

## Environmental Protection Agency

## § 222.10

transcript, of the proceedings to be made. Any person may appear at a public hearing convened pursuant to §222.5 whether or not he requested the hearing, and may be represented by counsel or any other authorized representative. The Presiding Officer is authorized to set forth reasonable restrictions on the nature or amount of documentary material or testimony presented at a public hearing, giving due regard to the relevancy of any such information, and to the avoidance of undue repetitiveness of information presented.

### § 222.8 Recommendations of Presiding Officer.

Within 30 days following the adjournment of a public hearing convened pursuant to §222.5, or within such additional period as the Administrator or the Regional Administrator, as the case may be, may grant to the Presiding Officer for good cause shown, and after full consideration of the comments received at the hearing, the Presiding Officer will prepare and forward to the Administrator or to the Regional Administrator, as the case may be, written recommendations relating to the issuance or denial of, or conditions to be imposed upon, the proposed permit and the record of the hearing, if any. Such recommendations shall contain a brief statement of the basis for the recommendations including a description of evidence relied upon. Copies of the Presiding Officer's recommendations shall be provided to any interested person on request, without charge. Copies of the record will be provided in accordance with 40 CFR Part 2.

[42 FR 2471, Jan. 11, 1977; 42 FR 6583, Feb. 3, 1977]

### § 222.9 Issuance of permits.

(a) Within 30 days following receipt of the Presiding Officer's recommendations or, where no hearing has been held, following the close of the 30-day period for requesting a hearing as provided in §222.4, the Administrator or the Regional Administrator, as the case may be, shall make a determination with respect to the issuance, denial, or imposition of conditions on, any permit applied for under this Subchapter H and shall give notice to the

applicant and to all persons who registered their attendance at the hearing by providing their name and mailing address, if any, by mailing a letter stating the determination and stating the basis therefor in terms of the Criteria.

(b) Any determination to issue or deny any permit after a hearing held pursuant to §222.7 shall take effect no sooner than:

(1) 10 days after notice of such determination is given if no request for an adjudicatory hearing is filed in accordance with §222.10(a); or

(2) 20 days after notice of such determination is given if a request for an adjudicatory hearing is filed in accordance with paragraph (a) of §222.10 and the Administrator or the Regional Administrator, as the case may be, denies such request in accordance with paragraph (c) of §222.10; or

(3) The date on which a final determination has been made following an adjudicatory hearing held pursuant to §222.11.

(c) The Administrator or Regional Administrator, as the case may be, may extend the term of a previously issued permit pending the conclusion of the proceedings held pursuant to §§222.7 through 222.9.

(d) A copy of each permit issued shall be sent to the appropriate District Office of the U.S. Coast Guard.

### § 222.10 Appeal to adjudicatory hearing.

(a) Within 10 days following the receipt of notice of the issuance or denial of any permit pursuant to §222.9 after a hearing held pursuant to §222.7, any interested person who participated in such hearing may request that an adjudicatory hearing be held pursuant to §222.11 for the purpose of reviewing such determination, or any part thereof. Any such request for an adjudicatory hearing shall be filed with the Administrator or the Regional Administrator, as the case may be, and shall be in writing, shall identify the person requesting the adjudicatory hearing and shall state with particularity the objections to the determination, the basis therefor and the modification requested.

## § 222.11

## 40 CFR Ch. I (7-1-06 Edition)

(b) Whenever a written request satisfying the requirements of paragraph (a) of this section has been received and the Administrator or Regional Administrator, as the case may be, determines that an adjudicatory hearing is warranted, the Administrator or the Regional Administrator, as the case may be, will set a time and place for an adjudicatory hearing in accordance with § 222.5, and will give notice of such hearing by publication in accordance with § 222.3.

(c) Prior to the conclusion of the adjudicatory hearing and appeal process, the Administrator or the Regional Administrator, as the case may be, in his discretion may extend the duration of a previously issued permit until a final determination has been made pursuant to § 222.11 or § 222.12.

(d) In the event the Administrator or the Regional Administrator, as the case may be, determines that a request filed pursuant to paragraph (a) of this section does not comply with the requirements of such paragraph (a) of this section or that such request does not present substantial issues of public interest, he shall advise, in writing, the person requesting the adjudicatory hearing of his determination.

(e) Any person requesting an adjudicatory hearing or requesting admission as a party to an adjudicatory hearing shall state in his written request, and shall by filing such request consent, that he and his employees and agents shall submit themselves to direct and cross-examination at any such hearing and to the taking of an oath administered by the Presiding Officer.

### § 222.11 Conduct of adjudicatory hearings.

(a) *Parties.* Any interested person may at a reasonable time prior to the commencement of the hearing submit to the Presiding Officer a request to be admitted as a party. Such request shall be in writing and shall set forth the information which would be required to be submitted by such person if he were requesting an adjudicatory hearing. Any such request to be admitted as a party which satisfies the requirements of this paragraph (a) shall be granted and all parties shall be informed at the commencement of the adjudicatory

hearing of the parties involved. Any party may be represented by counsel or other authorized representative. EPA staff representing the Administrator or Regional Administrator who took action with respect to the permit application shall be deemed a party.

(b) *Filing and service.* (1) An original and two (2) copies of all documents or papers required or permitted to be filed shall be filed with the Presiding Officer.

(2) Copies of all documents and papers filed with the Presiding Officer shall be served upon all other parties to the adjudicatory hearing.

(c) *Consolidation.* The Administrator, or the Regional Administrator in the case of a hearing arising within his Region and for which he has been delegated authority hereunder, may, in his discretion, order consolidation of any adjudicatory hearings held pursuant to this section whenever he determines that consolidation will expedite or simplify the consideration of the issues presented. The Administrator may, in his discretion, order consolidation and designate one Region to be responsible for the conduct of any hearings held pursuant to this section which arise in different Regions whenever he determines that consolidation will expedite or simplify the consideration of the issues presented.

(d) *Pre-hearing conference.* The Presiding Officer may hold one or more prehearing conferences and may issue a prehearing order which may include without limitation, requirements with respect to any or all of the following:

- (1) Stipulations and admissions;
- (2) Disputed issues of fact;
- (3) Disputed issues of law;
- (4) Admissibility of any evidence;
- (5) Hearing procedures including submission of oral or written direct testimony, conduct of cross-examination, and the opportunity for oral arguments;
- (6) Any other matter which may expedite the hearing or aid in disposition of any issues raised therein.

(e) *Adjudicatory hearing procedures.* (1) The burden of going forward with the evidence shall:

- (i) In the case of any adjudicatory hearing held pursuant to § 222.10(b)(1), be on the person filing a request under