

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 4  
WATER DIVISION  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**APPEALING NPDES PERMITS**

If you wish to contest any of the provisions of your final National Pollutant Discharge Elimination System (NPDES) permit, you must file a petition for review with the U.S. Environmental Protection Agency's (EPA) Environmental Appeals Board (EAB) within thirty (30) days after the Regional Administrator served you with notice of the issuance of the final NPDES permit decision under 40 Code of Federal Regulations (CFR) §124.15. The EAB reviews administrative appeals of NPDES permits and issues decisions on such appeals. Subsequent to issuance of an EAB decision, the Regional Administrator will issue another final permit decision which becomes the final agency action for purposes of further judicial review.

If you received notice of this final permit decision by mail, the 30-day period within which you must file any appeal with the EAB begins on the day the notice was sent by EPA (i.e., the day after the postmark date according to 40 CFR § 124.20(a)), and an additional three days are added to the period within which to appeal in order to compensate for mail delay (see 40 CFR § 124.20(d)). If the notice is made by email the 30-day period is not expanded by 3 days.

Any person who filed comments on the draft permit or participated in any public hearing that may have been held pertaining to the draft permit may appeal a final permit by filing a Petition for Review with the Clerk of the EAB. The issues raised in the appeal must have been raised during the public comment period so long as they were reasonably ascertainable. Additionally, any person who failed to file comments or failed to participate in any public hearing on the draft permit may file a petition for review of permit conditions, but only to the extent that such permit conditions reflect changes from the draft permit.

Procedures for appealing permits are specified in 40 CFR § 124.19, as revised in August 2020. 40 CFR § 124.19 is set forth on the following pages. Additional provisions related to appealing permits can be found at 40 CFR § 124.16 (stays of permit conditions), 40 CFR § 124.20 (computation of time), and 40 CFR § 124.60 (issuance and effective date and stays of NPDES permits). All permit appeals must conform to the regulations.

**ENVIRONMENTAL APPEALS BOARD CONTACT INFORMATION**

EAB's mailing address:	Clerk of the Board U.S. Environmental Protection Agency Environmental Appeals Board 1200 Pennsylvania Avenue NW (Mail Code 1103M) Washington, DC 20460-0001
EAB's telephone number:	(202) 233-0122
EAB's fax number:	(202) 233-0121
EAB's website:	<a href="http://www.epa.gov/aboutepa/about-environmental-appeals-board-eab">www.epa.gov/aboutepa/about-environmental-appeals-board-eab</a>

## **40 CFR § 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.**

### **(a) Petitioning for review of a permit decision.**

- (1) Initiating an appeal.** Appeal from a RCRA, UIC, NPDES, or PSD final permit decision issued under § 124.15 of this part, or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter, is commenced by filing a petition for review with the Clerk of the Environmental Appeals Board within the time prescribed in paragraph (a)(3) of this section.
- (2) Who may file?** Any person who filed comments on the draft permit or participated in a public hearing on the draft permit may file a petition for review as provided in this section. Additionally, any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review of any permit conditions set forth in the final permit decision, but only to the extent that those final permit conditions reflect changes from the proposed draft permit.
- (3) Filing deadline.** A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the Regional Administrator serves notice of the issuance of a RCRA, UIC, NPDES, or PSD final permit decision under § 124.15 or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter. A petition is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.
- (4) Petition contents.**
  - (i)** In addition to meeting the requirements in paragraph (d), a petition for review must identify the contested permit condition or other specific challenge to the permit decision and clearly set forth, with legal and factual support, petitioner's contentions for why the permit decision should be reviewed. The petition must demonstrate that each challenge to the permit decision is based on a finding of fact or conclusion of law that is clearly erroneous.
  - (ii)** Petitioners must demonstrate, by providing specific citation to the administrative record, including the document name and page number, that each issue being raised in the petition was raised during the public comment period (including any public hearing) to the extent required by § 124.13. For each issue raised that was not raised previously, the petition must explain why such issues were not required to be raised during the public comment period as provided in § 124.13. Additionally, if the petition raises an issue that the Regional Administrator addressed in the response to comments document issued pursuant to § 124.17, then petitioner must provide a citation to the relevant comment and response and explain why the Regional Administrator's response to the comment was clearly erroneous or otherwise warrants review.

