

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Reg 2  
2014 APR -1 AM 10: 04  
REGIONAL HEARING  
CLERK

**IN THE MATTER OF:**

Ravago Americas, LLC  
(formerly known as Amco Polymers, LLC and  
Ravago Manufacturing Americas, LLC)  
595 Broadhollow Road  
Farmingdale, NY 11735

Respondents

Proceedings under Section 1423(c) of the Safe  
Drinking Water Act, 42 U.S.C. §300h-2(c)

**AMENDMENT TO COMPLAINT,  
NOTICE OF VIOLATION,  
PROPOSED ADMINISTRATIVE ORDER  
WITH CIVIL PENALTY AND  
OPPORTUNITY TO REQUEST A  
HEARING**

**DOCKET NO.  
SDWA-02-2013-8902**

**AMENDMENT TO COMPLAINT AND NOTICE OF SAFE DRINKING  
WATER ACT VIOLATIONS**

**I. STATUTORY and REGULATORY AUTHORITIES**

1. This Complaint, Notice of Violation, Proposed Administrative Order with Civil Penalty and Opportunity to Request a Hearing, is hereinafter referred to as "Complaint" and is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 1423(c) of the Safe Drinking Water Act ("SDWA" or "Act"), 42 U.S.C. §300h-2(c). The EPA Administrator has delegated the authority to take these actions to the Regional Administrator for EPA, Region 2, who in turn has delegated the authority to the Director of the Division of Enforcement and Compliance Assistance, Region 2 ("Complainant").
2. Pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and in accordance with the administrative Consolidated Rules of Practice ("CROP") 40 C.F.R. Part 22, Complainant hereby requests that the Regional Administrator assess a civil penalty against a person for violations of the Act and the regulations promulgated thereunder and requires such person to take certain actions to achieve compliance with the Act and the regulations promulgated thereunder.
3. Sections 1421(a) and (b) of the Act, 42 U.S.C. §§300h(a) and (b), requires the EPA Administrator to promulgate regulations establishing minimum requirements for effective programs to prevent underground injection which endangers drinking water sources. *See* 40 C.F.R. Parts 124, 142, 144, 146, and 147, Subpart HH.
4. Section 1401(12) of the Act, 42 U.S.C. §300f(12) and 40 C.F.R. §144.3 defines "person" among other things, as an individual, corporation, company, association, partnership or municipality.

Project: Ravago Americas, LLC  
SDWA-02-2013-8902  
REGISTRATION/RENEWAL  
DATE: 01/10/2014

5. Section 1422(c) of the SDWA, 42 U.S.C. §300h-1(c) requires EPA to administer the Underground Injection Control ("UIC") program in states which do not have approved state programs. The State of New York has not acquired primacy of the UIC program. Pursuant to 40 C.F.R. §147.1651, June 25, 1984 is the effective date of the UIC program for New York for all injection activities except those on lands of the Seneca Indian Tribe.
6. Section 1421(d) of the Act, 42 U.S.C §300h(d) defines "underground injection" as the subsurface emplacement of fluids by well injection. Underground injection endangers drinking water sources if such injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system, and if the presence of such contaminant may result in such system not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.
7. 40 C.F.R. §144.3 defines "contaminant" as any physical, chemical, biological, or radiological substance or matter in water.
8. 40 C.F.R. §144.3 defines "owner or operator" as the owner or operator of any "facility or activity" subject to regulation under the UIC program. "Facility or activity" is defined as any UIC "injection well," or any other facility or activity that is subject to regulation under the UIC program. "Site" is defined as the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.
9. 40 C.F.R. §144.3 defines "injection well" as a "well" into which "fluids" are being injected. A "well" is defined as a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system. "Fluids" are defined as any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
10. 40 C.F.R. §144.3 defines "drywell" as a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids. "Subsurface fluid distribution system" is defined as an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.
11. 40 C.F.R. §144.3 defines "underground source of drinking water" as an aquifer or its portion: (a)(1) which supplies any public water system; or (2) which contains a sufficient quantity of ground water to supply a public water system; and (i) currently supplies drinking water for human consumption; or (ii) contains fewer than 10,000 mg/l total dissolved solids; and (b) which is not an exempted aquifer.
12. 40 C.F.R. §144.3 defines "ground water" as water below the land surface in a zone of saturation.
13. 40 C.F.R. §144.11 prohibits any underground injection, except as authorized by rule or permit under the UIC program.

14. 40 C.F.R. §144.12 prohibits any injection activity which allows the movement of fluids containing any contaminant into an underground source of drinking water (“USDW”), if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons. *See also*, 40 C.F.R. §144.82.
15. 40 C.F.R. §144.26 requires the owner or operator of an injection well which is authorized by rule to submit inventory information to the Director. *See also*, 40 C.F.R. §144.83.
16. Pursuant to 40 C.F.R. §144.6, injection wells are classified as either in Class I, II, III, IV, or V. 40 C.F.R. §144.80(e) indicates that Class V wells are not included in Class I, II, III, or IV and are typically shallow wells used to place a variety of fluids directly below the land surface. 40 C.F.R. §144.81 describes the types of Class V injection wells as, among other things, drainage wells used to drain surface fluids, primarily storm runoff, into a subsurface formation and dry wells used for the injection of wastes into a subsurface formation.
17. Pursuant to 40 C.F.R. §144.24, all Class V injection operations (as defined by 40 C.F.R. §§144.3, 144.6(e), 146.3 and 146.5(e)) are authorized to operate, provided that the owner and/or operator is in compliance with 40 C.F.R. Part 144, where applicable.
18. Section 1445 of the Act, 42 U.S.C. §300j-4, authorizes EPA to conduct inspections to determine whether the owner or operator of an injection well has acted or is acting in compliance with the UIC program.

## **II. JURISDICTIONAL FINDINGS**

1. Ravago Americas, LLC, formerly known as Amco Polymers, LLC and Ravago Manufacturing Americas, LLC, (collectively “Respondents”) are “persons” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12) and 40 C.F.R. §144.3 because both are companies and/or corporations.
2. Respondents either operate or operated a manufacturing and distribution site (“Site”) located at 595 Broadhollow Road, Farmingdale, NY 11735. This Site is used to manufacture and distribute plastic resin and to change the properties and colors of plastic resin. Respondents are or were the “operators” of the Site within the meaning of 40 C.F.R. §144.3.
3. There are Class V injection wells (drainage wells and drywells) located at the Site, as defined at 40 C.F.R. §§144.6, 144.80(e), and 144.81.
4. Based upon information available to EPA, there are no areas in New York State known not to be underlain by one or more aquifers. Pursuant to Title 6 of the New York Codes, Rules, and Regulations, 6 NYCRR §701.18, ground water in all areas of New York State are considered potential sources of potable drinking water, with the exception of Manhattan. The Site’s injection wells, therefore, discharge into or above an USDW.
5. Based on the above, Respondents are subject to the requirements of Part C of the SDWA, 32 U.S.C. §300h *et seq.* and implementing regulations found at 40 C.F.R. Parts 124, 144, 146 and 147, Subpart HH.

### III. FINDINGS OF FACT AND VIOLATION

1. The paragraphs above are re-alleged and incorporated herein by reference.
2. On March 5, 2013, EPA conducted an inspection (“Inspection”) at Respondents’ Site.
3. During the Inspection, the EPA inspector made the following findings and observations:
  - a. Eleven Class V exterior open grate storm water drainage wells and/or drywells (hereinafter “UIC Wells”) were observed at the Site. The four UIC Wells on the south side of the Site are referred to hereinafter as UIC Wells #1 to #4 from east to west. *See* diagram in Attachment 1.
  - b. A horizontal metal pipe was observed entering the side of UIC Well #4 from the direction of the Site building. According to Site representatives, the pipe is used to discharge re-circulated process water (cooling water from cooling baths) from the closed loop cooling system inside the building into the UIC Well #4. A Site representative explained that the discharge occurs intermittently if there is a “clog” and that there is no mechanism in place to indicate that a discharge has occurred.
  - c. An apparatus that was stated to be a sump pump was observed in UIC Well #4. According to a Site representative, the sump pump pumps water from UIC Well #4 to another UIC Well to prevent icing.
  - d. A horizontal pipe was observed entering the side of UIC Well #3 from the direction of the Site building. According to Site representatives, the purpose of the pipe was not known.
  - e. A possible pipe entering/exiting UIC Well #2 was observed. A cone shaped object was observed inside UIC Well #2 which when hit with a crowbar was soft material on the outside appearing to be around a metal sounding object on the inside.
  - f. EPA observed staining on the pavement in the immediate vicinity of and on the open grate tops of UIC Wells #1 and #2 which indicated that a yellow-green substance had entered the UIC Wells. Based on photos taken inside of UIC Wells #1 and #2, the water inside both UIC Wells was discolored a yellow-green color, and based on photos taken of the inside of UIC Well #2, there were yellowish colored filamentlike streaks in the water inside the well. During the walk through, a Site representative stated that he did not know what the yellow-green color was. During the closing conference, the property owner stated that yellow pigments are used as part of the manufacturing process at the Site.
  - g. Best Management Practices (BMPs) were inadequate at Respondents’ Site to protect UIC Wells on the south side of the Site from spills, leaks or other discharges of industrial contaminants.
  - h. The paved drive area on the south side of the Site where UIC Wells #1 through #4 are located is used for trucks to offload hard plastic pellets via piping into silos, has a

cooling tower and enclosed dust collector system; and is used for open storage of what appeared to be discarded items. Based on photos taken of this area, there was a large discarded cardboard box labeled “Total Petrochemicals” and “Polypropylene”.

