

Order

On Electronic Filing and Service Terms in
Designated Administrative Hearings and Actions of the
Department of Resources Recycling and Recovery (CalRecycle)

I am the duly appointed Director of the Department of Resources Recycling and Recovery (CalRecycle).

Certain statutes and regulations call for administrative hearings to be conducted before CalRecycle's director. For those hearings, clerical staff in the CalRecycle Legal Office perform many of the functions typically provided by a clerk of court, such as filing documents, preparing and maintaining the official file, calendaring, and serving papers on behalf of the presiding officer. CalRecycle's Legal Office staff perform similar functions for actions subject to Chapter 5 of the Administrative Procedure Act (APA) (Gov. Code § 11500 et seq.) from the time the action is filed with the Legal Office until a request to set a hearing date for the action is filed with the Office of Administrative Hearings (OAH). (See 1 Cal. Code Regs. § 1018.)

Electronic filing (e-filing) and electronic service (e-service) of legal documents has become commonplace in courts and administrative forums. In recognition of its increasing use and to ensure its reliability, I have coordinated with staff to develop terms that will make e-filing and e-service an option in designated tire, beverage container recycling, electronic waste, and mattress program administrative hearings being conducted before CalRecycle's director, and in all actions subject to Chapter 5 of the APA until a request to set a hearing date is filed with OAH. CalRecycle will allow e-filing and e-service in the designated hearings and actions according to the Electronic Filing and Service Terms attached hereto and incorporated by reference as **Exhibit A**.

E-filing and e-service are wholly optional. While no party is required to e-file or e-serve documents in the designated hearings and actions, any party choosing to e-file or e-serve does so subject to the terms set forth in Exhibit A.

To provide notice of these terms to parties in the designated hearings and actions, this order and/or its Exhibit A may be publicly distributed, posted on the CalRecycle web site, and/or served with applicable accusations, statements of issues, and other documents.

This order shall be effective as of April 1, 2019, and shall remain in effect until modified or revoked by the Director of CalRecycle. All prior orders on electronic filing and service terms in designated CalRecycle administrative hearings and actions are hereby revoked and superseded by this order.

It is so ordered.

Original signed by Scott Smithline on April 1, 2019.

Date: _____
Scott Smithline, Director
Department of Resources Recycling and Recovery (CalRecycle)

Order
On Electronic Filing and Service Terms in
Designated Administrative Hearings and Actions of the
Department of Resources Recycling and Recovery (CalRecycle)
April 2019

Exhibit A

Electronic Filing and Service Terms

April 2019

I. Terms of Electronic Filing

The Department of Resources Recycling and Recovery (CalRecycle) allows the electronic filing (e-filing) and electronic service (e-service) of documents in designated hearings conducted by the Director or the Director's designee (hereinafter "Hearing Officer") and actions subject to the formal hearing provisions of Chapter 5 of the Administrative Procedure Act (Government Code § 11500 et seq.) according to the following terms.

A. Consent to Electronic Filing & Service Terms

By express agreement, or by submitting a document for e-filing, providing an electronic mail (e-mail) address for service, or accepting e-service of a document, a person consents to these Electronic Filing & Service Terms, and may use e-mail to file documents with the CalRecycle Legal Office and to serve documents on persons who have provided an e-mail address for service in the action.

B. Hearings And Actions Designated For E-filing

CalRecycle allows e-filing in the following types of hearings and actions.

