



United States
Environmental
Protection Agency

EPA--100-F-01-001
April 2001
(MC1103B)

Environmental Appeals Board



Environmental Appeals Board

The Environmental Appeals Board (EAB) of the U.S. Environmental Protection Agency is the final Agency decision maker on administrative appeals under all major environmental statutes that EPA administers. It is an impartial, four-member body that is independent of all Agency components outside the immediate Office of the Administrator. It was created in 1992 in recognition of the growing importance of EPA adjudicatory proceedings as a mechanism for implementing and enforcing the environmental laws.

The EAB's caseload consists primarily of appeals from permit decisions and civil penalty decisions. The EAB has authority to hear permit and civil penalty appeals in accordance with regulations delegating this authority from the EPA Administrator. Appeals from permit decisions made by EPA's Regional Administrators (and in some cases, state permitting officials) may be filed either by permittees or other interested persons. A grant of review of a permit decision is at the EAB's discretion. Permit appeals are governed primarily by procedural regulations at 40 C.F.R. Part 124 (2000). Appeals of civil penalty decisions made by EPA's administrative law judges may be filed, as a matter of right, either by private parties or by EPA. Penalty appeals are governed primarily by the Consolidated Rules of Practice (CROP) at 40 C.F.R. Part 22 (1999).

An additional portion of the EAB's caseload consists of petitions for reimbursement of costs incurred in complying with cleanup orders issued under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The EAB decides these matters pursuant to a delegation of authority from the Administrator. The EAB is also authorized to hear appeals from various administrative decisions under the Clean Air Act's acid rain program at 40 C.F.R. Part 78.

EAB Decisionmaking Process

The EAB typically sits in three-member panels and decides each matter by majority vote. Concurring or dissenting opinions may be issued as appropriate.

Most cases are decided without oral argument, based on the administrative record and on written briefs submitted by the parties. However, an oral argument may be scheduled, on motion by any party or at the EAB's initiative, where the EAB decides that it will assist in decisionmaking. A schedule of oral arguments may be obtained from the Clerk of the Board.

EAB Jurisdiction

All major environmental statutes that EPA administers, including.

- Clean Air Act
- Clean Water Act
- Comprehensive Environmental Response, Compensation, and Liability Act
- Emergency Planning and Community Right-to-Know Act
- Federal Insecticide, Fungicide, and Rodenticide Act
- Marine Protection, Research, and Sanctuaries Act
- Safe Drinking Water Act
- Solid Waste Disposal Act (RCRA)
- Toxic Substances Control Act

Environmental Appeals Judges

The EAB consists of four Environmental Appeals Judges appointed by the Administrator from the career Senior Executive Service:

Judge Scott C. Fulton served as EPA's Acting General Counsel and Principal Deputy General Counsel and formerly as Deputy Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance. He has also served as a trial attorney and supervising attorney in the Environmental and Natural Resources Division of the U.S. Department of Justice.

Judge Ronald L. McCallum served as the Administrator's Chief Judicial Officer before being named to the EAB in 1992. He has also served as Judicial Officer in the Office of the Administrator, and as Senior Trial Attorney in the Office of General Counsel. He was an attorney in private practice before joining EPA in 1974.

Judge Edward E. Reich served as Legal Advisor to the Administrator and as Acting Assistant Administrator and Deputy Assistant Administrator in EPA's Office of Enforcement. As Deputy Assistant Administrator, he was the senior career officer in the Office of Enforcement responsible for managing EPA's environmental litigation.

Judge Kathie A. Stein served as Director of EPA's RCRA and Air Enforcement divisions within the Office of Enforcement and Compliance Assurance and as Acting Regional Counsel for EPA Region III. Before joining EPA, she held positions with the U.S. Department of Justice, the Environmental Defense Fund, and the Maryland Attorney General's Office and engaged in the private practice of law.

EAB Counsel and Staff

Counsel to the Board. Eleven experienced attorneys serve as counsel to the Board: Richard L. Albores, Nivea R. Berrios, Jasmine M. Chapman, Carlos D. Da Rosa, Timothy R. Epp, Danielle C. Fidler, David R. Heckler, Leslie A. Kirby-Miles, Mary E. Sirianni, Alice P. Wegman, and Michelle A. Wenzel. Counsel assist the Board in reviewing the administrative record, analyzing applicable law and Agency policy, and preparing formal written opinions. They are available to answer questions from litigants and the general public about the appeals process.

EAB Staff: Clerk of the Board, Eureka Durr; Staff Assistant, Mildred T. Johnson; Secretary, Annette Duncan.

EAB on the Web

The EAB maintains a World Wide Web site, at <http://www.epa.gov/eab>, which contains the full text of all formal written opinions issued by the EAB, additional information about EAB procedures, and data on federal court decisions and pending federal court cases on appeal from an EAB decision.

Selected Highlights: 2000

Tennessee Valley Authority, sustaining in part and vacating in part an administrative compliance order issued by Region IV under the Clean Air Act, finding that changes made to 14 of TVA's coal-fired generating units were "physical changes" that did not fall within the "routine maintenance, repair or replacement" exception under the new source permitting programs, and that TVA had violated some but not all of the new source requirements alleged in the order.