- i. A current as-built plan for the eleven UIC Wells showing depths, direction of flow, interconnections and internal connections was not available at the time of Inspection.
4. Based on the Inspection findings above, at least UIC Wells #1, #2, and #4 at the Site receive discharges other than storm water and are classified as Industrial Process Water & Waste Disposal Wells and/or Industrial Drainage Wells.
5. Plastic resin and plastics products industry process water may contain hazardous substances as defined by EPA at 40 C.F.R Part 302. Cooling water may come in contact with raw materials or plastic products; and/or may be generated from water that contains contaminants.
6. On January 31, 2014, Respondents ceased all wet process operations and/or injections. On March 31, 2014, Respondent will cease all operations at the Site.
7. The Site is located above the Long Island Sole Source Aquifer, an USDW.
8. Based on the Findings above, the Site’s UIC Wells therefore discharge into or above an USDW.
9. An injection activity that allows the movement of fluid containing any contaminant into an USDW, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 C.F.R. Part 142 or may otherwise adversely affect the health of persons, is prohibited.
10. On January 1, 2014, Amco Polymers, LLC and Ravago Manufacturing Americas, LLC merged to become Ravago Americas, LLC.
11. Based on the Findings above, Respondents are in violation of 40 C.F.R. §144.11 by injection without authorization to inject and 40 C.F.R. §144.12 by injection which may endanger USDWs.

#### IV. PROPOSED ADMINISTRATIVE ORDER

1. **Penalty:** EPA proposes to issue a Final Administrative Order (“Final Order”). The Final Order will be based on the foregoing Findings of Violation and will be issued pursuant to the authority of Section 1423(c) of the Act, 42 U.S.C. §300h-2(c), and the Debt Collection Improvement Act of 1996. EPA Region 2, hereby proposes to issue a Final Administrative Order against the Respondents assessing a penalty of **\$15,000**. EPA determined the proposed penalty in accordance with the terms of the SDWA, which takes into account statutory factors, including the seriousness of the violation(s); the economic benefit (if any) resulting from the violation(s); the history of such violation(s); the good-faith efforts to comply with the applicable requirements; the economic impact of the penalty on the violator; and such other matters as justice may require.

2. **Compliance Measures:** In addition to paying a penalty, Respondents will be ordered to:
- a. **Cease Injection:** As of the date the Final Order is issued and signed by the Complainant (“Effective Date”), Respondents must discontinue the use of all UIC Wells for the disposal of all industrial waste, including but not limited to the piped discharges from inside the Site (i.e. internal connections), and spills, leaks or other discharges of industrial contaminants.
  - b. **Remediation/Closure Plan Submittal:** Within 30 days of the Effective Date of the Final Order, Respondents must submit a Remediation/Closure Plan detailing how the UIC Wells subject to this Complaint will be properly remediated and, if applicable, permanently closed. The Remediation/Closure Plan must be developed in accordance with the well remediation/closure requirements incorporated into this Complaint as Attachment 2 and the following requirements:
    - i. **Determine All Internal Connections and Discharges to UIC Wells:** Respondents must determine all internal connections and piped discharges to any UIC Wells identified during the Inspection and any other unidentified UIC wells. Identify the point in the manufacturing process where the discharge(s) originate. Identify all UIC Wells receiving or having the potential to receive internal discharges either directly, via sump pump, or via internal connections among UIC Wells. Provide a description of all fluids which enter the UIC Wells via an internal piped discharge. Include the types of fluids that enter, have entered, or have the potential to enter each of the UIC wells. Identify potential contaminants discharged and ensure the end-point samples for all impacted wells are analyzed for all probable contaminants.
    - ii. **Determine All Interconnections/Overflow Wells among UIC Wells:** Respondents must determine all interconnections and overflows among UIC Wells.
    - iii. **Provide Current As Built Plan for UIC Wells:** Respondents must provide a current as built plan for all UIC Wells at the Site including depths, interconnections and internal connections such as that in UIC Well #4. Provide a schematic diagram of the injection well system including the internal connections and interconnections/overflow among Wells as determined in b.i and b.ii, above. Include significant Site features (e.g., loading dock, chemical storage, waste parts storage) and their proximity to UIC Wells.
    - iv. **Identify Probable Contaminant(s) Spilled, Leaked or Otherwise Discharged:** Respondents must identify the probable cause of the yellow-green substance in UIC Wells #1 and #2 and ensure the end-point samples for all impacted Wells are analyzed for all probable contaminants.
    - v. **Identify Types of Activities Conducted and Materials Stored/Handled Near UIC Wells:** Respondents must identify all activities conducted and materials loaded/offloaded/handled/stored on south side of the Site and in truck loading bays on west side of the Site.

- vi. **Type of Facility/Activities/Manufacturing Processes/SIC:** Respondents must provide a description characterizing the Site, the types of activities and the types of manufacturing processes conducted. Include the primary and all secondary Standard Industrial Classification (SIC) codes and North American Industry Classification System (NAICS) codes for the Site.
- vii. **Method for Ground Water Sampling and Analyses:** Respondents must provide a method for ground water sampling and analyses in the event ground water is reached during remediation.
- viii. **Permanent Closure of Internal Connections/Remediation; Protect from Industrial Discharges due to Spills, Leaks or Other; or Permanently Close:** Respondents must describe how UIC Wells #1 through #4 on the south side of the Site, including any associated overflow UIC Wells and any other injection wells that have received industrial contaminants at the Site:
  - 1. will have all internal connections permanently disconnected.
  - 2. will be properly remediated.
  - 3. will be protected from industrial contaminants due to spills, leaks, or other discharges; or permanently closed if sufficient BMPs cannot be implemented to prevent discharges.

EPA will review the Remediation/Closure Plan and approve or provide comments within 45 days after receipt of the Remediation/Closure Plan from Respondents.

Please note that the continued use of any UIC Wells subject to this Complaint for the discharge of storm water runoff after remediation is completed must be approved by EPA pursuant to Paragraph 4, below.

- 3. **UIC Well Remediation/Closure Final Report Submittal:** Within 180 days of the Effective Date of the Final Order, Respondents must submit a Final Report to EPA, summarizing the work completed in fulfillment of the requirements of the Final Order and as required by the EPA-approved Remediation/Closure Plan. EPA will notify Respondents in writing as to whether the UIC Well remediation/closure and Final Report are adequate or if additional measures must be taken.
- 4. **Request for Authorization of Remediated UIC Wells:** Should Respondents desire to continue to utilize the UIC Wells subject to this Complaint for the disposal of storm water runoff after the permanent closure of internal connections and remediation required pursuant to Paragraph 2 of this section is completed, Respondents must submit a written request (“Request”), to EPA within 180 days of the Effective Date of the Final Order indicating Respondents desire to obtain authorization for continued injection of storm water runoff only. This Request must include, at a minimum:
  - a. **A BMP Plan:** BMP Plan to protect UIC Wells receiving storm water from industrial contaminants due to spills, leaks, or other discharges. The BMP Plan must utilize the information obtained from the investigations in IV.2, above. Examples of BMPs include covering work and storage areas, berming, employee training, etc., or alternatives such as holding and hauling.

- b. **Ground Water Depth:** provide the depth to ground water at the Site and on the south side of the Site. Identify how depth was determined.
- c. **Public or Private Drinking Water Wells:** provide any known public or private drinking water wells within a ½ mile radius of the Site.
- d. **Inventory Information Submittal:** provide inventory information for the UIC Wells for which you are requesting authorization for continued injection of storm water runoff. Include completed EPA form 7520-16 Inventory of Injection Wells according to the USEPA Region II Supplemental Instructions (Attachment 3). Include the name, address and phone number of the land owner, business owner and legal contact, including the organizational type for each, such as individual, corporation, company, association, partnership, LLC or municipality. Provide a contact name for all three.

Once EPA completes its review of the Request, EPA will send Respondents a written response approving or denying the Request, or detailing any additional information needed to evaluate the Request and may include additional requirements that must be met in order for the Request to be approved under authorization by rule.

All information required in the Final Order must be sent to the following:

Nicole Foley Kraft, Chief  
Groundwater Compliance Section  
U.S. EPA, Region 2  
290 Broadway, 20th Floor  
New York, New York 10007-1866

5. The Final Order does not constitute a waiver, suspension or modification of the requirements of 40 C.F.R. Part 147, Subpart HH, which remain in full force and effect. Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
6. Violations of the terms of the Final Order after its Effective Date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2(c)(6), may subject Respondents to additional civil and/or criminal enforcement actions of the Final Order, pursuant to Section 1423(b) of the Act, 42 U.S.C. §300h-2(b). Failure to act in accordance with the Final Order truthfully and accurately within the time provided may subject Respondents to sanctions authorized by federal law. In addition, making a knowing submission of materially false information to the U.S. Government may be a criminal offense.