1. Tire program hearings under the informal hearing procedures of the Administrative Procedure Act (ch. 4.5 of pt. 1 of div. 3 of title 2 of the Gov. Code (commencing with § 11400)) pursuant to Public Resources Code sections 42852 or 42961.1.
2. Beverage container recycling program hearings on:
 - a) The immediate suspension of a certification or registration under the informal hearing procedures of the Administrative Procedure Act (art. 10 of ch. 4.5 of pt. 1 of div. 3 of title 2 of the Gov. Code (commencing with § 11445.10)) pursuant to Public Resources Code section 14591.2(d)(3); and
 - b) The denial of an initial application for certification in accordance with section 2130(c) of title 14 of the California Code of Regulations (14 Cal. Code Regs. § 2130(c)); and
 - c) The revocation of a probationary certificate in accordance with section 2130(c) of title 14 of the California Code of Regulations (14 Cal. Code Regs. § 2130(c)) and Public Resources Code section 14541(b).
3. Electronic waste program hearings on:
 - a) Appeals of approval decisions under the administrative adjudication provisions of the Administrative Procedure Act (ch. 4.5 of pt. 1 of div. 3 of title 2 of the Gov. Code (commencing with § 11400)) pursuant to Public Resources Code section 42474(e) and section 18660.19 of title 14 of the California Code of Regulations (14 Cal. Code Regs. § 18660.19); and
 - b) Appeals of denied or adjusted claims under the administrative adjudication provisions of the Administrative Procedure Act (ch. 4.5 of pt. 1 of div. 3 of title 2 of the Gov. Code (commencing with § 11400)) pursuant to Public Resources Code section 42474(e) and section 18660.31 of title 14 of the California Code of Regulations (14 Cal. Code Regs. § 18660.31); and
 - c) The imposition of administrative civil penalties under the informal administrative hearing procedures of the Administrative Procedure Act (ch. 4.5 of pt. 1 of div. 3 of title 2 of the Gov. Code (commencing with § 11400)) pursuant to Public Resources Code section 42474(d) and section 18660.44 of title 14 of the California Code of Regulations (14 Cal. Code Regs. § 18660.44).
4. Mattress program hearings under the informal hearing procedures of the Administrative Procedure Act (article 10 of ch. 4.5 of pt. 1 of div. 3 of title 2 of the

Gov. Code (commencing with § 11445.10)) on the administrative imposition of civil penalties pursuant to Public Resources Code section 42993.1 and section 18971 of title 14 of the California Code of Regulations (14 Cal. Code Regs. § 18971).

5. Actions subject to the formal hearing provisions of Chapter 5 of the Administrative Procedure Act (Gov. Code § 11500 et seq.) from the time the action is filed with the CalRecycle Legal Office until a request to set a hearing date for the action is filed with the Office of Administrative Hearings. (See 1 Cal. Code Regs. § 1018.)

C. CalRecycle Legal Office E-filing Addresses

Documents submitted for e-filing must be transmitted to the CalRecycle Legal Office Hearing Clerk using the email address below that corresponds to the type of hearing.

1. Designated tire program hearings:
HearingClerk.TIR@CalRecycle.ca.gov
2. Designated beverage container recycling program hearings and all actions subject to Chapter 5 of the Administrative Procedure Act:
HearingClerk.BCR@CalRecycle.ca.gov
3. Designated electronic waste program hearings:
HearingClerk.EWA@CalRecycle.ca.gov
4. Designated mattress program hearings:
HearingClerk.MAT@CalRecycle.ca.gov

D. Submitting Documents For E-filing

Documents submitted for e-filing must meet all of the following requirements.

1. Documents must be transmitted via e-mail as attachments in PDF format (PDF).
2. A single transmission may not exceed 40.0 megabytes in size. A single transmission may be comprised of multiple documents or PDF files, but the total size of the transmission cannot exceed the limit. Documents tendered in a transmission that exceeds this limit shall not be filed electronically.
3. A proof of service must be transmitted along with each document submitted for e-filing.
4. The subject line of the e-mail message must include in the following order (1) the CalRecycle Legal Office file number (such as, IH13-001-BCR, IH13-002-TIR, 2015-001-BCR, 2015-002-TIR, etc.), (2) the short name of the action (such as, ABC Rec. or XYZ Tires), and (3) a brief identification of the document being submitted for e-filing.
5. The body of the e-mail message must (1) identify the documents being submitted for e-filing, (2) indicate whether the e-mail message is one of multiple e-mail messages transmitting the document or documents to be e-filed and, if so, how many e-mail messages in all are needed, and (3) provide the name, telephone number, e-mail address, and facsimile transmission number of the person to whom problems with receipt of the document to be e-filed should be directed.

Only the PDF documents will be accepted for e-filing. The accompanying e-mail message is not filed and is not normally seen or reviewed by the Hearing Officer. All information you wish considered by the Hearing Officer must be presented in the PDF documents submitted for e-filing.

E. Receipt and Acceptance Required For Filing

Electronically transmitted documents must be both received by the CalRecycle Legal Office and accepted for filing by the Hearing Clerk in order to be considered duly filed. No document submitted electronically is deemed filed unless it is accepted for filing by the Hearing Clerk.

