



THE PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

ANNUAL REPORT 2014



Pennsylvania Environmental Hearing Board



Message of Chief Judge and Chairman

Welcome! On behalf of the Judges, Assistant Counsel, and staff of the Pennsylvania Environmental Hearing Board I am pleased to present the 2014 Annual Report. In 2014, the Board received 181 new appeals and resolved 209 cases. Only nine of the Board's decisions were appealed to the Commonwealth Court.

The mission of the Board is to safeguard the rights of Pennsylvania's citizens to due process of law through the timely disposition of appeals of actions taken by the Pennsylvania Department of Environmental Protection or other agencies as prescribed by statute.

Our goal, as always, is to justly and promptly resolve appeals filed before us. We also want the process to be fair, transparent, economical, and friendly. In conjunction with the Environmental Bar, we have expanded our program to help litigants who can not otherwise afford counsel obtain pro bono counsel. We greatly appreciate the efforts of all the attorneys who volunteer their time in this worthwhile program which epitomizes the highest ideals of the legal profession.

Adapting to the new economic realities faced not only by the Board but all courts and governmental agencies, it is with great pride in the Board and our hard working Judges and valued staff that once again we have accomplished our mission in a very cost efficient manner. The Pennsylvania Environmental Hearing Board has a full time staff of 13 filled positions: 5 Judges, 1 Secretary, 4 Attorneys, 1 law clerk, and 2 administrative staff. To put this in perspective, the Board had a full time staff of 24 just two decades ago.

We were one of the first tribunals in Pennsylvania to implement an electronic docketing system. Our continued commitment to embrace technology has been the bedrock of running an efficient operation, yielding positive outcomes, for both litigants, as well as the general public. All of the Board's Adjudications, Opinions, and Orders are readily and easily available to anyone with internet access as are the filings of the parties in Board proceedings. Our electronic docket, with a recent rule change making e-filing mandatory, gives us the ability to handle our case volumes in an orderly fashion, as well as providing transparency to stakeholders and the general public.

I invite you to read more about these and other system programs in this edition of the EHB Annual Report, which includes caseload activity data.

Pennsylvania Environmental Hearing Board

A handwritten signature in black ink, reading "Thomas W. Renwand".

Thomas W. Renwand

Pittsburgh Office and Court Facility, Suite 310

Platt Place, 301 5th Avenue

Pittsburgh, Pa. 15222-2420

Pennsylvania Environmental Hearing Board



Mission Statement

To safeguard the rights of Pennsylvania's citizens to due process of law and a clean environment through a timely disposition of appeals of actions taken by the Department of Environmental Protection and of certain enforcement actions instituted by the Department or by citizens.

Summary

The Pennsylvania Environmental Hearing Board (Board) is the statutorily established trial court of state-wide jurisdiction that hears certain types of environmental cases, including appeals of actions taken by the Pennsylvania Department of Environmental Protection (Department) and complaints for civil penalties assessed by the Department. The Board holds trials and issues adjudications, as well as legal opinions and orders. Trials before the Board are similar to non-jury civil trials before Common Pleas Courts or Federal District Courts. Appeals from the Board are to the Commonwealth Court of Pennsylvania. The Board consists of five Judges appointed by the Governor and confirmed by the Senate. The Judges of the Board are: Chief Judge and Chairman Thomas W. Renwand, Judge Michelle A. Coleman, Judge Bernard A. Labuskes, Jr., Judge Richard P. Mather, Sr. and Judge Steven C. Beckman. The Board's website address is <http://ehb.courtapps.com/public/index.php>

History

The Environmental Hearing Board (Board) was created as part of the Department of Environmental Resources by the Act of December 3, 1970, P.L. 834, 71 P.S. § 510-1 et seq. and began functioning on February 15, 1972. The Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. §§ 7511-7516, established the Board as an independent agency on January 1, 1989.

During its 43 years of existence, over 14,370 cases have been filed with the Board. The subject matter of the cases is varied and includes issues involving air pollution, water pollution, stream protection, surface and underground mining, oil and gas drilling, safe drinking water, dams and encroachments and sewage facilities planning. The Board hears actions involving both permitting and enforcement. Most recently, the Board has addressed issues pertaining to Marcellus shale drilling in Pennsylvania. The Board also has the authority to assess civil penalties and to award attorney's fees where appropriate. Trials before the Board are often lengthy and involve scientific and technical expert testimony and evidence. The Board's review is *de novo*, which means that it decides the case based on the evidence presented at trial. Board adjudications contain detailed findings of fact, conclusions of law and discussion. The Board's decisions are published in annual volumes and may also be found on the Board's website.

