

#### § 104.14

without remand for further proceedings, or may remand with such instructions as he deems appropriate concerning cross-examination, or opportunity for any party to submit further evidence, with respect to such evidence as he directs should be admitted. In making his determination whether to remand, the Administrator shall consider whether the statutory time restraints permit a remand, and whether it would be constructive to allow cross-examination or further evidence with respect to the newly admitted evidence. If evidence is admitted without cross-examination, the Administrator shall consider the lack of opportunity for cross-examination in determining the weight to be given such evidence.

(g) Motions shall be brief, in writing, and may be filed at any time following the publication of the proposed effluent standards, unless otherwise ordered by the Presiding Officer or the Administrator. Unless otherwise ordered or provided in these rules, responses to motions may be filed within seven days of the actual filing of the motion with the hearing clerk.

#### § 104.14 Tentative and final decision by the Administrator.

(a) As soon as practicable following the certification of the record and the filing by the parties of briefs and proposed findings of fact and conclusions under § 104.11, the Administrator, with such staff assistance as he deems necessary and appropriate, shall review the entire record and prepare and file a tentative decision based thereon. The tentative decision shall include findings of fact and conclusions, and shall be filed with the hearing clerk who shall at once transmit a copy thereof to each party who participated at the hearing, or his attorney or other representative.

(b) Upon filing of the tentative decision, the Administrator may allow a reasonable time for the parties to file with him any exceptions to the tentative decision, a brief in support of such exceptions containing appropriate references to the record, and any proposed changes in the tentative decision. Such materials shall, upon submission, become part of the record. As soon as practicable after the filing

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thereof the Administrator shall prepare and file a final decision, copies of which shall be transmitted to the parties or their representatives in the manner prescribed in paragraph (a) of this section.

(c) In the event that the Administrator determines that due and timely execution of his functions, including compliance with time limitations established by law, imperatively and unavoidably so requires, he may omit the preparation and filing of the tentative decision and related procedures set forth in paragraph (b) of this section, and shall instead prepare and file a final decision, copies of which shall be transmitted to the parties or their representatives in the manner prescribed in paragraph (a) of this section.

(d) Any decision rendered by the Administrator pursuant to this section shall include a statement of his findings and conclusions, and the reasons and basis therefor, and shall indicate the toxic pollutant effluent standard or standards which the Administrator is promulgating or intends to promulgate based thereon.

#### § 104.15 Promulgation of standards.

Upon consideration of the record, at the time of his final decision the Administrator shall determine whether the proposed effluent standard or standards should be promulgated as proposed, or whether any modification thereof is justified based upon a preponderance of the evidence adduced at the hearing, regardless of whether or not such modification was actually proposed by any objecting party. If he determines that a modification is not justified, he shall promulgate the standard or standards as proposed. If he determines that a modification is justified, he shall promulgate a standard or standards as so modified.

#### § 104.16 Filing and time.

(a) All documents or papers required or authorized by the foregoing provisions of this part including, but not limited to, motions, applications for review, and briefs, shall be filed in duplicate with the hearing clerk, except as otherwise expressly provided in these rules. Any document or paper so required or authorized to be filed with

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the hearing clerk, if it is filed during the course of the hearing, shall be also filed with the Presiding Officer. A copy of each document or paper filed by any party with the Presiding Officer, with the hearing clerk, or with the Administrator shall be served upon all other parties, except to the extent that the list of parties to be so served may be modified by order of the Presiding Officer, and each such document or paper shall be accompanied by a certificate of such service.

(b) A party may be represented in any proceeding under this part by an attorney or other authorized representative. When any document or paper is required under these rules to be served upon a party such service shall be made upon such attorney or other representative.

(c) Except where these rules or an order of the Presiding Officer require receipt of a document by a certain date, any document or paper required or authorized to be filed by this part shall be deemed to be filed when post-marked, or in the case of papers delivered other than by mail, when received by the hearing clerk.

(d) Sundays and legal holidays shall be included in computing the time allowed for the filing of any document or paper, provided, that when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

### PART 105—RECOGNITION AWARDS UNDER THE CLEAN WATER ACT

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AUTHORITY: Section 501(a) and (e) of the Clean Water Act (CWA), 33 U.S.C. 1361(a) and (e).

SOURCE: 67 FR 6142, Feb. 8, 2002, unless otherwise noted.

#### GENERAL

##### § 105.1 Background.

The Environmental Protection Agency's (EPA) Clean Water Act (CWA) Recognition Awards Program is authorized by CWA section 501(e). The Administrator may provide official recognition to industrial organizations and political subdivisions of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method or device in their waste treatment and pollution abatement programs. The wastewater management programs can generally be characterized as waste treatment and/or pollution abatement programs. Individual EPA Regional Administrators (and Regional officials they may designate) also may conduct Regional CWA Recognition Awards Programs according to and consistent with the provisions of this part.

##### § 105.2 Definitions.

*Applicant* means the person authorized to complete the application on behalf of an industrial organization or political subdivision of States.

*Application* means a completed questionnaire, nomination form, or other documentation submitted to or by the States, EPA Regions or headquarters for consideration of a national CWA Recognition Award.

*I* means the applicant for an award.

*Industrial organization* means any company, corporation, association, partnership, firm, university, not-for-profit organization, or wastewater