

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On July 24, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of West Virginia in the lawsuit entitled *United States and West Virginia v. CSX Transportation, Inc.*, Civil Action No. 2:18-cv-01175.

The Complaint alleges that Defendant CSX Transportation, Inc., violated the Clean Water Act, the West Virginia Water Pollution Control Act, and the West Virginia Groundwater Protection Act by discharging oil into Armstrong Creek and the Kanawha River after Defendant's train derailed in February 2015 near Mount Carbon, West Virginia. The Consent Decree resolves the alleged violations through a settlement package with two components. First, the Consent Decree requires Defendant to pay a total civil penalty of \$2.2 million: \$1.2 million to resolve the United States' claims, and \$1 million to resolve West Virginia's claims. Second, Defendant must participate in a State supplemental environmental project ("State SEP") to settle West Virginia's claims only. The State SEP requires Defendant to pay \$500,000 into a State-created and State-owned escrow account that the State will use to fund upgrades to the Kanawha Falls Public Service District water treatment facility in Fayette County, West Virginia.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and West Virginia v. CSX Transportation, Inc.*, Civil Action No. 2:18-cv-01175, DOJ number 90-5-1-1-11264. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://>

www.justice.gov/enrd/consent-decrees. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$5.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the signature pages, the cost is \$4.25.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 05—2018

Subject: Procedures for Appointment of Individuals to Department of Labor Appellate Boards

1. *Purpose.* To provide for transparent and consistent processes by which the Secretary of Labor shall select and appoint individuals to the three appellate boards within the Department of Labor.

2. *Authorities and Directives Affected.*

A. *Authorities.* This Order is issued pursuant to the following authorities:

- i. 29 U.S.C. 551 *et seq.*;
- ii. 5 U.S.C. 301-02.

B. *Directives Affected.* This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, including but not limited to Order 02-2012 (77 FR 69378) and Order 03-2006 (20 CFR 801.201).

3. *Background.* The Secretary has the authority and responsibility to appoint the members of the Department's three appellate boards: the Administrative Review Board (ARB), the Benefits Review Board (BRB), and the Employees' Compensation Appeals Board (ECAB). These appointments should be made through a transparent and consistent process. Accordingly, this Order establishes procedures by which these appointments shall be made.

4. *Responsibilities.*

A. The Assistant Secretary for Administration and Management, in consultation with the Deputy Secretary, is assigned responsibility for issuing written guidance, as necessary, to implement this Order.

B. The Solicitor of Labor is responsible for providing legal advice to DOL on all matters arising in the implementation and administration of this Order.

5. *Procedure.* The following procedures shall apply to the selection and appointment of individuals to the ARB, BRB, and ECAB:

A. A notice of vacancy and solicitation of applications shall be posted in the **Federal Register** and on the relevant Board's website. The vacancy shall be held open for a minimum of thirty days, during which applications shall be accepted. The notice shall specify: The name of the board; the type of appointment; the duration, if any, of the appointment; the minimum criteria for appointment; the documentation an applicant must submit for consideration; the deadline by which such documentation must be submitted; and the email address and/or physical address where documentation may be submitted.

B. Applications will be directed to the Office of Executive Resources (OER) within the Office of the Assistant Secretary for Administration and Management (OASAM) to be screened for whether an applicant has timely submitted all required documentation and meets the minimal qualifications for the position, including vetting potential ethics concerns such as conflicts of interest in consultation with ethics counsel.

C. OER will deliver qualified applications to a six-person review panel. The members of the panel will be selected by the Secretary or the Secretary's designee,¹ and will consist of three career and three non-career Department employees who are members of the Senior Executive Service. The Department's Director, Human Resources Center, or her designee, shall be present for each meeting of the panel.

D. The panel will review the qualified applications, and rank the candidates. The panel will send the applications of the top-ranked candidates to an interview committee, which will be comprised of the Deputy Secretary and a career ethics attorney from Office of the Solicitor.

E. The interview committee will interview the top-ranked candidates and recommend to the Secretary which candidate should be chosen for the position. The interview committee will also provide the Secretary with the resumes of the other top-ranked candidates it interviewed but did not

¹ In the absence of specific Secretary's designee, the Solicitor of Labor shall be the designee.