### **(b) Response(s) to a petition for review.**

- (1)** In a PSD or other new source permit appeal, the Regional Administrator must file a response to the petition for review, a certified index of the administrative record, and the relevant portions of the administrative record within 21 days after the filing of the petition.
- (2)** In all other permit appeals under this section, the Regional Administrator must file a response to the petition, a certified index of the administrative record, and the relevant portions of the administrative record within 30 days after the filing of a petition.
- (3)** A permit applicant who did not file a petition but who wishes to participate in the appeal process must file a notice of appearance and a response to the petition. Such documents must be filed by the deadlines provided in paragraph (b)(1) or (2) of this section, as appropriate.

(4) The State or Tribal authority where the permitted facility or site is or is proposed to be located (if that authority is not the permit issuer) must also file a notice of appearance and a response if it wishes to participate in the appeal. Such response must be filed by the deadlines provided in paragraph (b)(1) or (2) of this section, as appropriate.

**(c) Replies.**

(1) In PSD and other new source permit appeals, the Environmental Appeals Board will apply a presumption against the filing of a reply brief. By motion, petitioner may seek leave of the Environmental Appeals Board to file a reply to the response, which the Environmental Appeals Board, in its discretion, may grant. The motion must be filed simultaneously with the proposed reply within 10 days after service of the response. In its motion, petitioner must specify those arguments in the response to which petitioner seeks to reply and the reasons petitioner believes it is necessary to file a reply to those arguments. Petitioner may not raise new issues or arguments in the motion or in the reply.

(2) In all other permit appeals under this section, petitioner may file a reply within 15 days after service of the response. Petitioner may not raise new issues or arguments in the reply.

**(d) Content and form of briefs.**

(1) **Content requirements.** All briefs filed under this section must contain, under appropriate headings:

(i) A table of contents, with page references;

(ii) A table of authorities with references to the pages of the brief where they are cited;

(iii) A table of attachments, if required under paragraph (d)(2) of this section; and

(iv) A statement of compliance with the word limitation.

(2) **Attachments.** Parts of the record to which the parties wish to direct the Environmental Appeals Board's attention may be appended to the brief submitted. If the brief includes attachments, a table must be included that provides the title of each appended document and assigns a label identifying where it may be found (e.g., Excerpts from the Response to Comments Document \* \* Attachment 1).

(3) **Length.** Unless otherwise ordered by the Environmental Appeals Board, petitions and response briefs may not exceed 14,000 words, and all other briefs may not exceed 7,000 words. Filers may rely on the word-processing system used to determine the word count. In lieu of a word limitation, filers may comply with a 30-page limit for petitions and response briefs, or a 15-page limit for replies. Headings, footnotes, and quotations count toward the word limitation. The table of contents, table of authorities, table of attachments (if any), statement requesting oral argument (if any), statement of compliance with the word limitation, and any attachments do not count toward the word limitation. The Environmental Appeals Board may exclude any petition, response, or other brief that does not meet word limitations. Where a party can demonstrate a compelling and documented need to exceed such limitations, such party must seek advance leave of the Environmental Appeals Board to file a longer brief. Such requests are discouraged and will be granted only in unusual circumstances.

**(e) Participation by amicus curiae.** Any interested person may file an amicus brief in any appeal pending before the Environmental Appeals Board under this section. The deadline for filing such brief is 21 days after the filing of the petition. Amicus briefs may not exceed 15 pages.

**(f) Motions.**

(1) **In general.** A request for an order or other relief must be made by written motion unless these rules prescribe another form.

