

## Environmental Protection Agency

## § 179.80

### Subpart D—Presiding Officer

#### § 179.60 Designation and qualifications of presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105 and designated by the Agency's chief administrative law judge.

#### § 179.70 Authority of presiding officer.

The presiding officer shall conduct the hearing in a fair and impartial manner subject to the precepts of the Administrative Procedure Act. The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to:

- (a) Specify and change the date, time, and place for conferences, and issue and modify a schedule for the hearing.
- (b) Establish an orderly manner for developing evidentiary facts at preliminary conferences under §179.87, for making rulings on oral testimony and cross-examination under §179.93, and for making other similar evidentiary rulings in accord with these regulations.
- (c) Prepare statements of the areas of factual disagreement among the participants.
- (d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing.
- (e) Administer oaths and affirmations.
- (f) Control the course of the hearing and the conduct of the participants.
- (g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions.
- (h) Rule on, admit, exclude, or limit evidence.
- (i) Set the time for filing pleadings.
- (j) Rule on motions and other procedural matters.
- (k) Rule on motions for summary decision under §179.90.
- (l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex.
- (m) Strike the participation of any person under §179.42(f), or exclude any person from the hearing under §179.50,

or take other reasonable disciplinary action.

(n) Take any other action for the fair, expeditious, and orderly conduct of the hearing that is not in conflict with law or these rules.

#### § 179.75 Disqualification of deciding officials.

(a) A deciding official in a hearing under this part (including, e.g., the Administrator, judicial officer, or presiding officer) shall not decide any matter in connection with which he or she has a financial interest in any of the parties, or a relationship that would make it otherwise inappropriate for him or her to act.

(b) A party may request that a deciding official disqualify himself/herself and withdraw from the proceeding. The party may obtain interlocutory review by the Administrator of a denial of such a request made to any deciding official other than the Administrator.

(c) A deciding official who is aware of grounds for disqualification shall withdraw from the proceeding.

#### § 179.78 Unavailability of presiding officer.

If the presiding officer is unable to act for any reason, his or her powers with respect to the hearing will be assigned by the Chief Administrative Law Judge to another presiding officer. The substitution will not affect the hearing, *i.e.*, the testimony of the witnesses will not be taken anew except as the new presiding officer may order upon the request of a party where the credibility of a witness is of particular importance.

### Subpart E—Hearing Procedures

#### § 179.80 Filing and service.

(a) All documents required or authorized to be filed by a party to a hearing under this part regarding any matter to be decided by the presiding officer, the judicial officer, or the Administrator shall be filed in triplicate with the hearing clerk, in the manner specified by §178.25(b) of this chapter. Each filing shall prominently note the docket number. To determine compliance with deadlines in a hearing, a document is considered filed on the date it