F. Date/Time of E-filing

A document may be electronically transmitted to the CalRecycle Legal Office at any time of the day. Acceptance of the document for filing shall be deemed to occur (1) on the date the document

was submitted if the submission occurred during the normal business hours of the Legal Office, and (2) on the next business day the Legal Office is open for business if the submission occurred after normal business hours. For purposes of this section, normal business hours shall be 8:30 a.m. through 4:00 p.m., Monday through Friday, excluding State holidays. Nothing in this section shall limit the ability of the Hearing Clerk or the Hearing Officer to reject filings.

G. Confirmation of E-filing By Hearing Clerk

Documents electronically submitted for e-filing shall be reviewed by the Hearing Clerk for required data elements once the document has been received. Upon the acceptance of the document submitted for filing, the Hearing Clerk shall transmit an e-mail message to the filer confirming the date the document was in fact filed in the CalRecycle Legal Office. The Confirmation of E-filing shall include the titles of the documents as filed. Ascertaining whether the document was received, accepted and filed, and verifying the accuracy of the document filed shall be the sole responsibility of the filer.

Acceptance of a document for filing is not a final determination that the document complies with all legal or other applicable requirements and is not a waiver of such requirements. The Hearing Officer may require amendments to a document submitted for e-filing and may entertain appropriate challenges concerning an e-filed document's deficiencies.

H. Rejected Filings

If an electronically transmitted document is submitted to the CalRecycle Legal Office but subsequently determined to be unacceptable for filing, the Hearing Clerk shall promptly cause to be electronically transmitted to the filer a notice of rejection of the document. The notice shall set forth the grounds for rejection of the document. It shall be the responsibility of the filer to resubmit rejected documents, along with any appropriate notices and corrections.

I. Confirmation of Submission By Filer

The confirmation of submission or subsequent resubmission of rejected documents with corrections, as well as the e-filing of documents with the CalRecycle Legal Office, is the sole responsibility of the filer. In the absence of the Hearing Clerk's Confirmation of E-filing, there is no presumption that the Legal Office received and filed the document.

J. Hearing Clerk's Endorsement

The CalRecycle Legal Office Hearing Clerk's endorsement of documents electronically filed shall consist of the printed words "E-filed" followed by date of filing and the initials of the Hearing Clerk that reviewed and accepted the documents for e-filing. Electronically filed documents so endorsed carry the same force and effect as a manually affixed endorsement stamp.

K. Signatures on E-filed and E-served Documents

Every item which is e-filed or e-served is deemed to have been signed by a party, Hearing Clerk, Hearing Officer, presiding officer, licensed attorney or other authorized representative, or person authorized to execute proofs of service if it bears a typographical signature of such person (such as, "/s/ Adam Attorney"), along with the typed name, address, and telephone number of the person signing, and, if applicable, the State Bar of California number of a signing attorney. Such typographical signatures are personal signatures for all purposes.

E-filed and/or e-served documents requiring a signature under penalty of perjury must be imaged to reflect the handwritten signature of the declarant to accomplish valid filing and service. E-filed and/or e-served documents which do not require a signature under penalty of perjury are deemed signed by the submitting party if it bears a typographical, graphic, or imaged signature.

A party who e-files or e-serves a document represents that a signed original of the document is in his or her possession or control. The original of e-filed and/or e-served documents, including original handwritten signatures, must be retained by the party filing the document for at least the period after the termination, including all appeals, of the action required for conventionally filed hard copy documents. At any time after filing or service of an electronic document, the Hearing Officer or any party to the action may require, upon reasonable notice, the filing party to produce the signed original document. The demand of a party shall be served on all other parties but shall not be filed, unless the signed original document is not timely produced.

L. Change of E-mail Address

A party whose e-mail address changes while an action is pending must promptly electronically file a notice of change of e-mail address with the CalRecycle Legal Office Hearing Clerk and must serve the notice on all other parties. An e-mail address is presumed valid for a party if the party e-files or e-serves electronic documents from that address and has not filed and served notice that the e-mail address is no longer valid.