Appeals of Board decisions are to the Commonwealth Court and, by allowance, to the Pennsylvania Supreme Court. These courts have rendered opinions in more than 400 Board cases, affirming the Board in the vast majority of cases. Since 1998, Board decisions have been vacated, reversed or remanded only 13 times. This record reflects the high quality of the Environmental Hearing Board's judicial work. The Pennsylvania appellate courts have recognized the Board's unique expertise in environmental regulation and have generally deferred to the Board's interpretations.

Pennsylvania Environmental Hearing Board



The Board has had a Procedural Rules Committee since its inception. Pursuant to the Environmental Hearing Board Act, the Committee consists of nine attorneys appointed by the Governor, legislative leaders, the Secretary of the Department of Environmental Protection and the Department's Citizens Advisory Council. The current Chairman and Vice Chair of the Rules Committee are Howard J. Wein and Maxine Woelfling.

Offices of the Environmental Hearing Board

Pursuant to the Environmental Hearing Board Act, the Board is required to maintain offices and hearing rooms in both Harrisburg and Pittsburgh. The Board also established an offices and hearing rooms in Norristown in 2004 and in Erie in 2013. The offices of the Board are located at:

Harrisburg:

2nd Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105

Pittsburgh:

Suite 310 Piatt Place
301 Fifth Avenue
Pittsburgh, PA 15222

Norristown:

4th Floor State Office Building
2 East Main Street
Norristown, PA 19401

Erie:

Renaissance Centre
1001 State Street
Erie, PA 16501

Pennsylvania Hearing Board Judges 2014



Judge Steven C. Beckman, Judge Richard P. Mather, Sr., Chief Judge and Chairman Thomas W. Renwand,
Judge Michelle A. Coleman, and Judge Bernard A. Labuskes, Jr.

Pennsylvania Environmental Hearing Board



Judges Professional Profiles



THOMAS W. RENWAND, Chair and Chief Judge

Thomas W. Renwand has served on the Pennsylvania Environmental Hearing Board since 1995. He is based in Pittsburgh. Governor Edward Rendell appointed him as Chairman and Chief Judge. Prior to his tenure on the Board, Judge Renwand was a partner and trial attorney with the Pittsburgh law firm of Meyer, Unkovic and Scott. He began his legal career in Erie with Knox McLaughlin Gornall & Sennett, P.C. Judge Renwand is a 1980 graduate of the University of Akron School of Law where he was Editor-in-Chief of the Law Review. He graduated with honors in 1977 from John Carroll University.



MICHELLE A. COLEMAN, Judge

Michelle A. Coleman, a native of Philadelphia, received a B.A. in political science from Bryn Mawr College in 1977. She then attended New York University School of Law as a Root-Tilden Scholar and received her J.D. in 1980. As a member of the Root-Tilden Program, she traveled in the U.S. and was permitted to practice on the Navajo Reservation. She served with the N.Y. Legal Aid Society as a public defender and with Community Legal Services representing the poor. After approximately 2 years in private practice, she accepted a position with the Pennsylvania Department of Environmental Resources and presented cases before the Environmental Hearing Board as well as Commonwealth and Federal Courts. Appointed to the Environmental Hearing Board in 1995 by Governor Ridge, she has served as a Judge hearing cases and writing opinions in all aspects of environmental law throughout the state.

At present she is active in legal support groups for parents of children with special needs. Michelle teaches classes in which special needs children are involved participants and she has written plans to assist these children to continue to thrive in main-stream classes.

Pennsylvania Environmental Hearing Board



Judges Professional Profiles



BERNARD A. LABUSKES JR., Judge

Bernard A. Labuskes, Jr. was born and raised in Pittsburgh, Pennsylvania. He received his B.A. from Pennsylvania State University in 1979 and his J.D. from the University of Pittsburgh School of Law in 1982. He was Senior Comments Editor of the University of Pittsburgh Law Review and a member of the Order of the Coif. He was a law clerk to Honorable Charles Clark, Chief Judge, U. S. Court of Appeals, Fifth Circuit, from 1982 to 1983. He served as Assistant Counsel at the Pennsylvania Department of Environmental Resources from 1985 through 1987, where he focused on litigation and enforcement matters. Prior to his appointment to the Board, he was a partner and chair of the Environmental Practice Group of McNees, Wallace & Nurick in Harrisburg. He was appointed to the Environmental Hearing Board by Governor Ridge in November 1998 and became a member of the Board in January 1999.



RICHARD A. MATHER SR., Judge

Richard P. Mather, Sr. was nominated to serve as a Judge on the Environmental Hearing Board by Governor Edward G. Rendell in August 2009. The Senate unanimously confirmed the nomination and Judge Mather took the oath of office in October 2009. Prior to becoming a Judge, Judge Mather was the Deputy Chief Counsel for the Department of Environmental Protection. He worked for the Department of Environmental Protection and its predecessor, the Department of Environmental Resources for twenty-five years. For eighteen years during this period, he was the head of the Bureau of Regulatory Counsel.