## **V. OPPORTUNITY FOR A HEARING**

1. Respondents may, within thirty (30) days of receipt of this Complaint, and as part of any Answer filed in this matter, request a hearing (“Hearing Request”) on the proposed civil penalty assessment and the actions proposed to achieve compliance with the Act, as detailed in Section IV, above. At the hearing, Respondents may contest the factual allegations set forth in the Findings sections above; the appropriateness of any penalty amount, and appropriateness of any compliance measures contained in Section IV, above. The procedures for the hearing, if one is requested, are set out in the CROP, including Subpart I. A copy of the CROP is attached.

2. Should Respondents request a hearing on this proposed penalty assessment and/or compliance measures, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 1423(c)(3) of the Act, 42 U.S.C. §300h-2(c)(3), to be heard and to present evidence on the appropriateness of the penalty assessment and compliance measures. Should Respondents not request a hearing, EPA will issue a Final Order and only members of the public who submit timely comment on this Complaint will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

#### **A. Filing an Answer**

3. If Respondents wish to avoid being found in default, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. Under authority of 40 C.F.R. §22.17, EPA may file a motion seeking a default order thirty (30) days after Respondents' receipt of the Complaint, unless Respondents file an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed and the proposed compliance measures may be required, without further proceedings.
4. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondents have knowledge, or, clearly state that Respondents have no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:
  - a. circumstances or arguments which are alleged to constitute grounds of any defense;
  - b. facts which the Respondents dispute;
  - c. basis for opposing the proposed relief;
  - d. whether a hearing has been requested.
5. Failure of Respondents to admit, deny or explain any material factual allegation in the Complaint shall constitute admission of the allegation.

#### **B. Filing of Documents**

6. In accordance with the CROP, the Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk  
U.S. EPA, Region 2  
290 Broadway – 16<sup>th</sup> Floor  
New York, New York 10007-1866

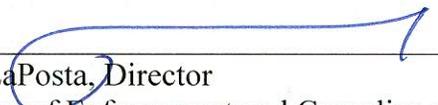
7. A copy of the Answer, any Hearing Request, and all subsequent documents filed in this action shall be sent to:

Kara E. Murphy, Assistant Regional Counsel  
Water & General Law Branch  
Office of Regional Counsel  
U.S. EPA, Region 2  
290 Broadway – 16<sup>th</sup> Floor  
New York, New York 10007

**VI. GENERAL PROVISIONS**

1. Respondents have the right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated thereunder or any applicable UIC permit.
3. Complainant specifically reserves all rights to pursue criminal enforcement as well as the right to initiate an action for imminent and substantial endangerment, including the right to seek injunctive relief and/or the imposition of statutory penalties for those violations not addressed by this Complaint. This reservation of right does not waive any other rights Complainant may have but has not stated herein.

COMPLAINT ISSUED THIS 28<sup>th</sup> DAY OF March, 2014.

  
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Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Ravago Americas, LLC  
(formerly known as Amco Polymers, LLC and  
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**DOCKET NO.  
SDWA-02-2013-8902**

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Amendment to Complaint, Notice of Violation, Proposed Administrative Order and Opportunity to Request a Hearing," bearing the above-referenced docket number, was sent to the following persons, in the manner specified, on the date below:

Original and one copy by hand to:

Karen Maples  
Regional Hearing Clerk  
U.S. EPA, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

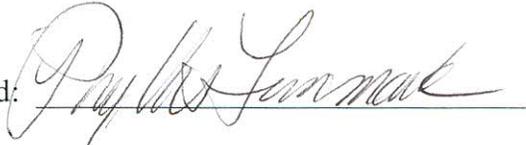
One copy by hand to:

Helen Ferrara  
Regional Judicial Officer  
U.S. EPA, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail Return Receipt Requested to:

Mark Applebaum, Esq.  
Ravago Americas, LLC  
1900 Summit Tower Blvd., Suite 900  
Orlando, FL 32810

Date: 3/31/14

Signed: 

Name and Title: Phyllis Feinmark  
New York, New York  
Chief, Water and General  
Law Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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**AMENDING THE COMPLAINT AS OF RIGHT  
PURSUANT TO 40 C.F.R. § 22.14(c)**

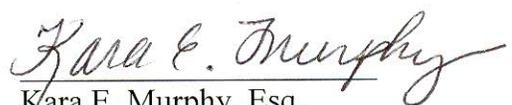
The United States Environmental Protection Agency (“EPA”) is issuing an amended complaint for the above referenced matter in accordance with 40 C.F.R. § 22.14(c), which permits the complainant to amend the complaint once as a matter of right at any time before the answer is filed.

On August 23, 2013, EPA issued a complaint against Amco Polymers, LLC, Ravago Manufacturing America, LLC, and Ravago Manufacturing Americas (“Respondents”). Shortly thereafter, EPA and the Respondents entered into settlement negotiations. Therefore, pursuant to 40 C.F.R. § 22.16(a), on September 16, 2013, Respondents filed an uncontested motion for extension of time to file an answer, which was granted by the Presiding Officer, Regional Judicial Officer (“RJO”) Ferrara. Respondents had until November 27, 2013 to file their answer. Since negotiations were still ongoing, on November 8, 2013, Respondent filed a second uncontested motion for extension of time to file an answer. RJO Ferrara granted their request

until February 14, 2014. A third uncontested motion was filed on February 14, 2014, which was also granted by this office, and provided Respondents until March 31, 2014 to file their answer. Pursuant to 40 C.F.R. § 22.14(c), Respondents will have 20 additional days from the date of service of the amended complaint to file their answer.

Respondents informed EPA that on January 1, 2014, Amco Polymers, LLC and Ravago Manufacturing Americas, LLC merged to become Ravago Americas, LLC. EPA was also told that Ravago Manufacturing Americas was not a company of interest for purposes of the Complaint. Therefore, the amended complaint reflects these changes along with other minor changes.

Dated: March 27, 2014

  
Kara E. Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 2

**ATTACHMENT 1**

**SITE DIAGRAM: OPEN GRATE STORM DRAIN**



○ - Open Grate Storm Drain

**ATTACHMENT 2**

REQUIREMENTS FOR UNDERGROUND INJECTION CONTROL CLASS V  
REMEDICATION/CLOSURE PLANS

TABLE 1 REGION 2 UIC CLEANUP OBJECTIVES

## ATTACHMENT 2

### Requirements for Underground Injection Control Class V Closure Plans

To ensure Underground Injection Control (UIC) Class V well closure is performed in an environmentally sound manner, the EPA requires the following information to be included in Class V Well Closure Plan<sup>1</sup>:

- A. Schematic diagram displaying the injection well system; the diagram must include all drains, piping, processing units such as oil/water separators or septic tanks, and final discharge mechanisms such as drywells, leach fields or open underground pipe.
- B. Description of all fluids which enter the Class V well.
- C. Statement indicating that the connection between all drains of concern and the injection well (cesspool, drywell, open pipe or leachfield), will be verified.
- D. Description of plug emplacements (if applicable).
- E. Statement indicating that all contaminated liquids, sludges, and contaminated soil will be removed from in and around the Class V injection well until visibly clean soil is reached, or structural integrity of the excavation or buildings or other significant structures near the excavation, may be compromised.
- F. Description of on-site storage while awaiting proper disposal, of liquids, sludges and contaminated soil removed from the Class V well system.
- G. Statement indicating that all wastes will be characterized for disposal purposes, in accordance with Federal, State, and local regulations.
- H. End-point sample shall be collected from the cleaned out Class V well, below the point of discharge. The end-point sample shall be analyzed according to well use and injectate constituents. A statement must be included indicating what analytical methods will be used. Recommended EPA methods are included below.
  - For large capacity cesspool wells (20 or more people per day), which receive only sanitary waste, an end-point sample and analysis is not required.
  - For motor vehicle waste disposal wells, the end-point sample shall be analyzed for volatile organic compounds (EPA Test Method SW-846 8260), semi-volatile organic compounds (EPA Test Method SW-846 8270 base/neutral extraction), and arsenic, cadmium, chromium, and lead by a total metals analysis.

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<sup>1</sup> Please note, for sanitary systems where a connection to the sewer is not possible, the sanitary system may remain in use as long as the chemical contamination is remediated and the chemical discharge is ceased.

- For funeral home waste disposal wells, the end-point sample shall be analyzed for volatile organic compounds (EPA Test Method SW-846 8260); phenol, 2-methylphenol and 4-methylphenol (EPA Test Method SW-846 8270 base/neutral extraction, or EPA Test Method SW-846 8041); and formaldehyde (EPA Test Method SW-846 8315); mercury, arsenic, cadmium, chromium, copper and lead by total metals analysis.
  - For industrial discharge wells, the end-point sample shall be analyzed for contaminants present in the injected discharge (analyses may include volatile organic compounds - EPA Test Method SW-846 8260; semi-volatile organic compounds - EPA Test Method SW-846 8270 base/neutral extraction, and metals, herbicides or pesticides).
  - Leachfield Sampling: Collect one sample from 4 feet under the center point of the leachfield for compounds in soil, and water, if encountered. For volatile organic compounds (EPA Test Method SW-846 8260), semi-volatile organic compounds (EPA Test Method SW-846 8270 base/neutral extraction), and arsenic, cadmium, chromium, and lead by a total metals analysis
- I. Clean inert soil or sand will be used as backfill.
- J. Statement must be included indicating that a final report shall be submitted. The final report shall include a description of the remediation/closure procedures as implemented in the field, analytical results of all initial and end-point samples (including a summary table highlighting any samples in exceedance of the Region 2 Clean-up Objectives), and copies of waste disposal manifests.
- K. All information shall be submitted to:

Nicole Kraft, Chief  
Ground Water Compliance Section  
U.S. Environmental Protection Agency  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007-1866

The Class V Closure Plan must be submitted to EPA and approved by EPA prior to initiation of well initial sampling and/or clean-out activities. You will be notified that EPA has approved your work plan or that the closure plan requires modification to meet the requirements listed above.