Rogers Corp., affirming the ALJ's accelerated decision as to liability and subsequent imposition of a \$281,400 penalty on Rogers for improperly disposing of PCBs, and holding, in part, that the Board's review of the accelerated decision as to liability is generally limited to the evidence in the record at the time the accelerated decision is made, that the "law of the case" doctrine supports the ALJ's determination not to later revisit the liability decision, that the exemption from regulation for historic PCB-disposal sites must be raised as an affirmative defense, and that due process is not violated by the imposition of civil administrative penalties in addition to already-incurred clean-up costs.

Du Pont de Nemours & Co., holding that communications by EPA personnel not referenced on the face of EPA's formal letters granting registration approval cannot modify or alter the clear, unambiguous terms of EPA's formal approval; and that, despite the approval, the registration does not bar EPA from charging that the labeling is misbranded; and remanding the case to allow Du Pont to submit additional rebuttal evidence to support its position that the labeling was not misbranded.

U.S. Department of Navy, Kingsville Naval Air Station, dismissing Region VI's complaint against the Navy on the ground that the Region may not assess penalties against the Navy for

noncompliance with the "Disclosure Rule" promulgated under the Residential Lead-Based Paint Hazard Reduction Act of 1992 until it amends the Disclosure Rule to include a legally binding interpretation of the terms "lease" and "contract to lease" that encompasses assignment of housing by the military to its military personnel.

EAB Formal Opinions: 2000

- Caribe Gen. Elec. Prods., Inc., RCRA Appeal No 98-3 (Feb 4, 2000), Order on Recons (Oct. 23, 2000) (appeal docketed 1st Cir May 4, 2000)
- V-1 Oil Co., RCRA (9006) Appeal No. 99-1 (Feb. 25, 2000)
- Knauf Fiber Glass, GmbH, PSD Appeal Nos 99-8 through 99-72 (Mar 14, 2000)
- U.S. Dep't of Navy, Kingsville Naval Air Station, TSCA Appeal No 99-2 (Mar 17, 2000)
- Du Pont de Nemours & Co., FIFRA Appeal No 98-2 (Apr 3, 2000)
- BWX Techs , Inc., RCRA (3008) Appeal No 97-5 (Apr 5, 2000)
- Pepperell Assocs , CWA Appeal Nos 99-1 & 99-2 (May 10, 2000) (appeal docketed 1st Cir June 9, 2000)
- Chempace Corp., FIFRA Appeal Nos 99-2 & 99-3 (May 18, 2000)
- Tifa Ltd., FIFRA Appeal No. 99-5 (June 5, 2000)
- Steel Dynamics, Inc., PSD Appeal Nos. 99-4 & 99-5 (June 22, 2000)
- Puna Geothermal Venture, UIC Appeal Nos 99-2 et al (June 27, 2000)
- American Soda, L.L P , UIC Appeal Nos 00-1 & 00-2 (June 30, 2000)
- Spitzer Great Lakes Ltd , TSCA Appeal No 99-3 (June 30, 2000)
- Sultan Chemists, Inc., FIFRA Appeal No. 99-7 (Sept 13, 2000) (appeal docketed 3d Cir Nov 6, 2000)
- Tennessee Valley Auth , CAA Docket No. 00-6 (Sept 15, 2000) (appeals docketed 11th Cir Nov 13, Nov. 28, 2000)
- Rohm & Haas Co., RCRA Appeal No. 98-2 (Oct 5, 2000)
- City of Phoenix, NPDES Appeal No 99-2 (Nov 1, 2000)
- Rogers Corp., TSCA Appeal No. 98-1 (Nov. 28, 2000) (appeal docketed D.C Cir. Dec. 22, 2000)

Availability of EAB Formal Opinions and EAB Practice Manual

The EAB issues formal written opinions in selected cases. These opinions are published in a series of bound volumes titled Environmental Administrative Decisions (E.A.D.), which may be purchased from the U.S. Superintendent of Documents (tel. (202) 512-1800). Volumes 1-4 of the E.A.D. are sold as a set (Order No. 055-000-00533-8). Volumes 1, 2, and 3 contain 300 selected pre-EAB opinions issued between 1972 and 1992. Volume 4 contains EAB opinions issued from March 1992 to December 1993. Volumes 5 (Order No. 055-000-00545-1), 6 (Order No. 055-000-00583-4), and 7 (Order No. 055-000-00628-8) contain EAB opinions issued from January 1994 through July 1998, and may be purchased individually. Volume 8 will contain opinions issued from September 1998 through February 2000.

The full text of all formal EAB opinions may also be accessed electronically at the EAB's World Wide Web site. Individual copies of pre-EAB and EAB decisions may be obtained from the Clerk of the Board. EAB decisions are also commercially available through LEXIS[®], WESTLAW[®], the EPA Administrative Law Reporter, the ELI Environmental Law Reporter, and EPA Shadow Law[™].

Copies of the EAB Practice Manual (Nov. 1994), as supplemented in Oct. 1997, and the EAB's procedural guidance manual for CERCLA §106(b) petitions (revised Oct. 1996) may be obtained from the Clerk of the Board. A revised version of the EAB Practice Manual will be available later this year.

Clerk of the Board
607 14th Street, N.W., Suite 500
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(202) 501-7060 8:30 a.m.- 4:30 p.m.