Judge Mather is a 1977 graduate of Lock Haven University. He received his J.D. from the University of Pittsburgh in 1982. He was Business Editor of the University of Pittsburgh Law Review. From 1982 until 1984, he was an associate with the law firm of Thorp, Reed and Armstrong in its Pittsburgh offices.



STEVEN C. BECKMAN, Judge

Steven C. Beckman was appointed to the Environmental Hearing Board by Governor Corbett in 2012. He received his undergraduate degree from Wittenberg University in Springfield, Ohio in 1983. He next attended the University of North Carolina-Chapel Hill and earned a Masters Degree in Geology. Judge Beckman received his law degree from the University of Pittsburgh in 1993 and went to work at MacDonald Illig Jones and Britton LLP in Erie, Pa. In 1996, he was appointed by Governor Ridge to serve as the Regional Director for the Northwest Region office of the Department of Environmental Protection. In 2001, Judge Beckman left the DEP and returned to MacDonald Illig law firm where he was a partner and a member of the law firm's Environmental Law practice group at the time of his appointment to the Board.

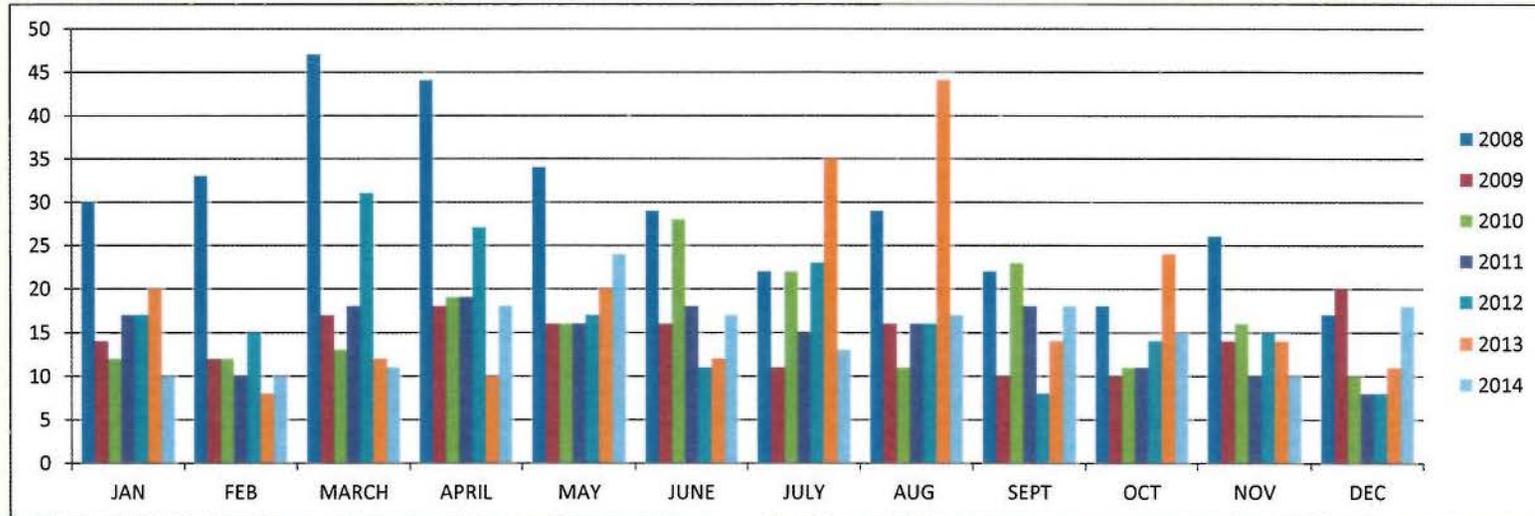
Pennsylvania Environmental Hearing Board



New Appeals by Year and Month

Number of Appeals filed with the EHB by year and month:

YEAR	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	TOTALS
2008	30	33	47	44	34	29	22	29	22	18	26	17	351
2009	14	12	17	18	16	16	11	16	10	10	14	20	174
2010	12	12	13	19	16	28	22	11	23	11	16	10	193
2011	17	10	18	19	16	18	15	16	18	11	10	8	176
2012	17	15	31	27	17	11	23	16	8	14	15	8	202
2013	20	8	12	10	20	12	35	44	14	24	14	11	224
2014	10	10	11	18	24	17	13	17	18	15	10	18	181



