

Environmental Protection Agency

§ 104.8

docket shall include all written objections filed by any party, any public comments received pursuant to §104.3(d), a verbatim transcript of the hearing, the statement of basis and purpose required by §104.4, and any supporting documents referred to therein, and other documents of exhibits that may be received in evidence or marked for identification by or at the direction of the Presiding Officer, or filed by any party in connection with the hearing. Copies of documents in the docket shall be available to any person upon payment to the Agency of such charges as the Agency may prescribe to cover the costs of duplication. The materials contained in the docket shall constitute the record.

§104.6 Designation of Presiding Officer.

The Chief Administrative Law Judge of the Agency may preside personally at any hearing under this part, or he may designate another Administrative Law Judge as Presiding Officer for the hearing. In the event of the unavailability of any such Administrative Law Judge, the Administrator may designate a Presiding Officer. No person who has any personal pecuniary interest in the outcome of a proceeding under this part, or who has participated in the development or enforcement of any standard or proposed standard at issue in a proceeding hereunder, shall serve as Presiding Officer in such proceeding.

§104.7 Powers of Presiding Officer.

The Presiding Officer shall have the duty to conduct a fair hearing within the time constraints imposed by section 307(a) of the Act. He shall take all necessary action to avoid delay and to maintain order. He shall have all powers necessary to these ends, including but not limited to the power to:

- (a) Rule upon motions and requests;
- (b) Change the time and place of the hearing, and adjourn the hearing from time to time or from place to place;
- (c) Examine and cross-examine witnesses;
- (d) Admit or exclude evidence; and
- (e) Require any part or all of the evidence to be submitted in writing and by a certain date.

§104.8 Prehearing conferences.

Prehearing conferences are encouraged for the purposes of simplification of issues, identification and scheduling of evidence and witnesses, the establishment of an orderly framework for the proceedings, the expediting of the hearing, and such other purposes of a similar nature as may be appropriate.

(a) The Presiding Officer on his own motion may, and at the request of any party made within 20 days of the proposal of standards hereunder shall, direct all parties to appear at a specified time and place for an initial hearing session in the nature of a prehearing conference. Matters taken up at the conference may include, without limitation:

- (1) Consideration and simplification of any issues of law or fact;
- (2) Identification, advance submission, marking for identification, consideration of any objections to admission, and admission of documentary evidence;
- (3) Possible stipulations of fact;
- (4) The identification of each witness expected to be called by each party, and the nature and substance of his expected testimony;
- (5) Scheduling of witnesses where practicable, and limitation of the number of witnesses where appropriate in order to avoid delay or repetition;
- (6) If desirable, the segregation of the hearing into separate segments for different provisions of the proposed effluent standards and the establishment of separate service lists;
- (7) Encouragement of objecting parties to agree upon and designate lead counsel for objectors with common interests so as to avoid repetitious questioning of witnesses.

(b) The Presiding Officer may, following a prehearing conference, issue an order setting forth the agreements reached by the parties or representatives, the schedule of witnesses, and a statement of issues for the hearing. In addition such order may direct the parties to file and serve copies of documents or materials, file and serve lists of witnesses which may include a short summary of the expected testimony of each and, in the case of an expert witness, his curriculum vitae, and may contain such other directions as may