In order to receive a letter from the EPA documenting proper initial sampling and/or clean-out of your wells, you must submit a final closure report outlining the closure procedures, and including all sampling results and waste disposal manifests.

**TABLE 1**  
**Region 2 UIC CLEANUP OBJECTIVES**  
 (Source: NYSDEC “Protection of Groundwater” Soil Cleanup Objectives<sup>a</sup>)

CONTAMINANT	ALLOWABLE SOIL CONC. PPM	ALLOWABLE SOIL CONC. PPB	LIMIT SOURCE	CONTAMINANT TYPE
Aluminum	Not Listed	Not Listed		inorg
Arsenic	16.00	16000.00	Table 375-6.8(b)	inorg
Barium	820.00	820000.00	Table 375-6.8(b)	inorg
Beryllium	47.00	47000.00	Table 375-6.8(b)	inorg
Cadmium	7.50	7500.00	Table 375-6.8(b)	inorg
Chromium VI	19.00	19000.00	Table 375-6.8(b)	inorg
Cobalt	Not Listed	Not Listed		inorg
Copper	1720.00	1720000.00	Table 375-6.8(b)	inorg
Total Cyanide	40.00	40000.00	Table 375-6.8(b)	inorg
Iron	Not Listed	Not Listed		inorg
Lead	450.00	450000.00	Table 375-6.8(b)	inorg
Magnesium	Not Listed	Not Listed		inorg
Manganese	2000.00	2000000.00	Table 375-6.8(b)	inorg
Mercury	0.73	730.00	Table 375-6.8(b)	inorg
Nickel	130.00	130000.00	Table 375-6.8(b)	inorg
Potassium	Not Listed	Not Listed		inorg
Selenium	4.00	4000.00	Table 375-6.8(b)	inorg
Sodium	Not Listed	Not Listed		inorg
Vanadium	Not Listed	Not Listed		inorg
Zinc	2480.00	2480000.00	Table 375-6.8(b)	inorg
Formaldehyde	Not Listed	Not Listed		other
Polychlorinated biphenyls (PCBs)	3.20	3200.00	Table 375-6.8(b)	other
2,4,5-T	1.90	1900.00	CP-51 Table 1	pest-herb
2,4-D	0.50	500.00	CP-51 Table 1	pest-herb
4,4'-DDD	14.00	14000.00	Table 375-6.8(b)	pest-herb
4,4'-DDE	17.00	17000.00	Table 375-6.8(b)	pest-herb
4,4'-DDT	136.00	136000.00	Table 375-6.8(b)	pest-herb
Aldrin	0.19	190.00	Table 375-6.8(b)	pest-herb
alpha-BHC	0.02	20.00	Table 375-6.8(b)	pest-herb
beta-BHC	0.09	90.00	Table 375-6.8(b)	pest-herb
Chlordane	2.90	2900.00	Table 375-6.8(b)	pest-herb
delta-BHC	0.25	250.00	Table 375-6.8(b)	pest-herb
Dibenzofuran	6.20	6200.00	CP-51 Table 1	pest-herb
Dibenzo-P-dioxins	Not Listed	Not Listed		pest-herb
Dieldrin	0.10	100.00	Table 375-6.8(b)	pest-herb
Endosulfan I	102.00	102000.00	Table 375-6.8(b)	pest-herb

<sup>a</sup> Protection of Groundwater Soil Cleanup Objectives source: 6 NYCRR 375-6.8(b) and the Supplemental Soil Cleanup Objectives listed in Table 1 of NYSDEC CP-51

CONTAMINANT	ALLOWABLE SOIL CONC. PPM	ALLOWABLE SOIL CONC. PPB	LIMIT SOURCE	CONTAMINANT TYPE
Endosulfan II	102.00	102000.00	Table 375-6.8(b)	pest-herb
Endosulfan Sulfate	1000.00	1000000.00	Table 375-6.8(b)	pest-herb
Endrin	0.06	60.00	Table 375-6.8(b)	pest-herb
gamma-BHC (Lindane)	0.10	100.00	Table 375-6.8(b)	pest-herb
gamma-chlordane	14.00	14000.00	CP-51 Table 1	pest-herb
Heptachlor	0.38	380.00	Table 375-6.8(b)	pest-herb
Heptachlor epoxide	0.02	20.00	CP-51 Table 1	pest-herb
Methoxychlor	900.00	900000.00	CP-51 Table 1	pest-herb
Parathion	1.20	1200.00	CP-51 Table 1	pest-herb
Pentachlorophenol	Not Listed	Not Listed		pest-herb
Silvex (2,4,5-TP)	3.80	3800.00	Table 375-6.8(b)	pest-herb
2,4,5-Trichlorophenol	0.10	100.00	CP-51 Table 1	semivoc
2,4-Dichlorophenol	0.40	400.00	CP-51 Table 1	semivoc
2,4-Dinitrophenol	0.20	200.00	CP-51 Table 1	semivoc
2,6-Dinitrotoluene	1.00	1000.00	CP-51 Table 1	semivoc
2-Chlorophenol	Not Listed	Not Listed		semivoc
2-Methylnaphthalene	36.40	36400.00	CP-51 Table 1	semivoc
2-Methylphenol	Not Listed	Not Listed		semivoc
2-Nitroaniline	0.40	400.00	CP-51 Table 1	semivoc
2-Nitrophenol	0.30	300.00	CP-51 Table 1	semivoc
3-Nitroaniline	0.50	500.00	CP-51 Table 1	semivoc
4-Chloro-3-methylphenol	Not Listed	Not Listed		semivoc
4-Chloroaniline	0.22	220.00	CP-51 Table 1	semivoc
4-Methylphenol	Not Listed	Not Listed		semivoc
4-Nitrophenol	0.10	100.00	CP-51 Table 1	semivoc
Acenaphthene	98.00	98000.00	Table 375-6.8(b)	semivoc
Acenaphthylene	107.00	107000.00	Table 375-6.8(b)	semivoc
Aniline	0.33	330.00	CP-51 Table 1	semivoc
Anthracene	1000.00	1000000.00	Table 375-6.8(b)	semivoc
Benzo(a)anthracene	1.00	1000.00	Table 375-6.8(b)	semivoc
Benzo(a)pyrene	22.00	22000.00	Table 375-6.8(b)	semivoc
Benzo(b)fluoranthene	1.70	1700.00	Table 375-6.8(b)	semivoc
Benzo(g,h,i)perylene	1000.00	1000000.00	Table 375-6.8(b)	semivoc
Benzo(k)fluoranthene	1.70	1700.00	Table 375-6.8(b)	semivoc
Benzoic acid	2.70	2700.00	CP-51 Table 1	semivoc
bis(2-ethylhexyl)phthalate (PAE)	435.00	435000.00	CP-51 Table 1	semivoc
Butylbenzylphthalate (PAE)	122.00	122000.00	CP-51 Table 1	semivoc
Chrysene ((PAH)	1.00	1000.00	Table 375-6.8(b)	semivoc
Dibenzo(a,h)anthracene	1000.00	1000000.00	Table 375-6.8(b)	semivoc
Dibenzofuran	Not Listed	Not Listed		semivoc
Diethylphthalate (PAE)	7.10	7100.00	CP-51 Table 1	semivoc
Dimethylphthalate (PAE)	27.00	27000.00	CP-51 Table 1	semivoc
Di-n-butyl phthalate	8.10	8100.00	CP-51 Table 1	semivoc
Di-n-octyl phthalate	120.00	120000.00	CP-51 Table 1	semivoc
Fluoranthene	1000.00	1000000.00	Table 375-6.8(b)	semivoc