- (2) Contents of a motion.** A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support the motion. In advance of filing a motion, parties must attempt to ascertain whether the other party(ies) concur(s) or object(s) to the motion and must indicate in the motion the attempt made and the response obtained.
- (3) Response to motion.** Any party may file a response to a motion. Responses must state with particularity the grounds for opposition and the legal argument necessary to support the motion. The response must be filed within 15 days after service of the motion unless the Environmental Appeals Board shortens or extends the time for response.
- (4) Reply.** Any reply to a response filed under paragraph (f)(3) of this section must be filed within 10 days after service of the response. A reply must not introduce any new issues or arguments and may respond only to matters presented in the response.
- (5) Disposition of a motion for a procedural order.** The Environmental Appeals Board may act on a motion for a procedural order at any time without awaiting a response.

**(g) Motions for extension of time.**

- (1)** Parties must file motions for extensions of time sufficiently in advance of the due date to allow other parties to have a reasonable opportunity to respond to the request for more time and to provide the Environmental Appeals Board with a reasonable opportunity to issue an order.
- (2)** Each party may only file one motion for extension and the requested extension may not exceed 30 days.

**(h) Oral argument.** The Environmental Appeals Board may hold oral argument on its own initiative or at its discretion in response to a request by one or more of the parties. To request oral argument, a party must include in its substantive brief a statement explaining why oral argument should be permitted. The Environmental Appeals Board will apply a presumption against oral argument in PSD or other new source permit appeals. The Environmental Appeals Board may, by order, establish additional procedures governing any oral argument before the Environmental Appeals Board.

**(i) Filing and service requirements.** Documents filed under this section, including the petition for review, must be filed with the Clerk of the Environmental Appeals Board. A document is filed when it is received by the Clerk of the Environmental Appeals Board at the address specified for the appropriate method of delivery as provided in paragraph (i)(2) of this section.

- (1) Caption and other filing requirements.** Every document filed with the Environmental Appeals Board must specifically identify in the caption the permit applicant, the permitted facility, and the permit number. All documents that are filed must be signed by the person filing the documents or the representative of the person filing the documents. Each filing must also indicate the signer's name, address, and telephone number, as well as an email address, and facsimile number, if any.

- (2) Method of filing.** Unless otherwise permitted under these rules, documents must be filed either electronically, by mail, or by hand delivery. In addition, a motion or a response to a motion may be submitted by facsimile if the submission contains no attachments. Upon filing a motion or response to a motion by facsimile, the sender must, within one business day, submit the original copy to the Clerk of the Environmental Appeals Board either electronically, by mail, or by hand-delivery.

- (i) Electronic filing.** Documents that are filed electronically must be submitted using the Environmental Appeals Board's electronic filing system, subject to any appropriate conditions and limitations imposed by order of the Environmental Appeals Board. All documents filed electronically must include the full name of the person filing below the signature line. Compliance with Environmental Appeals Board electronic filing requirements constitutes compliance with applicable signature requirements.

- (ii) Filing by U.S. Mail.** Documents that are sent by U.S. Postal Service (except by U.S. Express Mail) must be sent to the official mailing address of the Clerk of the Environmental Appeals Board at:  
U.S. Environmental Protection Agency, Environmental Appeals Board, 1200 Pennsylvania Avenue  
NW, Mail Code 1103M, Washington, DC 20460-0001. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the

Environmental Appeals Board clearly identifying the documents that are being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address.

**(iii) Filing by hand delivery.** Documents delivered by hand or courier (including deliveries by U.S. Express Mail) must be delivered to the Clerk of the Environmental Appeals Board at: U.S. Environmental Protection Agency, Environmental Appeals Board, EPA East Building, 1201 Constitution Avenue NW, Room 3334, Washington, DC 20004. The original and two copies of each document must be filed. The person filing the documents must include a cover letter to the Clerk of the Environmental Appeals Board clearly identifying the documents being submitted, the name of the party on whose behalf the documents are being submitted, as well as the name of the person filing the documents, his or her address, telephone number and, if available, fax number and email address.

**(3) Service requirements.** Petitioner must serve the petition for review on the Regional Administrator and the permit applicant (if the applicant is not the petitioner). Once an appeal is docketed, every document filed with the Environmental Appeals Board must be served on all other parties. Service must be by first class mail, or by any reliable commercial delivery service. Upon agreement by the parties, service may be made by facsimile or electronic means.

