

**§ 209.19**

**40 CFR Ch. I (7-1-03 Edition)**

to state his or her position on any relevant issue;

(9) To take depositions or cause depositions to be taken in accordance with § 209.22.

(10) To render judgments upon issues of law during the course of the hearing.

(11) To issue subpoenas authorized by law.

(b) *Assignment of administrative law judge.* When an answer which contains a written demand for a hearing is filed, the administrator shall refer the proceeding to the chief administrative law judge, who shall conduct the proceeding, or assign another administrative law judge to conduct the proceeding.

(Sec. 16, Noise Control Act (42 U.S.C. 4915))

**§ 209.19 Informal settlement and consent agreement.**

(a) *Settlement policy.* The Agency encourages settlement of the proceeding at any time after the issuance of a complaint if settlement is consistent with the provisions and the objectives of the act and the regulations. Whether or not respondent requests a hearing, he or she may confer with complainant concerning the facts stated in the complaint or concerning the appropriateness of the proposed remedial order. The terms of any settlement agreement shall be expressed in a written consent agreement. Conferences with complainant concerning possible settlement shall not affect the 20 day time limit for filing an answer under § 209.6.

(b) *Consent agreement.* A written consent agreement signed by the complainant and respondent shall be prepared by the complainant and forwarded to the Environmental Appeals Board whenever settlement or compromise is proposed. A copy shall be served on all other parties to the proceeding, no later than the date the consent agreement is forwarded to the Environmental Appeals Board. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts as stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the issuance of a given remedial order.

The consent agreement shall include (i) the terms of the agreement; (ii) any appropriate conclusions regarding material issues of law, fact and/or discretion as well as reasons therefor; and (iii) the Environmental Appeals Board's proposed final order. The administrative law judge does not have jurisdiction over a consent agreement.

(c) *Final order.* No settlement or consent agreement shall be dispositive of any action pending under section 11(d) of the act without a final order of the Environmental Appeals Board. In preparing a final order, the Environmental Appeals Board may require that any or all of the parties to the settlement or other parties appear before it to answer inquiries relating to the proposed consent agreement. The hearing is terminated without further proceedings upon the filing of the final order with the hearing clerk.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

**§ 209.20 Conferences.**

(a) At the discretion of the administrative law judge, conferences may be held prior to or during any hearing. The administrative law judge shall direct the hearing clerk to notify all parties of the time and location of any such conferences. At the discretion of the administrative law judge, persons other than parties may attend. At a conference the administrative law judge may:

(1) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party.

(2) Set a hearing schedule for as many of the following as are deemed necessary by the administrative law judge:

- (i) Oral and written statements;
  - (ii) Submission of written testimony as required or authorized by the administrative law judge;
  - (iii) Oral direct and cross-examination of a witness;
  - (iv) Oral argument, if appropriate;
- (3) Identify matters of which official notice may be taken;
- (4) Consider limitation of the number of expert and other witnesses;