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## Title 40 —Protection of Environment

### Chapter I —Environmental Protection Agency

#### Subchapter D —Water Programs

#### Part 108 Employee Protection Hearings

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## PART 108—EMPLOYEE PROTECTION HEARINGS

**Authority:** Sec. 507(e), Pub. L. 92-500, 86 Stat. 816 (33 U.S.C. 1251 *et seq.*).

**Source:** 39 FR 15398, May 3, 1974, unless otherwise noted.

### § 108.1 Applicability.

This part shall be applicable to investigations and hearings required by section 507(e) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* (Pub. L. 92-500).

### § 108.2 Definitions.

As used in this part, the term:

- (a) **Act** means the Federal Water Pollution Control Act, as amended;
- (b) **Effluent limitation** means any effluent limitation which is established as a condition of a permit issued or proposed to be issued by a State or by the Environmental Protection Agency pursuant to section 402 of the Act; any toxic or pretreatment effluent standard established under section 307 of the Act; any standard of performance established under section 306 of the Act; and any effluent limitation established under section 302, section 316, or section 318 of the Act.
- (c) **Order** means any order issued by the Administrator under section 309 of the Act; any order issued by a State to secure compliance with a permit, or condition thereof, issued under a program approved pursuant to section 402 of the Act; or any order issued by a court in an action brought pursuant to section 309 or section 505 of the Act.
- (d) **Party** means an employee filing a request under § 108.3, any employee similarly situated, the employer of any such employee, and the Regional Administrator or his designee.

- (e) *Administrator or Regional Administrator* means the Administrator or a Regional Administrator of the Environmental Protection Agency.

### **§ 108.3 Request for investigation.**

Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under the Act, or any representative of such employee, may submit a request for an investigation under this part to the Regional Administrator of the region in which such discrimination is alleged to have occurred.

### **§ 108.4 Investigation by Regional Administrator.**

Upon receipt of any request meeting the requirements of § 108.3, the Regional Administrator shall conduct a full investigation of the matter, in order to determine whether the request may be related to an effluent limitation or order under the Act. Following the investigation, the Regional Administrator shall notify the employee requesting the investigation (or the employee's representative) and the employer of such employee, in writing, of his preliminary findings and conclusions. The employee, the representative of such employee, or the employer may within fifteen days following receipt of the preliminary findings and conclusions of the Regional Administrator request a hearing under this part. Upon receipt of such a request, the Regional Administrator, with the concurrence of the Chief Administrative Law Judge, shall publish notice of a hearing to be held not less than 30 days following the date of such publication where he determines that there are factual issues concerning the existence of the alleged discrimination or its relationship to an effluent limitation or order under the Act. The notice shall specify a date before which any party (or representative of such party) may submit a request to appear.

### **§ 108.5 Procedure.**

Any hearing held pursuant to this part shall be of record and shall be conducted according to the requirements of 5 U.S.C. 554. The Administrative Law Judge shall conduct the hearing in an orderly and expeditious manner. By agreement of the parties, he may dismiss the hearing. The Administrative Law Judge, on his own motion, or at the request of any party, shall have the power to hold prehearing conferences, to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. The Regional Administrator, and any party submitting a request pursuant to § 108.3 or § 108.4, or counsel or other representative of such party or the Regional Administrator, may appear and offer evidence at the hearing.

### **§ 108.6 Recommendations.**

At the conclusion of any hearing under this part, the Administrative Law Judge shall, based on the record, issue tentative findings of fact and recommendations concerning the alleged discrimination, and shall submit such tentative findings and recommendations to the Administrator. The Administrator shall adopt or modify the findings and recommendations of the Administrative Law Judge, and shall make copies of such findings and recommendations available to the complaining employee, the employer, and the public.

### **§ 108.7 Hearing before Administrator.**

At his option, the Administrator may exercise any powers of an Administrative Law Judge with respect to hearings under this part.