

§ 164.32

brief is desirable. Unless all parties otherwise consent, an amicus curiae shall file its brief within the time allowed the party whose position the brief will support. Upon a showing of good cause, the Administrator or Administrative Law Judge may grant permission for later filing.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5342, Feb. 13, 1992]

§ 164.32 Consolidation.

The Chief Administrative Law Judge, by motion or sua sponte, may consolidate two or more proceedings whenever it appears that this will expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. At the conclusion of proceedings consolidated under this section, the Administrative Law Judge shall issue one decision under §164.90 unless one or more of the consolidated proceedings have been dismissed pursuant to §164.91.

ADMINISTRATIVE LAW JUDGE

§ 164.40 Qualifications and duties of Administrative Law Judge.

(a) *Qualifications.* The Administrative Law Judge shall have the qualifications required by statute. He shall not decide any matter in connection with a proceeding where he has a financial interest in any of the parties or a relationship with a party that would make it otherwise inappropriate for him to act.

(b) *Disqualification of the Administrative Law Judge.* (1) Any party may, by motion made to the Administrative Law Judge, as soon as practicable, request that he disqualify himself and withdraw from the proceeding. The Administrative Law Judge shall then rule upon the motion and, upon request of the movant, shall certify an adverse ruling for appeal.

(2) *Withdrawal sua sponte.* The Administrative Law Judge may at any time withdraw from any proceedings in which he deems himself disqualified for any reason.

(c) *Conduct.* The Administrative Law Judge shall conduct the proceeding in a fair and impartial manner subject to

40 CFR Ch. I (7-1-05 Edition)

the precepts of the Canons of Judicial Ethics of the American Bar Association.

(d) *Power.* Subject to review, as provided elsewhere in this part, the Administrative Law Judge shall have power to take actions and decisions in conformity with statute or in the interests of justice. The Administrative Law Judge shall not interrupt the recording of the proceedings on the record over the objection of any party.

(e) *Absence or change of the Administrative Law Judge.* In the case of the absence or unavailability of the Administrative Law Judge, or his inability to act, or his removal by disqualification or withdrawal, the powers and duties to be performed by him under this part in connection with a hearing assigned to him may, unless otherwise directed by the Administrator, be assigned to another Administrative Law Judge so designated to act by the Chief Administrative Law Judge, the Administrator or the Environmental Appeals Board.

[38 FR 19371, July 20, 1973, as amended at 38 FR 34117, Dec. 11, 1973; 57 FR 5342, Feb. 13, 1992]

PREHEARING PROCEDURES AND DISCOVERY

§ 164.50 Prehearing conference and primary discovery.

(a) *Purpose of the prehearing conference.* Except as otherwise provided in paragraph (d) of this section, the Administrative Law Judge shall, prior to the commencement of the hearing and for the purpose of expediting the hearing, file with the hearing clerk an order for a prehearing conference. More than one such conference may be held. Such order or orders shall direct the parties or their counsel to appear at a specified time and place to consider:

(1) The simplification of issues including listing of specific uses to be contested;

(2) The necessity or desirability of amendments to the objections or statement of issues, or any document filed in response thereto;

(3) The possibility of obtaining stipulations of fact and documents which will avoid unnecessary delay;

(4) Matters of which official notice may be taken;