Table 1: Region 2 UIC Cleanup Objectives

CONTAMINANT	ALLOWABLE SOIL CONC. PPM	ALLOWABLE SOIL CONC. PPB	LIMIT SOURCE	CONTAMINANT TYPE
Fluorene (PAH)	386.00	386000.00	Table 375-6.8(b)	semivoc
Hexachlorobenzene	1.40	1400.00	CP-51 Table 1	semivoc
Hexachlorobenzene	3.20	3200.00	Table 375-6.8(b)	semivoc
Indeno(1,2,3-cd)pyrene (PAH)	8.20	8200.00	Table 375-6.8(b)	semivoc
Isophorone	4.40	4400.00	CP-51 Table 1	semivoc
Naphthalene	12.00	12000.00	Table 375-6.8(b)	semivoc
Nitrobenzene	0.17	170.00	CP-51 Table 1	semivoc
m-Cresol	0.33	330.00	Table 375-6.8(b)	semivoc
o-Cresol	0.33	330.00	Table 375-6.8(b)	semivoc
p-Cresol	0.33	330.00	Table 375-6.8(b)	semivoc
Pentachlorophenol	0.80	800.00	Table 375-6.8(b)	semivoc
Phenanthrene (PAH)	1000.00	1000000.00	Table 375-6.8(b)	semivoc
Phenol	0.33	330.00	Table 375-6.8(b)	semivoc
Pyrene (PAH)	1000.00	1000000.00	Table 375-6.8(b)	semivoc
1,1,1-Trichloroethane	0.68	680.00	Table 375-6.8(b)	voc
1,1,2,2-Tetrachloroethane	0.60	600.00	CP-51 Table 1	voc
1,1-Dichloroethane	0.27	270.00	Table 375-6.8(b)	voc
1,1-Dichloroethene	0.33	330.00	Table 375-6.8(b)	voc
1,2,3-Trichloropropane	0.34	340.00	CP-51 Table 1	voc
1,2,4-Trichlorobenzene	3.40	3400.00	CP-51 Table 1	voc
1,2,4-Trimethylbenzene	3.60	3600.00	Table 375-6.8(b)	voc
1,2-Dichlorobenzene	1.10	1100.00	Table 375-6.8(b)	voc
1,2-Dichloroethane	0.02	20.00	Table 375-6.8(b)	voc
1,2-Dichloroethene(cis)	0.25	250.00	Table 375-6.8(b)	voc
1,2-Dichloroethene(trans)	0.19	190.00	Table 375-6.8(b)	voc
1,3,5-Trimethylbenzene	8.40	8400.00	Table 375-6.8(b)	voc
1,3-Dichlorobenzene	2.40	2400.00	Table 375-6.8(b)	voc
1,3-Dichloropropane	0.30	300.00	CP-51 Table 1	voc
1,4-Dichlorobenzene	1.80	1800.00	Table 375-6.8(b)	voc
1,4 Dioxane	0.10	100.00	Table 375-6.8(b)	
113 Freon (1,1,2 Trichloro-1,2,2 Trifluoroethane)	6.00	6000.00	CP-51 Table 1	voc
2-Butanone	0.30	300.00	CP-51 Table 1	voc
4-Methyl-2-Pentanone	1.00	1000.00	CP-51 Table 1	semivoc
Acetone	0.05	50.00	Table 375-6.8(b)	voc
Benzene	0.06	60.00	Table 375-6.8(b)	voc
Butylbenzene	12.00	12000.00	Table 375-6.8(b)	voc
Carbon Disulfide	2.70	2700.00	CP-51 Table 1	voc
Carbon Tetrachloride	0.76	760.00	Table 375-6.8(b)	voc
Chlorobenzene	1.10	1100.00	Table 375-6.8(b)	voc
Chloroethane	1.90	1900.00	CP-51 Table 1	semivoc
Chloroform (THM)	0.37	370.00	Table 375-6.8(b)	voc
Ethylbenzene	1.00	1000.00	Table 375-6.8(b)	voc
Isopropylbenzene	2.30	2300.00	CP-51 Table 1	voc
Methyl ethyl ketone	0.12	120.00	Table 375-6.8(b)	
Methyl tert butyl ether	0.93	930.00	Table 375-6.8(b)	voc

Table 1: Region 2 UIC Cleanup Objectives

CONTAMINANT	ALLOWABLE SOIL CONC. PPM	ALLOWABLE SOIL CONC. PPB	LIMIT SOURCE	CONTAMINANT TYPE
Methylene chloride	0.05	50.00	Table 375-6.8(b)	voc
p-Cymene	Not Listed	Not Listed		voc
p-Isopropyltoluene	10.00	10000.00	CP-51 Table 1	voc
Propylbenzene n-	3.90	3900.00	Table 375-6.8(b)	voc
sec-Butylbenzene	11.00	11000.00	Table 375-6.8(b)	voc
tert-Butylbenzene	5.90	5900.00	Table 375-6.8(b)	voc
Tetrachloroethene (PCE)	1.30	1300.00	Table 375-6.8(b)	voc
Toluene	0.70	700.00	Table 375-6.8(b)	voc
Trichloroethene (TCE)	0.47	470.00	Table 375-6.8(b)	voc
Vinyl chloride	0.02	20.00	Table 375-6.8(b)	voc
Xylenes	1.60	1600.00	Table 375-6.8(b)	voc

**ATTACHMENT 3**

USEPA REGION II SUPPLEMENTAL INSTRUCTIONS FOR COMPLETING  
INVENTORY OF INJECTION WELLS FORM

EPA FORM 7520 INVENTORY OF INJECTION WELLS

**USEPA REGION II SUPPLEMENTAL INSTRUCTIONS  
FOR COMPLETING  
INVENTORY OF INJECTION WELLS**

EPA FORM 7520-16 (Rev. 8-01)

**SECTION 2. FACILITY ID NUMBER:** Leave blank. EPA will assign an ID number.

**SECTION 3. TRANSACTION TYPE:** Check either First Time Entry or Entry Change. If this is the first time you have submitted this form for your injection wells(s), check First Time Entry and fill in all the appropriate information. If you are modifying information you sent in before, check Entry Change, fill in the Facility Name and Location and fill in the information that has changed. (Note: If the facility name has changed, in the blank space in the upper left hand corner write the prior facility name under which the form was first submitted, and the date it was submitted.)

**SECTION 4. FACILITY NAME AND LOCATION:** If you know the latitude and longitude of your facility, fill in line 4C and 4D. You do not need to fill in 4E, Township/Range. If you know the Numeric County Code, fill in line 4I, otherwise just write in the name of the County.

**SECTION 5. LEGAL CONTACT:** Under 5A, if the Legal Contact you are identifying owns the land, check Owner. If the Legal Contact owns and/or operates the business but someone else owns the land, check Operator. Under 5I, "Private" means privately owned. "Public" means owned by local/municipal government. "State" and "Federal" mean owned by state/federal government.

**SECTION 6. WELL INFORMATION:** Under 6A CLASS AND TYPE, use the attached table "USEPA Region II List of Class V Injection Well Types" to determine the **CLASS V "TYPE"**. Enter the appropriate Type Code in 6A (the Type Code does not have to fit within the two boxes on the Inventory Form). Select the Class V well type(s) that most accurately fit the well(s) at your facility. When reviewing the attached table and making your determination, be sure to consider all of the fluids entering the well or having the potential to enter the well. For example, Storm Water Drainage Wells located in industrial areas which are susceptible to spills, leaks or other chemical discharges are inventoried as Industrial Drainage Wells. If Cesspools and Septic Systems are receiving fluids other than sanitary waste (human excreta), that should be noted in the Additional Information below.

**IMPORTANT: ADDITIONAL INFORMATION**

In order to ensure that the **Class V Well(s)** at your facility are accurately inventoried you must also submit on a separate piece of paper: (1) a brief description characterizing your facility and the types of activities conducted; (2) a brief description of what you use each of your injection well(s) for; (3) a brief description of the types of fluids that enter, or have the potential to enter, each of your injection well(s). (Note: wells with the same information may be grouped).

If you require assistance, please contact EPA Region II at (212) 637-4232.

**USEPA REGION II LIST OF  
CLASS V INJECTION WELL TYPES**

TYPE CODE	NAME	DESCRIPTION
<b>INDUSTRIAL/COMMERCIAL/UTILITY DISPOSAL WELLS</b>		
5X28	MOTOR VEHICLE WASTE DISPOSAL WELLS	- wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work.
5W20	INDUSTRIAL PROCESS WATER & WASTE DISPOSAL WELLS	- used to dispose of a wide variety of wastes and wastewater from industrial, commercial, or utility processes. Industries include refineries, chemical plants, smelters, pharmaceutical plants, laundromats and dry cleaners, tanneries, carwashes, laboratories, funeral homes, etc. Specify industry <u>and</u> waste stream.
5A19	COOLING WATER RETURN FLOW WELLS	- used to inject water which was used in a cooling process.
<b>DRAINAGE WELLS</b>		
5D4	INDUSTRIAL DRAINAGE WELL	- wells located in industrial areas which primarily receive storm water runoff but are susceptible to spills, leaks, or other chemical discharges.
5D2	STORM WATER DRAINAGE WELLS	- receive storm water runoff from paved areas, including parking lots, streets, residential subdivisions, building roofs, highways, etc.
5F1	AGRICULTURAL DRAINAGE WELLS	- receive irrigation tailwaters, other field drainage, animal yard, feedlot, or dairy runoff, etc.
5D3	IMPROVED SINKHOLES	- receive storm water runoff from developments located in karst topographic areas.
5G30	SPECIAL DRAINAGE WELLS	- used for disposing water from sources other than direct precipitation—such as landslide control drainage wells, potable water tank overflow drainage wells, swimming pool drainage wells, and lake level control drainage wells.

