

PRIVACY ACT STATEMENT

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NOTICE OF DISCLOSURE OF CONFIDENTIAL AND PERSONAL INFORMATION

Waiver of Confidentiality and Consent to Public Disclosure: To the extent that any person files or submits any un-redacted Confidential Business Information (CBI) or Personally Identifiable Information (PII) pertaining to themselves or their client, that person thereby waives any claims to confidentiality and thereby consents to public disclosure by EPA, including posting on the Internet, of all such information they submit. To protect such information against public disclosure, parties must follow the procedures described below.

Legal Authority to Collect Information: EPA's Administrative Law Judges (ALJs) are authorized to preside over EPA's administrative adjudicatory proceedings under the Administrative Procedure Act, 5 U.S.C. § 500 et seq. and 40 C.F.R. Part 22, as well as the various federal environmental statutes that EPA enforces, see 40 C.F.R. § 22.1. In so doing, EPA's Administrative Law Judges are directed to conduct a fair and impartial proceeding, assure that the facts are elicited, adjudicate all issues, and avoid delay. 40 C.F.R. § 22.4(c). More specifically, the ALJs are authorized to, among other things, (1) conduct administrative hearings; (2) rule upon motions, requests and offers of proof and issue all necessary orders; (3) administer oaths and affirmations and take affidavits; (4) examine witnesses and receive documentary or other evidence; (5) order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences; (6) admit or exclude evidence; (7) hear and decide questions of facts, law or discretion; (8) require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings; (9) issue subpoenas authorized by the applicable statute; and (10) "[d]o all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of the issues arising in proceedings." 40 C.F.R. § 22.4(c).

Purpose of Collecting Information: Parties to the administrative adjudicatory proceedings, both EPA as complainant and Respondents defending themselves against EPA's charges, submit documents and information to the judges in order to support their side of the case and advocate for their desired outcome. The judges consider the parties submitted allegations, motions and evidence in order to rule on motions and ultimately to make findings of facts and conclusions of law in deciding on liability and penalties in the cases.

Intended Uses of Collected Information: This proceeding is a matter of public record. All parties should be aware that, unless they follow the specified protective procedures, all documents and information submitted in this proceeding will be made publicly available upon request. 40 C.F.R. § 22.9(a).

Mandatory or Voluntary Submission and Effect of Not Providing Information: In general, the parties voluntarily choose what information they submit and can elect to redact (i.e., remove or obscure) any specific information they wish to keep confidential. As a general rule,

submission of CBI or PII should be minimized. However, in certain instances the parties may need to submit CBI or PII to support or refute a party's factual or legal assertion, for example, financial information may be required to prove or disprove ability to pay a penalty. In those instances where a party submits CBI or PII, that party should redact the sensitive information in accordance with the following procedures.

Procedures to Protect CBI and PII:

In order to protect proprietary rights, personal privacy and other legitimate interests, the following procedures are available to the parties to protect certain information from public disclosure:

- a) Confidential Business Information (CBI).** A party may claim that “business information” filed during the course of a proceeding is entitled to confidential treatment for “reasons of business confidentiality,” as those phrases are defined by 40 C.F.R. § 2.201(c), (e). Such a claim must be raised at the time the document containing the given information is filed and shall be raised in the manner specified by Section 22.5(d) of the Rules of Practice, 40 C.F.R. § 22.5(d) and the regulations in 40 C.F.R. Part 2, Subpart B governing the confidentiality of business information. Pursuant to Section 22.5(d)(2) of the Rules of Practice, the filing party shall file a non-confidential version of the document, wherein the filing party redacts (i.e., removes or obscures) the information claimed to be entitled to confidential treatment and replaces it with notes indicating the nature of the redacted information. The redacted document will be included in the public record. The filing party shall also file under seal an unredacted version of the document, clearly and prominently marked as confidential, which will be retained as part of the case file but not disclosed to the public. Both the redacted and unredacted documents shall be served on the undersigned and the complainant, as well as any party and non-party participant authorized to receive the given information.
- b) Personally Identifiable Information (PII).** The parties are cautioned that, unless redacted, all information filed with the court will be made publicly available. This may include information that can be used to distinguish, trace or identify an individual's identity, including personal information which is linked or linkable to an individual (“personally identifiable information” or “PII”). Thus, the parties are hereby advised not to file, or to redact (i.e., remove or obscure) where filing is necessary, any information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, as well as “sensitive personally identifiable information” (“sensitive PII”), such as Social Security numbers, medical records and personal financial information. For example, personal financial information may be submitted for the purpose of assessing an individual respondent's ability to pay the proposed penalty. Therefore, if a party wishes to file a document in this proceeding that contains PII, the filing party shall file and serve redacted and unredacted versions of the document in the same manner as described above for Confidential Business Information and as specified at Section 22.5(d)(2) of the Rules of Practice, 40 C.F.R. § 22.5(d)(2). The redacted document will be included in the public record. The unredacted document will be retained as part of the case file but not disclosed to the public

The parties are responsible for taking appropriate action to protect information from public disclosure to the extent such protection is available under applicable law. **If a party files information in this proceeding without adhering to the procedures described above and specified in the applicable rules, the information may be made available to the public without further notice to the filing party.**

In addition to the above described redaction procedures, if confidential evidence will be presented at the hearing, the party may file a motion for a protective order, requesting that those parts of the hearing be closed to the public and those parts of the record be protected against unauthorized disclosure. 40 C.F.R. § 22.22(a)(2). Protective orders can also contain terms designating certain exhibits as confidential, prohibiting the parties from disclosing that information to unauthorized persons, requiring witnesses and consultants to sign a confidentiality agreement, providing for storage and destruction of confidential information after the case is completed, and other similar provisions.