

## Environmental Protection Agency

## § 209.18

(5) The extent to which one movant's participation may reasonably be expected to delay the proceedings.

(c) A motion to intervene should be filed before the first prehearing conference, the initiation of correspondence under §209.20, or the setting of the time and place for the hearing, whichever occurs earliest. Motions shall be served on all parties. Any opposition to such motion must be filed within 10 days of service.

(d) All motions to be made an intervenor shall be reviewed by the administrative law judge using the criteria set forth in paragraph (b) of this section and considering any opposition to such motion. The administrative law judge may, in granting such motion, limit a movant's participation to certain issues only.

(e) If the administrative law judge grants the motion with respect to any or all issues, he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties. If the administrative law judge denies the motion he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties and shall briefly state the reasons why the motion was denied.

(f) All motions to be made an intervenor shall include the movant's agreement that the movant and any person he or she represents will be subject to examination and cross-examination, and will also include an agreement to make any supporting and relevant records available at the movant's own expense upon the request of the administrative law judge, on his or her own motion or the motion of any party or other intervenor. If the intervenor fails to comply with any of these requests, the administrative law judge may, in his or her discretion, terminate his or her status as an intervenor.

### § 209.16 Late intervention.

Following the expiration of the time prescribed in §209.15 for the submission of motions to intervene in a hearing, any person may file a motion with the administrative law judge to intervene in a hearing. Such a motion must contain the information and commitments required by paragraph (b) and (f) of §209.15, and, in addition, must show

that there is good cause for granting the motion and must contain a statement that the movant shall be bound by agreements, arrangements, and other determinations which may have been made in the proceeding.

### § 209.17 Amicus curiae.

Persons not parties to the proceedings who wish to file briefs may do so by leave of the Environmental Appeals Board or the administrative law judge, as appropriate, granted on motion. This motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. An amicus curiae shall be eligible to participate in any briefing following the granting of his or her motion, and shall be served with all briefs, reply briefs, motions and orders relating to issues to be briefed.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

### § 209.18 Administrative law judge.

(a) *General.* The administrative law judge shall conduct a fair and impartial hearing in accordance with 5 U.S.C. 554, and shall take all necessary action to avoid delay and maintain order. He or she shall have all power consistent with Agency rule and with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, necessary to this end, including the following:

- (1) To administer oaths and affirmations;
- (2) To rule upon offers of proof and receive relevant evidence;
- (3) To regulate the course of the hearings and the conduct of the parties and their counsel;
- (4) To hold conferences for simplification of the issues or any other proper purpose;
- (5) To consider and rule upon all appropriate procedural and other motions, and to issue all necessary orders;
- (6) To require the submission of testimony in written form whenever in the opinion of the administrative law judge oral testimony is not necessary for full and true disclosure of the facts.
- (7) To require the filing of briefs on any matter on which he or she is required to rule;
- (8) To require any party or any witness, during the course of the hearing,

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to state his or her position on any relevant issue;

(9) To take depositions or cause depositions to be taken in accordance with § 209.22.

(10) To render judgments upon issues of law during the course of the hearing.

(11) To issue subpoenas authorized by law.

(b) *Assignment of administrative law judge.* When an answer which contains a written demand for a hearing is filed, the administrator shall refer the proceeding to the chief administrative law judge, who shall conduct the proceeding, or assign another administrative law judge to conduct the proceeding.

(Sec. 16, Noise Control Act (42 U.S.C. 4915))

### § 209.19 Informal settlement and consent agreement.

(a) *Settlement policy.* The Agency encourages settlement of the proceeding at any time after the issuance of a complaint if settlement is consistent with the provisions and the objectives of the act and the regulations. Whether or not respondent requests a hearing, he or she may confer with complainant concerning the facts stated in the complaint or concerning the appropriateness of the proposed remedial order. The terms of any settlement agreement shall be expressed in a written consent agreement. Conferences with complainant concerning possible settlement shall not affect the 20 day time limit for filing an answer under § 209.6.

(b) *Consent agreement.* A written consent agreement signed by the complainant and respondent shall be prepared by the complainant and forwarded to the Environmental Appeals Board whenever settlement or compromise is proposed. A copy shall be served on all other parties to the proceeding, no later than the date the consent agreement is forwarded to the Environmental Appeals Board. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts as stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the issuance of a given remedial order.

The consent agreement shall include (i) the terms of the agreement; (ii) any appropriate conclusions regarding material issues of law, fact and/or discretion as well as reasons therefor; and (iii) the Environmental Appeals Board's proposed final order. The administrative law judge does not have jurisdiction over a consent agreement.

(c) *Final order.* No settlement or consent agreement shall be dispositive of any action pending under section 11(d) of the act without a final order of the Environmental Appeals Board. In preparing a final order, the Environmental Appeals Board may require that any or all of the parties to the settlement or other parties appear before it to answer inquiries relating to the proposed consent agreement. The hearing is terminated without further proceedings upon the filing of the final order with the hearing clerk.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5344, Feb. 13, 1992]

### § 209.20 Conferences.

(a) At the discretion of the administrative law judge, conferences may be held prior to or during any hearing. The administrative law judge shall direct the hearing clerk to notify all parties of the time and location of any such conferences. At the discretion of the administrative law judge, persons other than parties may attend. At a conference the administrative law judge may:

(1) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party.

(2) Set a hearing schedule for as many of the following as are deemed necessary by the administrative law judge:

- (i) Oral and written statements;
  - (ii) Submission of written testimony as required or authorized by the administrative law judge;
  - (iii) Oral direct and cross-examination of a witness;
  - (iv) Oral argument, if appropriate;
- (3) Identify matters of which official notice may be taken;
- (4) Consider limitation of the number of expert and other witnesses;