<b>DOMESTIC WASTEWATER DISPOSAL WELLS</b>		
5W9	UNTREATED SEWAGE WASTE DISPOSAL	- receive raw sewage wastes from pumping trucks or other vehicles which collect such wastes from single or multiple sources. (No treatment)
5W10	LARGE CAPACITY CESSPOOLS	- large capacity cesspools including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides. Includes non-residential cesspools which receive solely sanitary waste and have the capacity to serve greater than or equal to 20 persons a day. DOES NOT apply to single family residential cesspools.
5W11	SEPTIC SYSTEM (UNDIFFERENTIATED DISPOSAL METHOD)	- used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank to an undetermined final discharge point. Includes non-residential septic systems which receive solely sanitary waste and have the capacity to serve greater than or equal to 20 persons a day. DOES NOT apply to single family residential septic systems. (Primary Treatment)
5W31	SEPTIC SYSTEMS (WELL DISPOSAL METHOD)	- used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank to a well-- examples of wells include dry wells, seepage pits, cavitettes, etc. The largest surface dimension is less than or equal to the depth dimension. Includes non-residential septic systems which receive solely sanitary waste and have the capacity to serve greater than or equal to 20 persons a day. DOES NOT apply to single family residential septic systems. (Primary Treatment)
5W32	SEPTIC SYSTEMS (DRAIN FIELD DISPOSAL METHOD)	- used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank to a drainfield--examples of drainfields include drain or tile lines, and trenches. Includes non-residential septic systems which receive solely sanitary waste and have the capacity to serve greater than or equal to 20 persons a day. DOES NOT apply to single family residential septic systems. (Primary Treatment)
5W12	DOMESTIC WASTEWATER TREATMENT PLANT EFFLUENT DISPOSAL	- dispose of treated sewage or domestic effluent from small package plants up to large municipal treatment plants. Final discharge points may include drywells or leachfields. (Secondary or further treatment)

<b>GEOHERMAL REINJECTION WELLS</b>		
5A5	ELECTRIC POWER REINJECTION WELLS	- reinject geothermal fluids used to generate electric power.
5A6	DIRECT HEAT REINJECTION WELLS	- reinject geothermal fluids used to provide heat for large buildings or developments.
5A7	HEAT/PUMP/AIR CONDITIONING RETURN FLOW WELLS	- reinject groundwater used to heat or cool a building in a heat pump system.
5A8	GROUNDWATER AQUACULTURE RETURN FLOW WELLS	- reinject groundwater or geothermal fluids used to support aquaculture. Non-geothermal aquaculture disposal wells are also included in this category (e.g., Marine aquariums in Hawaii use relatively cool sea water).
<b>RECHARGE WELLS</b>		
5R21	AQUIFER RECHARGE WELLS	- used to recharge depleted aquifers and may inject fluids from a variety of sources such as lakes, streams, domestic wastewater treatment plants, other aquifers, etc.
5B22	SALINE WATER INTRUSION BARRIER WELLS	- used to inject water into fresh water aquifers to prevent intrusion of salt water into fresh water aquifers.
5S23	SUBSIDENCE CONTROL WELLS	- used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with overdraft of fresh water and not used for the purpose of oil or natural gas production.
<b>OIL FIELD PRODUCTION WASTE DISPOSAL WELLS</b>		
5X17	AIR SCRUBBER WASTE DISPOSAL WELLS	- inject waste from air scrubbers used to remove sulfur from crude oil which is burned in steam generation for thermal oil recovery projects. (If injection is used directly for enhanced recovery and not just disposal it is a Class II well.)
5X18	WATER SOFTENER REGENERATION BRINE DISPOSAL WELLS	- inject regeneration waste from water softeners which are used to improve the quality of brines used for enhanced recovery. (If injection is used directly for enhanced recovery and not just disposal it is a Class II well.)

<b>MINERAL AND FOSSIL FUEL RECOVERY RELATED WELLS</b>		
5X13	MINING, SAND, OR OTHER BACKFILL WELLS	- used to inject a mixture of water and sand, mill tailings, and other solids into mined out portions of subsurface mines whether what is injected is radioactive waste or not. Also includes special wells used to control mine fires and acid mine drainage wells.
5X14	SOLUTION MINING WELLS	- used for in situ solution mining in conventional mines, such as slopes leaching.
5X15	IN-SITU FOSSIL FUEL RECOVERY WELLS	- used for in situ recovery of coal, lignite, oil shale, and tar sands.
5X16	SPENT BRINE RETURN FLOW WELLS	- used to reinject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts.
<b>MISCELLANEOUS WELLS</b>		
5X25	EXPERIMENTAL TECHNOLOGY WELL	- wells used in experimental or unproven technologies such as pilot scale in situ solution mining wells in previously unmined areas.
5X26	AQUIFER REMEDIATION RELATED WELLS	- wells used to prevent, control, or remediate aquifer pollution, including but not limited to Superfund sites.
5X29	ABANDONED DRINKING WATER WELLS	- used for disposal of fluids. Specify well purpose and injected fluids.
5X27	OTHER WELLS	- any other unspecified Class V wells. Specify well type/purpose and injected fluids.

SOURCE: Prepared by EPA Region II. Based on 1987 Report to Congress on Class V Wells; and 40 C.F.R. §144.81.

May 11, 2004 (3:47pm)G:/User/Share/DECADIV/DECA-WCB/GWCS/Well Class Type Table for Inventory Form5.wpd

# INVENTORY OF INJECTION WELLS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF GROUND WATER AND DRINKING WATER  
(This information is collected under the authority of the Safe Drinking Water Act)



1. DATE PREPARED (Year, Month, Day) 2. FACILITY ID NUMBER

**PAPERWORK REDUCTION ACT NOTICE**  
The public reporting burden for this collection of information is estimated to average about 0.5 hour per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, and to the Office of Management and Budget, Paperwork Reduction Project (2040-0042), Washington, DC 20503.

3. TRANSACTION TYPE (Please mark one of the following)

Deletion  
 Entry Change  
 First Time Entry  
 Replacement

**4. FACILITY NAME AND LOCATION**

A. NAME (last, first, and middle initial) E. TOWNSHIP/RANGE

C. LATITUDE TOWNSHIP RANGE SECT 1/4 SECT

B. STREET ADDRESS/ROUTE NUMBER D. LONGITUDE

D. DEG MIN SEC DEG MIN SEC

F. CITY/TOWN G. STATE H. ZIP CODE I. NUMERIC COUNTY CODE J. INDIAN LAND (mark "x") Yes No

**5. LEGAL CONTACT:**

A. TYPE (mark "x")  Owner  Operator C. PHONE (area code and number)

B. NAME (last, first, and middle initial)

D. ORGANIZATION E. STREET/P.O. BOX

F. CITY/TOWN G. STATE H. ZIP CODE I. OWNERSHIP (mark "x")  PRIVATE  PUBLIC  SPECIFY OTHER  STATE  FEDERAL

**6. WELL INFORMATION:**

A. CLASS AND TYPE	B. NUMBER OF WELLS		C. TOTAL NUMBER OF WELLS	D. WELL OPERATION STATUS					COMMENTS (Optional):	
	COMM	NON-COMM		UC	AC	TA	PA	AN		
			0							KEY: DEG = Degree MIN = Minute SEC = Second SECT = Section 1/4 SECT = Quarter Section COMM = Commercial NON-COMM = Non-Commercial AC = Active UC = Under Construction TA = Temporarily Abandoned PA = Permanently Abandoned and Approved by State AN = Permanently Abandoned and not Approved by State
			0							
			0							
			0							
			0							
			0							

**SECTION 1. DATE PREPARED:** Enter date in order of year, month, and day.

**SECTION 2. FACILITY ID NUMBER:** In the first two spaces, insert the appropriate U.S. Postal Service State Code. In the third space, insert one of the following one letter alphabetic identifiers:

- D - DUNS Number,
- G - GSA Number, or
- S - State Facility Number.

In the remaining spaces, insert the appropriate nine digit DUNS, GSA, or State Facility Number. For example, A Federal facility (GSA - 123456789) located in Virginia would be entered as : VAG123456789.

**SECTION 3. TRANSACTION TYPE:** Place an "x" in the applicable box. See below for further instructions.

**Deletion.** Fill in the Facility ID Number.

**First Time Entry.** Fill in all the appropriate information.

**Entry Change.** Fill in the Facility ID Number and the information that has changed.

**Replacement.**

**SECTION 4. FACILITY NAME AND LOCATION:**

- A. **Name.** Fill in the facility's official or legal name.
- B. **Street Address.** Self Explanatory.
- C. **Latitude.** Enter the facility's latitude (all latitudes assume North Except for American Samoa).
- D. **Longitude.** Enter the facility's longitude (all longitudes assume West except Guam).
- E. **Township/Range.** Fill in the complete township and range. The first 3 spaces are numerical and the fourth is a letter (N,S,E,W) specifying a compass direction. A township is North or South of the baseline, and a range is East or West of the principal meridian (e.g., 132N, 343W).
- F. **City/Town.** Self Explanatory.
- G. **State.** Insert the U.S. Postal Service State abbreviation.
- H. **Zip Code.** Insert the five digit zip code plus any extension.

**SECTION 4. FACILITY NAME & LOCATION (CONT'D.):**

- I. **Numeric County Code.** Insert the numeric county code from the Federal Information Processing Standards Publication (FIPS Pub 6-1) June 15, 1970, U.S. Department of Commerce, National Bureau of Standards. For Alaska, use the Census Division Code developed by the U.S. Census Bureau.
- J. **Indian Land.** Mark an "x" in the appropriate box (Yes or No) to indicate if the facility is located on Indian land.

