

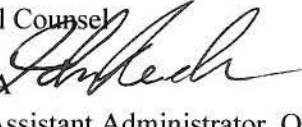



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

April 27, 2012

To: Regional Counsel and Deputy Regional Counsel

From: John Reeder, Deputy Chief of Staff, OALJ 
Lawrence Starfield, Principal Deputy Assistant Administrator, OECA 

Subject: Pilot Program to Migrate Certain Regional Hearing Clerk Functions to the Headquarters Hearing Clerk

Thank you for your participation in recent discussions of the advisability of certain changes to the administrative enforcement and adjudicative procedures that will affect your offices and, in particular, the work of the Regional Hearing Clerks ("RHCs"). Pursuant to those discussions, we are now prepared to implement the changes to the RHC functions on an expanded pilot basis, starting May 1, 2012

Background

Currently the Consolidated Rules of Practice governing EPA administrative enforcement proceedings (40 C.F.R. Part 22) require each of the ten Regional Administrators to "duly authorize" one or more individuals to serve as the "Regional Hearing Clerk." 40 C.F.R. § 22.03(a). Under these Rules, the RHCs have significant responsibilities that preserve the fairness and integrity of administrative enforcement proceedings and provide crucial elements of due process to which the regulated community is lawfully entitled. In particular, the RHCs' responsibilities include the following: (1) ensuring that original pleadings and orders in enforcement actions are properly and timely received, date-stamped, filed and maintained; (2) securing original official case records from theft and alteration; (3) providing supervised access to the public to inspect and copy the record; (3) arranging secure and appropriate hearing facilities; (4) contracting for court reporting and translation services; (5) certifying and transmitting the official record to appellate courts; and (6) officially and timely serving initial decisions upon the Environmental Appeals Board ("EAB").

Over the last two years, and continuing into fiscal year 2012, OALJ has been reviewing and altering its internal processes in accordance with the Federal Managers' Financial Integrity Act ("FMFIA") and the dictates of the technological changes prompted by the expanding use of the Internet. In addition, it has been working to ensure that its practices are consonant with the newest Agency policies including those on penalty collection as set forth by the Office of the Chief Financial Officer in Resource Management Directive System (RMDSS) 2540-09, issued October 4, 2011. Successfully fulfilling the requirements of the FMFIA and Agency policies, and generally becoming more accessible and transparent, require some changes in regard to administrative case procedures and in particular the work of the RHCs.

OALJ has been preparing for the implementation of an electronic filing system for those administrative enforcement cases that come within the jurisdiction of the ALJs. Presently, Regions 7 and 9 are part of a pilot program that transfers the RHC functions pertaining to OALJ cases from the region to OALJ's Headquarters Hearing Clerk ("HQHC"). Region 10 has indicated an interest in joining the Pilot Program but has not yet executed the MOU. The HQHC performs the duties of the RHC in regard to all headquarters cases. To assure the data integrity, before we implement e-filing we believe that we should first expand the pilot program to include all regions. We expect the impact to be minimal, and below, we outline the changes that we are correspondingly implementing on a pilot basis:

Pilot Program

- For all cases in which an Answer is filed after the start date of the pilot program expansion (May 1, 2012), the RHC will immediately transfer the official case record to the HQHC and push the electronic case record to OALJ's tracking system
- All subsequent filings will be made with the HQHC until the case has settled or the presiding ALJ has resolved the case by decision or order at which time the official case record will be returned to the RHC for processing and penalty collection if necessary
- The Electronic Case Tracking Systems will be modified to allow better information sharing between OALJ and the Regions, including automatic synchronization and shared authority to improve the data entered
- The terms presently in place for the pilot program with Regions 7 & 9, with any necessary tailoring, will serve as the basis for establishing standard procedures under the expanded pilot program
- The RHCs will continue to perform all their other duties, but will not have to spend time operating as the hearing clerk for the approximately 100 contested enforcement actions that come to OALJ each year from the regions

We are requesting your assistance in implementing the foregoing changes in your Regions. Attached you will find the general provisions that currently guide the Headquarters Pilot Program. These provisions will be the basis for realigning the responsibilities between the RHCs and the HQHC. Importantly, they also address the transition points where the RHC and HQHC will trade off control of contested cases. Transition to a fully functional centralized system, including the e-filing/e-service component, is expected to be complete by the end of the fiscal year. OALJ will contact each Region to review the terms of the Pilot Program and each Region is encouraged to identify a point person, if it has not already done so.

