

## § 27.11

## 40 CFR Ch. I (7–1–07 Edition)

### § 27.11 Referral of complaint and answer to the presiding officer.

(a) Upon receipt of an answer, the reviewing official shall file the complaint and answer with the hearing clerk.

(b) The hearing clerk shall forward the complaint and answer to the Chief administrative law judge who shall assign himself or herself or another administrative law judge as presiding officer. The presiding officer shall then obtain the complaint and answer from the Chief administrative law judge and notify the parties of his or her assignment.

### § 27.12 Notice of hearing.

(a) When the presiding officer obtains the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 27.8. At the same time, the presiding officer shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The date, time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the presiding officer deems appropriate.

(c) The presiding officer shall issue the notice of hearing at least twenty (20) days prior to the date set for the hearing.

### § 27.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

### § 27.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Authority who takes part

in investigating, preparing, or presenting a particular case, may not, in such case or a factually related case—

(1) Participate in the hearing as the presiding officer;

(2) Participate or advise in the initial decision or the review of the initial decision by the Environmental Appeals Board, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) Neither the presiding officer nor the members of the Environmental Appeals Board shall be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

### § 27.15 *Ex parte* contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine question concerning administrative functions or procedures.

### § 27.16 Disqualification of the reviewing official or presiding officer.

(a) A reviewing official or presiding officer in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or presiding officer with the hearing clerk. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed within 15 days of the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.