

## Environmental Protection Agency

## § 22.3

under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), and 300j-6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c);

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator,

or Presiding Officer, as provided for in these Consolidated Rules of Practice.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000]

### § 22.2 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

### § 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

*Act* means the particular statute authorizing the proceeding at issue.

*Administrative Law Judge* means an Administrative Law Judge appointed under 5 U.S.C. 3105.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or his delegate.

*Agency* means the United States Environmental Protection Agency.

*Business confidentiality claim* means a confidentiality claim as defined in 40 CFR 2.201(h).

*Clerk of the Board* means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Commenter* means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

*Complainant* means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

## § 22.4

## 40 CFR Ch. I (7-1-04 Edition)

*Consolidated Rules of Practice* means the regulations in this part.

*Environmental Appeals Board* means the Board within the Agency described in 40 CFR 1.25.

*Final order* means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

*Hearing* means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

*Hearing Clerk* means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Initial decision* means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

*Party* means any person that participates in a proceeding as complainant, respondent, or intervenor.

*Permit action* means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

*Person* includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

*Presiding Officer* means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Pre-

siding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

*Proceeding* means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

*Regional Administrator* means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

*Regional Hearing Clerk* means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

*Regional Judicial Officer* means a person designated by the Regional Administrator under § 22.4(b).

*Respondent* means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000]

### **§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.**

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of