

Federal Underground Injection Control Program Permit Appeals Procedure

The U.S. Environmental Protection Agency Region 3 is serving notice of the Region's decision to issue a federal Underground Injection Control ("UIC") permit. Any party or other person who wishes to appeal the Region's decision may do so in accordance with the procedures at 40 C.F.R. § 124.19, which this notice summarizes below.

The provisions governing procedures for the appeal of an EPA UIC permit are specified at 40 C.F.R. § 124.19. Any person who filed comments on the draft permit or participated in one of the public hearings on the draft permit, can appeal the final permit by filing a written petition for review with the Clerk of the EPA Environmental Appeals Board (EAB). Additionally, any person who did not file comments or participated in a public hearing may petition for review of any permit conditions, but only to the extent that those conditions reflect changes from the draft permit.

A petition for review must be filed with the EAB Clerk. The petition must be filed within thirty (30) days. The 30 days starts the day after the Regional Administrator serves notice of the issuance of the permit. This means that the EAB must receive the petition within 30 days of the day after the service of this notice. Consult 40 C.F.R. § 124.20 for additional rules about the time allowed for filing an appeal. All parties and other interested persons are encouraged to file documents with the Board by using the EAB's Electronic Filing System which is accessible on the Board's website at www.epa.gov/eab. See the EAB website for further information on how to file with the EAB electronically, EPA Environmental Appeals Board | US EPA.

The rule requires petitioners to send a copy of the petition to the EPA Regional Administrator and the permit applicant. For the Regional Administrator, send the petition to the following address:

Regional Administrator
EPA Region 3 3RA00
4 Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852

In addition, please send an email copy of the petition to the Source Water & UIC Section (3WD22) using the following email address: R3_UIC_Mailbox@epa.gov.

Filing documents by U.S. mail or hand delivery or courier (including delivery by a commercial delivery service) is also permissible. Consult the regulations at 40 C.F.R. § 124.19(i) on how to file by U.S. mail or by hand. Documents sent through the U.S. Postal Service (except by U.S. Express Mail) to the Clerk of the Board are to be addressed to the EAB's mailing address:

Clerk of the Board
U.S. Environmental Protection Agency Environmental Appeals Board
1200 Pennsylvania Avenue, N.W. Mail Code 1103M
Washington, D.C. 20460-0001

Documents delivered in person by courier or otherwise (including delivery by U.S. Express Mail or a by commercial delivery service) are to be sent to the EAB's hand-delivery address:

Clerk of the Board
U.S. Environmental Protection Agency Environmental Appeals Board
WJC East Building
1201 Constitution Avenue, N.W., Room 3332
Washington, D.C. 20004

Note that pursuant to an order issued by the EAB on September 21, 2020, Revised Order Authorizing Electronic Service of Documents in Permit and Enforcement Appeals, the EAB authorized parties to all newly filed permit and enforcement appeals to utilize email to fulfill their service obligations under 40 C.F.R. §§ 22.5(b) and 124.19(i)(3)(ii). Thus, a party need not seek and obtain consent of another party in order to serve that party by email. Parties must promptly file notices informing the Board and the other parties of any changes in their email addresses.

The petition must clearly set forth the petitioner's contentions for why the EAB should review the permit. The petition must identify the contested permit conditions or the specific challenge to the permit decision. The petitioner must demonstrate the issues raised in the petition had been raised previously during the comment period. The petition must also demonstrate that each challenge to the permit decision is based on:

1. Factual or legal error, or
2. The incorporation of a policy consideration which the EAB should, at its discretion, review.

Consult the regulations at 40 C.F.R. § 124.19 on the contents of a petition for review.

If a petition for review of this permit is filed, the permit would be deemed not to be in effect pending a final agency action. After review of the Appeals Petition, the EAB will either grant or deny the appeal. The EAB will decide the appeal on the basis of the written briefs and the total administrative record of the permit action. If the EAB denies the petition, EPA will notify the petitioner of the final permit decision. The petitioner may, thereafter, challenge the permit decision in Federal Court. If the EAB grants the appeal, it may direct the Region 3 office to implement its decision by permit issuance, modification, or denial. The EAB may order all or part of the permit decision back to the EPA Region 3 office for reconsideration. In either case, if the permit is appealed, a final agency decision occurs when after appeal the permit is issued, modified, or denied and an Agency decision is announced. After this time, all administrative

appeals have been exhausted, and any further challenges to the permit decision must be made to Federal Court.

The rules for computing the time for appealing the permit issuance decision are subject to 40 C.F.R. § 124.20.