**(4) Proof of service.** A certificate of service must be appended to each document filed stating the names of persons served, the date and manner of service, as well as the electronic, mailing, or hand delivery address, or facsimile number, as appropriate.

**(j) Withdrawal of permit or portions of permit by Regional Administrator.** The Regional Administrator, at any time prior to 30 days after the Regional Administrator files its response to the petition for review under paragraph (b) of this section, may, upon notification to the Environmental Appeals Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit that are not withdrawn and that are not stayed under § 124.16(a) continue to apply. If the Environmental Appeals Board has held oral argument, the Regional Administrator may not unilaterally withdraw the permit, but instead must request that the Environmental Appeals Board grant a voluntary remand of the permit or any portion thereof.

**(k) Petitioner request for dismissal of petition.** Petitioner, by motion, may request to have the Environmental Appeals Board dismiss its appeal. The motion must briefly state the reason for its request.

**(l) Final disposition.**

**(1)** Except as provided in paragraph (l)(2), the Environmental Appeals Board shall issue its decision on a permit appeal by the later date occurring 60 days after the date on which:

- (i) The final brief has been submitted; or
- (ii) Oral argument is concluded.

The Environmental Appeals Board may, upon determining that the nature and complexity of the case requires additional time, grant itself an additional 60 days to issue its decision.

**(2)** Any written opinion issued by the Environmental Appeals Board should only be as long as necessary to address the specific issues presented to the Board in the appeal.

**(m) Judicial review.**

**(1)** A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of the final agency action.

**(2)** For purposes of judicial review under the appropriate Act, final agency action on a permit occurs when agency review procedures under this section are exhausted and the Regional Administrator subsequently issues a final permit decision under this paragraph. A final permit decision must be issued by the Regional

Administrator:

- (i) When the Environmental Appeals Board issues notice to the parties that the petition for review has been denied;
  - (ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or
  - (iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.
- (3) The Regional Administrator must promptly publish notice of any final agency action in the Federal Register regarding the following permits:
- (i) PSD permits;
  - (ii) Outer continental shelf permits issued under 40 CFR part 55;
  - (iii) Federal Title V operating permits issued under 40 CFR part 71;
  - (iv) Acid Rain permits appealed under 40 CFR part 78;
  - (v) Tribal Major Non-Attainment NSR permits issued under 40 CFR 49.166 through 49.173; and
  - (vi) Tribal Minor NSR permits issued under 40 CFR 49.151 through 49.161.
- (n) **Motions for reconsideration or clarification.** Motions to reconsider or clarify any final disposition of the Environmental Appeals Board must be filed within 10 days after service of that order. Motions for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for clarification must set forth with specificity the portion of the decision for which clarification is being sought and the reason clarification is necessary. Motions for reconsideration or clarification under this provision must be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration or clarification directed to the Administrator, rather than the Environmental Appeals Board, will not be considered, unless such motion relates to a matter that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.2 and for which the Administrator has issued the final order. A motion for reconsideration or clarification does not stay the effective date of the final order unless the Environmental Appeals Board specifically so orders.
- (o) **Board authority.** In exercising its duties and responsibilities under this part, the Environmental Appeals Board may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part including, but not limited to, imposing procedural sanctions against a party who, without adequate justification, fails or refuses to comply with this part or an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding. Additionally, for good cause, the Board may relax or suspend the filing requirements prescribed by these rules or Board order.
- (p) **General NPDES permits.**
- (1) Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of a general permit in further Agency proceedings. Instead, they may do either of the following:
    - (i) Challenge the general permit by filing an action in court; or
    - (ii) Apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 of this chapter and may then petition the Environmental Appeals Board to review the individual permit as provided by this section.
  - (2) As provided in § 122.28(b)(3) of this chapter, any interested person may also petition the Director to require an individual NPDES permit for any discharger eligible for authorization to discharge under an NPDES general permit.