/TIMES]

PLACE: [INSERT ADDRESS]

YOU ARE FURTHER COMMANDED:

TO APPEAR IN PERSON before the Administrative Law Judge at the above dates, time and place;

TO TESTIFY then and there under oath, and make truthful response to all lawful inquiries and questions put to you by the Parties to the proceedings; and

TO REMAIN IN ATTENDANCE until expressly excused by the Administrative Law Judge.

YOU ARE FURTHER COMMANDED TO BRING WITH YOU AND PRODUCE at said the earliest time and place identified above the following books, papers, letters or other documentary evidence:

[INSERT LIST OF DOCUMENTS HERE]

PURSUANT TO THE AUTHORITY OF to [INSERT APPLICABLE STATUTORY PROVISION AUTHORIZING SUBPOENA, *e.g.* Section 307(a) of the Clean Air Act, 42 U.S.C. § 7607(a)]**,** FAILURE TO COMPLY WITH THIS SUBPOENA MAY RESULT IN INITIATION OF COURT PROCEEDINGS IN A UNITED STATES DISTRICT COURT AGAINST THE RECIPIENT OF THE SUBPOENA TO COMPEL COMPLIANCE WITH THE SUBPOENA AND ANY FAILURE TO OBEY SUCH ORDER OF THE COURT MAY BE PUNISHED BY SUCH COURT AS CONTEMPT THEREOF.

ISSUED in Washington, D.C., this ____ day of _____, ____. [LEAVE DATE BLANK FOR COMPLETION BY ADMINISTRATIVE LAW JUDGE UPON ISSUANCE].

_____
The Honorable _____
Administrative Law Judge
Office of Administrative Law Judges
Mail Code 1900L
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

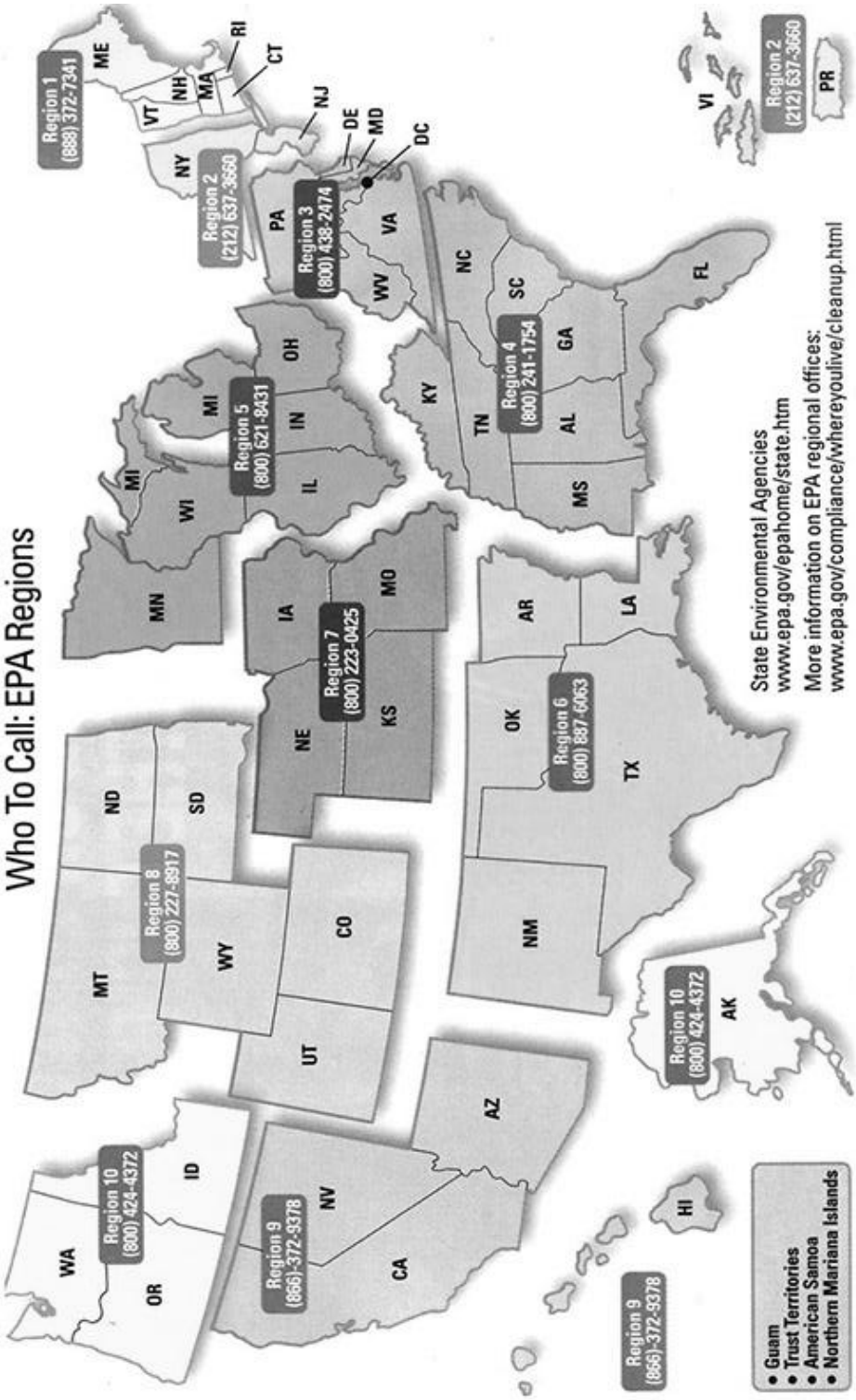
Witness Fees and expenses in the same amounts as are paid to witnesses in the courts of the United States shall be paid by the party upon whose request the subpoena is issued.

This subpoena is to be served in accordance with Section 22.05(b)(1)(i) of the Rules of Practice, 40 C.F.R. § 22.05(b)(1)(i).

Person at whose request this Subpoena was issued:

[INSERT YOUR NAME, ADDRESS,
AND TELEPHONE NUMBER HERE]

Appendix 2: National Map of EPA Regional Offices



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