**SECTION 5. LEGAL CONTACT:**

- A. **Type.** Mark an "x" in the appropriate box to indicate the type of legal contact (Owner or Operator). For wells operated by lease, the operator is the legal contact.
- B. **Name.** Self Explanatory.
- C. **Phone.** Self Explanatory.
- D. **Organization.** If the legal contact is an individual, give the name of the business organization to expedite mail distribution.
- E. **Street/P.O. Box.** Self Explanatory.
- F. **City/Town.** Self Explanatory.
- G. **State.** Insert the U.S. Postal Service State abbreviation.
- H. **Zip Code.** Insert the five digit zip code plus any extension.
- I. **Ownership.** Place an "x" in the appropriate box to indicate ownership status.

**SECTION 6. WELL INFORMATION:**

- A. **Class and Type.** Fill in the Class and Type of injection wells located at the listed facility. Use the most pertinent code (specified below) to accurately describe each type of injection well. For example, 2R for a Class II Enhanced Recovery Well, or 3M for a Class III Solution Mining Well, etc.
- B. **Number of Commercial and Non-Commercial Wells.** Enter the total number of commercial and non-commercial wells for each Class/Type, as applicable.
- C. **Total Number of Wells.** Enter the total number of injection wells for each specified Class/Type.
- D. **Well Operation Status.** Enter the number of wells for each Class/Type under each operation status (see key on other side).

**CLASS I** Industrial, Municipal, and Radioactive Waste Disposal Wells used to inject waste below the lowermost Underground Source of Drinking Water (USDW).

- TYPE 1I Non-Hazardous Industrial Disposal Well.
- 1M Non-Hazardous Municipal Disposal Well.
- 1H Hazardous Waste Disposal Well injecting below the lowermost USDW.
- 1R Radioactive Waste Disposal Well.
- 1X Other Class I Wells.

**CLASS II** Oil and Gas Production and Storage Related Injection Wells.

- TYPE 2A Annular Disposal Well.
- 2D Produced Fluid Disposal Well.
- 2H Hydrocarbon Storage Well.
- 2R Enhanced Recovery Well.
- 2X Other Class II Wells.

**CLASS III** Special Process Injection Wells.

- TYPE 3G *In Situ* Gasification Well
- 3M Solution Mining Well.

**CLASS III (CONT'D.)**

- TYPE 3S Sulfur Mining Well by Frasch Process.
- 3T Geothermal Well.
- 3U Uranium Mining Well.
- 3X Other Class III Wells.

**CLASS IV** Wells that inject hazardous waste into/above USDWs.

- TYPE 4H Hazardous Facility Injection Well.
- 4R Remediation Well at RCRA or CERCLA site.

**CLASS V** Any Underground Injection Well not included in Classes I through IV.

- TYPE 5A Industrial Well.
- 5B Beneficial Use Well.
- 5C Fluid Return Well.
- 5D Sewage Treatment Effluent Well.
- 5E Cesspools (non-domestic).
- 5F Septic Systems.
- 5G Experimental Technology Well.
- 5H Drainage Well.
- 5I Mine Backfill Well.
- 5J Waste Discharge Well.

**PAPERWORK REDUCTION ACT** The public reporting and record keeping burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resource expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to the collection of information; search data sources; complete and review the collection of information; and, transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed forms to this address.

**ATTACHMENT 4**

**CONSOLIDATED RULES OF PRACTICE**

§ 21.13

approve or disapprove the State issued statement, in accordance with the requirements of § 21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(1) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(1) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec. 22.1 Scope of this part.

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal and reassignment.

22.5 Filing, service, and form of all filed documents; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 Ex parte discussion of proceeding.

22.9 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.

22.11 Intervention and non-party briefs.

22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

22.13 Commencement of a proceeding.

22.14 Complaint.

22.15 Answer to the complaint.

22.16 Motions.

22.17 Default.

22.18 Quick resolution; settlement; alternative dispute resolution.

22.19 Prehearing information exchange; prehearing conference; other discovery.

22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.

22.22 Evidence.

22.23 Objections and offers of proof.

22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

22.25 Filing the transcript.

22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.

22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of Interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.

22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessments of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(i) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

22.46-22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.

22.51 Presiding Officer.

22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 136(l); 15 U.S.C. 2615; 30 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g-3(g), 6912, 6925, 6928, 6991e and 6992d; 4 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§ 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992(d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the

an Water Act, as amended (33 U.S.C. 9(e), 1321(b)(6), and 1343(a)).

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Control Act (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 146(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (16 U.S.C. 1462g-3(g)(3)(B), 300h-2(c), and 1462h-1(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c);

(10) The assessment of any administrative civil penalty or the issuance of an order requiring compliance under section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply. (c) Questions arising at any stage of a proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, Presiding Officer, as provided for in these Consolidated Rules of Practice.

FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000

## § 22.2 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

## § 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

*Act* means the particular statute authorizing the proceeding at issue.

*Administrative Law Judge* means an Administrative Law Judge appointed under 5 U.S.C. 3105.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or his delegate.

*Agency* means the United States Environmental Protection Agency.

*Business confidentiality claim* means a confidentiality claim as defined in 40 CFR 2.201(h).

*Clerk of the Board* means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Complainant* means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a permit pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

*Complaint* means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

*Consolidated Rules of Practice* means the regulations in this part.

*Environmental Appeals Board* means the Board within the Agency described in 40 CFR 1.25.

*Final order* means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

*Hearing* means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

*Hearing Clerk* means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Initial decision* means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

*Party* means any person that participates in a proceeding as complainant, respondent, or intervenor.

*Permit action* means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

*Person* includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

*Presiding Officer* means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

*Proceeding* means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

*Regional Administrator* means, for a case initiated in an EPA Regional Of-

fice, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

*Regional Hearing Clerk* means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

*Regional Judicial Officer* means a person designated by the Regional Administrator under § 22.4(b).

*Respondent* means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000

## § 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and resignation.

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred

to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate §22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification falls or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

(b) *Regional Judicial Officer.* Each Regional Administrator shall delegate to one or more Regional Judicial Officers authority to act as Presiding Officer in proceedings under subpart I of this part, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I of this part does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to §22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any case in which he serves as a Regional Judicial Officer. A Regional Judicial Officer shall not

knowingly preside over a case involving any party concerning whom the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the commencement of the case. A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer may:

- (1) Conduct administrative hearings under these Consolidated Rules of Practice;

- (2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

- (3) Administer oaths and affirmations and take affidavits;

- (4) Examine witnesses and receive documentary or other evidence;

- (5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof, without good cause being shown, draw adverse inferences against that party;

- (6) Admit or exclude evidence;

- (7) Hear and decide questions of fact, law, or discretion;

- (8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

- (9) Issue subpoenas authorized by the Act; and

- (10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these

Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

**§22.5 Filing, service, and form of all filed documents; business confidentiality claims.**

(a) *Filing of documents.* (1) The original and one copy of each document intended to be part of the record shall be filed with the Regional Hearing Clerk when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at §22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic filing, subject to any appropriate conditions and limitations.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of documents.* A copy of each document filed in the proceeding shall be served on the Presiding Officer or the Environmental Appeals Board, and on each party.

(1) *Service of complaint.* (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of

the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(1)(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an agency of the United States complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(i)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(ii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) *Service of filed documents other than the complaint, rulings, orders, and decisions.* All filed documents other than the complaint, rulings, orders, and decisions shall be served personally, by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), or by any reliable commercial delivery service. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic serv-

ice, subject to any appropriate conditions and limitations.

(c) *Form of documents.* (1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, address, and telephone number of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Regional Hearing Clerk, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (b)(2) of this section and § 22.6.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any document which does not comply with this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of business information.* (1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any document to be filed in a proceeding under these Consolidated Rules

of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to the public for inspection and copying.

(2) Two versions of any document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(1) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Assorted." The specific portions(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

[6] FR 40176, July 23, 1999, as amended at 69 FR 7639, Dec. 20, 2004]

**§ 22.6 Filing and service of rulings, orders and decisions.**

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional

Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. Copies of such rulings, orders, decisions or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or any reliable commercial delivery service, upon all parties by the Clerk of the Environmental Appeals Board, the Office of Administrative Law Judges or the Regional Hearing Clerk, as appropriate.

**§ 22.7 Computation and extension of time.**

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Service by mail or commercial delivery service.* Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.

### § 22.8 *Ex parte* discussion of proceeding.

At no time after the issuance of the complaint, shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding, or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

### § 22.9 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

## Subpart B—Parties and Appearances

### § 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a part-

nership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

### § 22.11 Intervention and non-party briefs.

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The Intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) *Non-party briefs.* Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

### § 22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer or the Environmental Appeals

Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Proceedings subject to subpart I of this part may be consolidated only upon the approval of all parties. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) *Severance.* The Presiding Officer or the Environmental Appeals Board may, for good cause, order any proceedings severed with respect to any or all parties or issues.

## Subpart C—Prehearing Procedures

### § 22.13 Commencement of a proceeding.

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).