Thank you in advance for your assistance. If you have any questions regarding the implementation of these changes, or have identified a point person for your region, please contact Steve Sarno, in OALJ, at (202) 564-6245 or sarno.steven@epa.gov. If you have questions for the Headquarters Hearing Clerk, please contact Sybil Anderson, HQHC, at (202) 564-6261 or anderson.sybil@epa.gov.

cc: Regional Judicial Officers
Regional Hearing Clerks
Mike Hanson, Office of Executive Services

Attachment 1: HQHC Pilot Program Parameters

1. For any Administrative Complaint initiated by an EPA Regional Office falling within the jurisdiction of OALJ's Administrative Law Judges, the RHC will promptly transmit (either via the ECTS or by mail) the complete official Agency case file to the HQHC upon receipt of the Respondent's Answer to the Complaint. The RHC will also ensure that contact information for all parties (including the EPA Regional Attorney) has been accurately entered into the ECTS to the maximum extent practicable.
 - a. If the Complaint names multiple Respondents, then the RHC shall forward the file to the HQHC only upon receipt of either (1) Answers to the Complaint from *all* of the named respondents or (2) one or more orders or other pleadings resolving the liability of all the non-answering respondents such as withdrawal, an order of the Regional Judicial Officer granting default or dismissal, or a Consent Agreement and Final Order.
 - b. The RHC shall include a cover letter to OALJ's Chief Administrative Law Judge accompanying each file so transmitted that such transmission is undertaken pursuant to 40 C.F.R. § 22.21(a) of the Consolidated Rules and this Pilot Project, and that pursuant thereto all documents to be filed in the case shall be filed with the HQHC at the following address: Sybil Anderson, Headquarters Hearing Clerk, Office of Administrative Law Judges, Mail Code 1900L, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460.
 - c. A copy of the cover letter shall be sent by the RHC to each of the parties in the case. If the case file is transmitted by ECTS, the cover letter shall also be emailed by the RHC to [OALJfiling@epa.gov].
2. In its initial written correspondence issued in each such referred case, OALJ will also instruct the parties that all documents shall be filed with the HQHC acting for the Regional Hearing Clerk under 40 C.F.R. 22.5(a) pursuant to this Pilot Project agreement. To facilitate this filing requirement, OALJ will notify the parties in such cases, either by individual order or by reference to a standing order, whether filing by facsimile or electronic filing is authorized under 40 C.F.R. §§ 22.5(a)(1) and (b)(2).
 - a. Official filing hours for OALJ are 8:30 AM - 4:30 PM (Eastern Time) for all filings submitted by mail or facsimile. Documents submitted by "electronic filing" means, as allowed by order, will be considered timely filed if time-stamped by the e-filing system before 4:30 PM in the time zone in which the Regional Office is located.
3. The HQHC in OALJ then operates as the designated recipient of all future pleadings and correspondence filed in such matters and would be responsible for all hearing clerk responsibilities for the matters including, but not limited to, handling all incoming and outgoing documents and communications, uploading documents into and maintaining the completeness of

the OALJ Electronic Case Tracking System (ECTS), and arranging for courtrooms, court reporters, translator services, etc.

- a. Nevertheless, the Region shall remain fully financially responsible for the costs incurred in regard to the courtroom, court reporter and any translation services required by the cases so referred. Any contracts required for hearing-related services or goods shall be issued by the Region's (or HQ's) Contracting Office with input as to the terms from the HQHC.
4. The RHC will retain access to and responsibility for the Region's ECTS, including information regarding the matters pending before OALJ so as to enable the Region's tracking of deadlines and activities for such pending matters. The Regional ECTSs and the OALJ ECTS will automatically synchronize on a nightly basis. In addition, both the RHC and the HQHC will be able to manually send or draw information to and from the other ECTS
 - a. RHCs scanning documents into the ECTS while a case is under the jurisdiction of OALJ must ensure uniform naming and numbering conventions to avoid duplicate filing entries that may occur during synchronization if these parameters are not followed. This is particularly important where the RJO retains jurisdiction over one or more non-answering respondents in a case with multiple parties.
 5. After transmission to the HQHC of all current case files, the RHC may undertake paralegal and administrative duties for the Region (the Complainant) in such cases, including preparation of the pre-hearing exchange. The RHC will no longer have to maintain the publicly available case file and may direct external requests to view the case file to the HQHC.
 6. Upon termination of OALJ's jurisdiction over any case so referred, either as a result of settlement or the issuance of an initial decision, OALJ will promptly transmit back to the RHC the entire official Agency case file for storage, penalty processing (if necessary), and archiving. For cases terminated by a filed CAFO that stipulates a penalty, the HQHC will initiate the process of establishing a debt/accounts receivable by requesting a Billing Document Number from the Cincinnati Finance Office before returning the case file to the Region, in observance of the requirements set forth by the Office of the Chief Financial Officer in Resource Management Directive System (RMDSS) 2540-09, issued October 4, 2011.
 7. The terms of this Pilot Project shall be in effect beginning May 1, 2012, until terminated or modified upon written or emailed, 60-day notice by OALJ.