

Environmental Protection Agency

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207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives this right unless it requests in its answer a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the documents in the record as necessary, and notify the parties of the changes.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

- (1) The docket number of the order;
- (2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;
- (3) The location of the facility where violations were found;
- (4) A description of the violations;
- (5) The penalty that was assessed; and
- (6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

(a) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

- (1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;
- (2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

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(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in §124.9 of this chapter, and any public comments received.

[65 FR 30904, May 15, 2000]

§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§22.1 through 22.32, this section shall apply.

(b) *Public notice.*—(1) *General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to §22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the proposed consent agreement if §22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick resolution and settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under §22.18, or commenced under §22.13(b), until 10 days after the close of the comment period