### § 22.14 Complaint.

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for each violation alleged;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for a Permit Action and a statement of its proposed terms and conditions; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or Permit Action;

(6) Notice if subpart I of this part applies to the proceeding;

(7) The address of the Regional Hearing Clerk; and

(8) Instructions for paying penalties, if applicable.

(b) *Rules of practice.* A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

### § 22.15 Answer to the complaint.

(a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or Permit Action, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

### § 22.16 Motions.

(a) *General.* Motions shall be served as provided by § 22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Ap-

peals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds therefor, with particularity;
- (3) Set forth the relief sought; and
- (4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§ 22.29(c) and 22.51, an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

### § 22.17 Default.

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a

conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) *Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.* Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

### § 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) *Quick resolution.* (1) A respondent may resolve the proceeding at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action. In a proceeding subject to the public comment provisions of § 22.45, this quick resolution is not available until 10 days after the close of the comment period.

(2) Any respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within 30 days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within 60 days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The

(7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer shall ensure that the record of the proceeding includes any stipulations, agreements, rulings or orders made during the conference.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
  - (ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
  - (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.
- (2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this

and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) Each party's prehearing information exchange shall contain:

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and (ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference to consider:

- (1) Settlement of the case;
- (2) Simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to pleadings;
- (4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
- (5) The limitation of the number of expert or other witnesses;
- (6) The time and place for the hearing; and

pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative means of dispute resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

**§ 22.19 Prehearing information exchange; prehearing conference; other discovery.**

(a) *Prehearing information exchange.* (1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents

parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement and a proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Conclusion of proceeding.* No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement.

(c) *Scope of resolution or settlement.* Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint

section and upon an additional finding that:

(1) The information sought cannot reasonably be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act. The Presiding Officer may issue a subpoena for discovery purposes only in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with §22.5(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in this paragraph (e) shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under any applicable law to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) *Failure to exchange information.* Where a party fails to provide information within its control as required pur-

suant to this section, the Presiding Officer may, in his discretion:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under §22.17(c).

**§ 22.20 Accelerated decision; decision to dismiss.**

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require. If no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

**Subpart D—Hearing Procedures**

**§ 22.21 Assignment of Presiding Officer; scheduling the hearing.**

(a) *Assignment of Presiding Officer.* When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any

other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact. The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing not later than 30 days prior to the date set for the hearing. The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under §22.19(d).

**§ 22.22 Evidence.**

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under §22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in paragraphs (c) and (d) of this section or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the party who has called the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by Rule 801(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

**§ 22.23 Objections and offers of proof.**

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the information excluded. The offer of proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the information from evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

**§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.**

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations

set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

**§ 22.25 Filing the transcript.**

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.

**§ 22.26 Proposed findings, conclusions, and order.**

After the hearings, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

**Subpart E—Initial Decision and Motion To Reopen a Hearing**

**§ 22.27 Initial Decision.**

(a) *Filing and contents.* After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become a final order 45 days after its service upon the parties and without further proceedings unless:

- (1) A party moves to reopen the hearing;
- (2) A party appeals the initial decision to the Environmental Appeals Board;

(3) A party moves to set aside a default order that constitutes an initial decision; or

(4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

(d) *Exhaustion of administrative remedies.* Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to paragraph (c) of this section, respondent waives its rights to judicial review. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

**§ 22.28 Motion to reopen a hearing.**

(a) *Filing and content.* A motion to reopen a hearing to take further evidence must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall state briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Regional Hearing Clerk.

(b) *Disposition of motion to reopen a hearing.* Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The filing of a motion to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30. These time periods shall begin again in full when the motion is denied or an amended initial decision is served.

**Subpart F—Appeals and Administrative Review**

**§ 22.29 Appeal from or review of interlocutory orders or rulings.**

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:

- (1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and
- (2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.

(c) *Interlocutory review.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

**§ 22.30 Appeal from or review of initial decision.**

(a) *Notice of appeal.* (1) Within 30 days after the initial decision is served, any

party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals sent by U.S. mail (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005. One copy of any document filed with the Clerk of the Board shall also be served on the Regional Hearing Clerk. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants. The notice or appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with appropriate references to the record), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal on any issue within 20 days after the date on which the first notice of appeal was served.

(2) Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or non-party participant may file with the Environmental Appeals Board an original and one copy of a response brief responding to argument raised by the appellant, together with reference to the relevant portions of the record; to the relevant portions of the record; initial decision, or opposing brief. Appellee shall simultaneously serve one copy of the response brief upon each party, non-party participant, and the

Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. Further briefs may be filed only with the permission of the Environmental Appeals Board.

(b) *Review initiated by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall file notice of its intent to review that decision with the Clerk of the Board, and serve it upon the Regional Hearing Clerk, the Presiding Officer and the parties within 45 days after the initial decision was served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties reasonable written notice of such determination to permit preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion, order oral argument on any or all issues in a proceeding.

(e) *Motions on appeal.* All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided.

(f) *Decision.* The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not

increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may remand the case to the Presiding Officer for further action.

[64 FR 40176, July 23, 1999, as amended at 68 FR 2204, Jan. 16, 2003; 69 FR 77639, Dec. 28, 2004]

**Subpart G—Final Order**

**§ 22.31 Final order.**

(a) *Effect of final order.* A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date.* A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

Subpart H—Supplemental Rules

\$ 22.36 [Reserved]

\$ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) Scope. This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) ("SWDA"). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) Corrective action and compliance orders. A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15.

\$ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) Scope. This section shall apply, in conjunction with §§ 22.1 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act ("CWA") (33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) Consultation with States. For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) Administrative procedure and judicial review. Action of the Administrator for which review could have been ob-

(d) Other relief. Any final order requiring compliance or corrective action, or a Permit Action, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) Final orders to Federal agencies on appeal. (1) A final order of the Environmental Appeals Board issued pursuant to § 22.30 to a department, agency, or instrumentality of the United States shall become effective 30 days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within 30 days of service of the final order. If a timely request is made, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the 30-day period described in paragraph (e)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

\$ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order issued pursuant to § 22.30 shall be filed within 10 days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.4(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

tained under section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

\$ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) Scope. This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) Judicial review. Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) Payment of civil penalty assessed. Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

## § 22.40 [Reserved]

**§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act ("TSCA"), (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

**§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives this right unless it requests in its answer a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the documents in the record as necessary, and notify the parties of the changes.

**§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a Federal agency under the Safe Drinking Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a Federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

- (1) The docket number of the order;
- (2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;
- (3) The location of the facility where violations were found;
- (4) A description of the violations;
- (5) The penalty that was assessed; and
- (6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

**§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.**

(a) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of

the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

[65 FR 30904, May 15, 2000]

**§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice—(1) General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the pro-

posed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(i) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick resolution and settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under §22.18, or commenced under §22.13(b), until 10 days after the close of the comment period provided in paragraph (c)(1) of this section.

(4) *Petition to set aside a consent agreement and proposed final order.* (1) Commenter shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of any consent agreement between the parties and the proposed final order.

(1) Within 30 days of receipt of the consent agreement and proposed final order a commenter may petition the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), to set aside the consent agreement and proposed final order on the basis that material evidence was not considered. Copies of the petition shall be served on the parties, but shall not be sent to the Regional Hearing Clerk or the Presiding Officer.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the consent agreement and proposed final order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or Environmental Appeals Board shall assign a Petition Officer to consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise

involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the proposed final order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the proceeding by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. The Petition Officer shall:

(A) File the order with the Regional Hearing Clerk;

(B) Serve copies of the order on the parties and the commenter; and

(C) Provide public notice of the order.

(viii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Regional Administrator may issue the proposed final order, which shall become final 30 days after both the order denying the petition and a properly signed consent agreement are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District

Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the final order is denied, the final order shall become effective 30 days after such denial has been filed with the Regional Hearing Clerk.

§§22.46-22.49 [Reserved]

### Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

#### §22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to all adjudicatory proceedings for:

(1) The assessment of a penalty under sections 309(g)(2)(A) and 311(b)(6)(B)(1) of the Clean Water Act (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(1)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300h-2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§22.11, 22.16(C), 22.21(a), and 22.29. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

#### §22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

### §22.52 Information exchange and discovery.

Respondent's information exchange pursuant to §22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under §22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

## PART 23—JUDICIAL REVIEW UNDER EPA-ADMINISTERED STATUTES

Sec.	Definitions.
23.2	Timing of Administrator's action under Clean Water Act.
23.3	Timing of Administrator's action under Clean Air Act.
23.4	Timing of Administrator's action under Resource Conservation and Recovery Act.
23.5	Timing of Administrator's action under Toxic Substances Control Act.
23.6	Timing of Administrator's action under Federal Insecticide, Fungicide and Rodenticide Act.
23.7	Timing of Administrator's action under Safe Drinking Water Act.
23.8	Timing of Administrator's action under Uranium Mill Tailings Radiation Control Act of 1978.
23.9	Timing of Administrator's action under the Atomic Energy Act.
23.10	Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.
23.11	Holidays.
23.12	Filing notice of judicial review.

**AUTHORITY:** Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j-7(a)(2), 300j-9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 345a, 28 U.S.C. 12112(a), 2343, 2344.

**SOURCE:** 50 FR 7270, Feb. 21, 1985, unless otherwise noted.