

## Environmental Protection Agency

## § 27.18

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.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the presiding officer determines that the reviewing official is disqualified because the reviewing official could not have made an impartial determination pursuant to § 27.5(a), the presiding officer shall dismiss the complaint without prejudice.

(2) If the presiding officer disqualifies himself or herself, the case shall be reassigned promptly to another presiding officer.

(3) If the presiding officer denies a motion to disqualify, the Environmental Appeals Board may determine the matter only as part of its review of the initial decision upon appeal, if any.

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### § 27.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the presiding officer;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the presiding officer; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

### § 27.18 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;