M. Errors or Malfunctions in Submissions

In the event that a party is temporarily unable to e-file due to technical problems, the party should promptly contact the CalRecycle Legal Office Hearing Clerk and follow any procedures set forth to resolve the problems. If the problems cannot be resolved in a timely manner, the party may alternatively file by faxing the documents to the Legal Office at 916-322-8768.

N. Responsibility for Errors in E-filed Data

The filing party shall be solely responsible for the accuracy and completeness of all data, files, documents and other information submitted for e-filing.

If electronic filing or service does not occur due to (1) an error in the transmission of the document which was unknown to the sending party, (2) a party's erroneous exclusion from the service list, or (3) other technical problems experienced by the sending party, then the sending party may be entitled to an extension of the time within which any right, duty, or other act must be performed, provided the sender demonstrates that he or she attempted to file or complete service on a particular day and time. The sending party may file and serve an application for an extension of time demonstrating he or she reasonably attempted to file or complete service on a particular day and time. The Hearing Officer will promptly rule on the application.

O. Technical Failure of CalRecycle Legal Office E-filing System

The CalRecycle Legal Office Hearing Clerk shall deem the electronic filing system to be subject to a technical failure on a given day if it is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day shall be deemed filed that day, if they are filed the next business day the system is able to accept filings.

P. E-filing and E-service By Hearing Clerk and Hearing Officer

The CalRecycle Legal Office Hearing Clerk and Hearing Officer may issue, file, and serve notices, orders, and other documents electronically in accordance with these Electronic Filing & Service Terms.

Q. E-filed Documents Must Be E-served | Additional Means of Service

A party must e-serve all e-filed documents on all persons who have provided an e-mail address for service in the action. A party may choose to e-serve documents that were not e-filed.

A party may also choose to serve e-filed documents by means in addition to e-service, but not instead of e-service. The time for response to the documents shall be the earliest of those corresponding to the various means of service used.

R. Orders Governing E-filing and E-service

These Electronic Filing & Service Terms shall not limit the ability of a Hearing Officer to issue orders governing e-filing and/or e-service in a particular action that supplement or supersede these terms. The Hearing Officer may order that one paper copy of a filed document be submitted instead of or in addition to electronic copies.

S. Electronic Filing System Inquiries

Questions or comments about the CalRecycle Legal Office e-filing system may be directed to:

Hearing Clerk
CalRecycle Legal Office
801 K Street, MS 19-03
Sacramento, CA 95814
916-327-0089
916-322-8768 FAX
HearingClerk.BCR@CalRecycle.ca.gov

II. Terms of Electronic Service

By express agreement, or by submitting a document for e-filing, providing an e-mail address for service, or accepting e-service of a document, a person consents to these Electronic Filing & Service Terms, and may use e-mail to file documents with CalRecycle Legal Office and to serve documents on persons who have provided an e-mail address for service in the action.

A. E-service Terms Supplement Administrative Procedure Act

These Electronic Filing & Service Terms supplement the applicable sections of the administrative adjudicative provisions of the Administrative Procedure Act (chapters 4.5 & 5 of part 1 of division 3 of title 2 of the Gov. Code (commencing with § 11400)) governing service. (See Gov. Code §§ 11440.20, 11504, 11505 & 11506.)

B. E-service In General

E-service shall be made by sending the document as an attachment to an e-mail message or providing a link to the filed version of the document at a particular Uniform Resource Locator (URL) on the World Wide Web in an e-mail message to the e-mail addresses of all persons to be e-served. A proof of service shall be included with the e-mail message as the last page of the document being served or as a separate document attachment. All e-served documents must be in PDF format, unless the persons being served have agreed prior to service to accept service in another electronic format.

The subject line of the e-mail message must include in the following order (1) the CalRecycle Legal Office file number (such as, IH13-001-BCR or IH13-002-TIR), (2) the short name of the action (such as, ABC Rec. or XYZ Tires), and (3) a brief identification of the document being served.

The body of the e-mail message must (1) identify each of the documents being served, (2) indicate whether the e-mail message is one of multiple e-mail messages transmitting the document or documents being served and, if so, how many e-mail messages in all are needed, and (3) provide the name, telephone number, e-mail address, and facsimile transmission number of the person to whom problems with receipt of the document being e-served should be directed.

The total size of a single e-mail message and all documents attached to it may not exceed 40.0 megabytes. If the size of the e-mail message causes service to fail for any person being served, the sending party shall, upon notice, follow the re-service procedure set forth below, and shall endeavor to achieve proper and timely service.

