

Environmental Protection Agency

§ 209.23

(5) Consider the procedure to be followed at the hearing; and

(6) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(b) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the administrative law judge and made part of the record.

(c) The administrative law judge, on motion or sua sponte, may request correspondence from the parties for any of the objectives set forth in this section. Copies of the administrative law judge's request and the parties' correspondence shall be served upon all parties. The administrative law judge shall include such correspondence in the record and a written summary of any stipulation or agreement reached by means of such correspondence as provided in paragraph (b) of this section.

§ 209.21 Primary discovery (exchange of witness lists and documents).

(a) At a prehearing conference or within some reasonable time set by the administrative law judge prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and copies of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(b) The administrative law judge, may, upon motion by a party or other person, and for good cause shown, by order (1) restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected testimony of a witness, and (2) prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he or she learns the name of a witness and obtains the narrative summary of the witness' expected testimony, to prepare for the presentation of his or her case.

§ 209.22 Other discovery.

(a) Further discovery under this section shall be undertaken only upon order of the administrative law judge or upon agreement of the parties, except as provided in § 209.21. The administrative law judge shall order further discovery only after determining:

(1) That such discovery will not delay the proceeding unreasonably;

(2) That the information to be obtained is not obtainable voluntarily; and

(3) That such information is relevant to the subject matter of the hearing.

(b) The administrative law judge shall order depositions upon oral questions only upon a showing of good cause and a finding that:

(1) The information sought cannot be obtained by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(c) Any party to the proceeding may make a motion or motions for an order of discovery. The motion shall set forth:

(1) The circumstances which require the discovery;

(2) The nature of the information expected to be discovered; and

(3) The proposed time and place where it will be taken. If the administrative law judge determines the motion should be granted, he or she shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(d) A person's or party's failure to comply with a discovery order may lead to the inference that the information to be discovered is adverse to the person or party who failed to provide it.

§ 209.23 Trade secrets and privileged information.

In the presentation, admission, disposition, and use of evidence, the administrative law judge shall preserve the confidentiality of trade secrets and other privileged commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its being