If a document is e-served by being made available at a particular URL (electronic notification), the e-mail message must contain a complete and accurate transcription of the URL or a hyperlink to the URL at which the document is available, and must state the date on which the document was made available at that URL. Such document must be maintained at that URL until the date of the final decision in the proceeding. If changes to the web site change the URL for the document, the serving person must serve a notice of the new URL to all persons e-served via the URL.

C. Re-service of Failed Transmission

By utilizing e-mail service, the serving person agrees, in the event of failure of e-mail service, to re-serve the document, no later than the next business day after the business day on which notice of the failure of e-mail service is received by the serving party. E-mail may be used for re-service only if (1) the receiving person consents to the use of e-mail, or (2) the serving person determines that the cause of the failure of e-mail service has been rectified. "Failure of e-mail

service" occurs when the serving person receives notification, in any manner, of a failed delivery or non-receipt of an e-mail message, or of the receiving person's inability to open or download an attached or linked document, or of any other inability of the receiving person to access the document to be served. The serving person and receiving person shall cooperate to achieve timely service, and may agree to another means of service.

D. Effect of E-service

The e-service of a document is effective service on all persons who have provided an e-mail address for service in the action.

E. Date/Time of E-service

E-service of a document is complete at the time the e-mail message transmitting the document or providing a link to the filed version of the document (electronic notification) is sent. However, any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute, regulation, or rule of court, shall be extended after service by electronic means by two business days. (See Code Civ. Proc. § 1010.6(a)(4) [electronic service in civil actions].)

Documents e-served during normal business hours are deemed to have been served on that day. Otherwise, they are deemed served the next business day. For purposes of this section, normal business hours shall be 8:30 a.m. through 4:00 p.m., Monday through Friday, excluding State holidays.

F. Signatures on E-filed and E-served Documents

Every item which is e-filed or e-served is deemed to have been signed by a party, Hearing Clerk, Hearing Officer, presiding officer, licensed attorney or other authorized representative, or person authorized to execute proofs of service if it bears a typographical signature of such person (such as, "/s/ Adam Attorney"), along with the typed name, address, and telephone number of the person signing, and, if applicable, the State Bar of California number of a signing attorney. Such typographical signatures are personal signatures for all purposes.

E-filed and/or e-served documents requiring a signature under penalty of perjury must be imaged to reflect the handwritten signature of the declarant to accomplish valid filing and service. E-filed and/or e-served documents which do not require a signature under penalty of perjury are deemed signed by the submitting party if it bears a typographical, graphic, or imaged signature.

A party who e-files or e-serves a document represents that a signed original of the document is in his or her possession or control. The original of e-filed and/or e-served documents, including original handwritten signatures, must be retained by the party filing the document for at least the period after the termination, including all appeals, of the action required for conventionally filed hard copy documents. At any time after filing or service of an electronic document, the Hearing Officer or any party to the action may require, upon reasonable notice, the filing party to produce the signed original document. The demand of a party shall be served on all other parties but shall not be filed, unless the signed original document is not timely produced.

G. Change of E-mail Address

A party whose e-mail address changes while an action is pending must promptly electronically file a notice of change of e-mail address with the CalRecycle Legal Office Hearing Clerk and must serve the notice on all other parties. An e-mail address is presumed valid for a party if the party e-files or e-serves electronic documents from that address and has not filed and served notice that the e-mail address is no longer valid.

H. E-service By Hearing Clerk and Hearing Officer

The CalRecycle Legal Office Hearing Clerk and Hearing Officer may issue, file, and serve notices, orders, and other documents electronically in accordance with these Electronic Filing & Service Terms.

I. E-filed Documents Must Be E-served | Additional Means of Service

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A party may also choose to serve e-filed documents by means in addition to e-service, but not instead of e-service. The time for response to the documents shall be the earliest of those corresponding to the various means of service used.

J. Orders Governing E-filing and E-service

These Electronic Filing & Service Terms shall not limit the ability of a Hearing Officer to issue orders governing e-filing and/or e-service in a particular action that supplement or supersede these terms. The Hearing Officer may order that one paper copy of a filed document be submitted instead of or in addition to electronic copies.

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