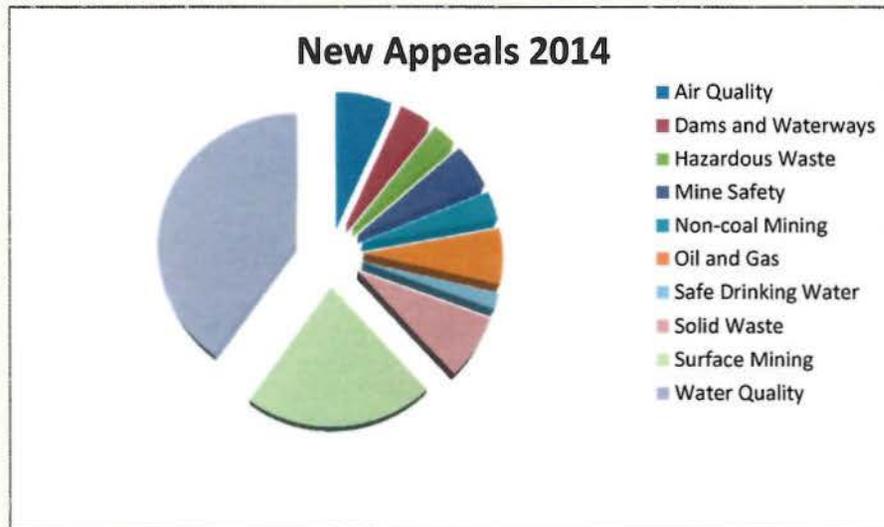
Pennsylvania Environmental Hearing Board



New Appeals by Program Area

Program Area

Air Quality	14
Dams and Waterways	8
Hazardous Waste	2
Mine Safety	7
Non-coal Mining	2
Oil and Gas	27
Safe Drinking Water	10
Solid Waste	15
Surface Mining	27
Water Quality	69



Pennsylvania Environmental Hearing Board

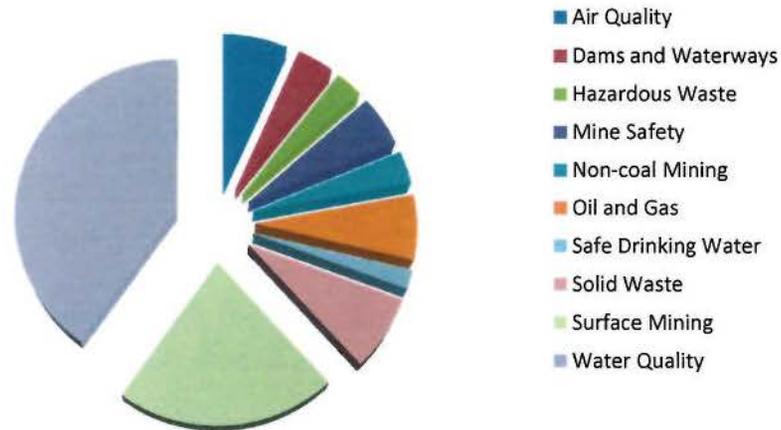


Dispositions by Program Area

Program Area

Air Quality	14
Dams and Waterways	8
Hazardous Waste	6
Mine Safety	11
Non-coal Mining	7
Oil and Gas	14
Safe Drinking Water	4
Solid Waste	16
Surface Mining	45
Water Quality	84

Total Dispositions 2014



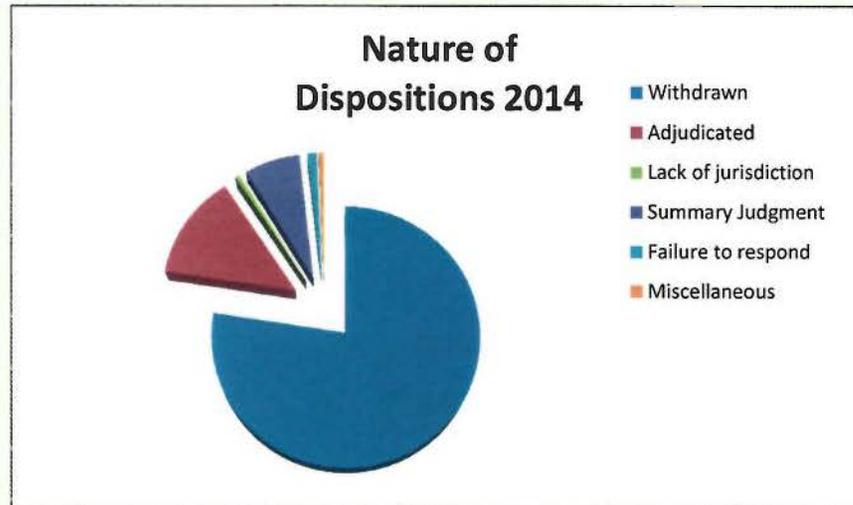
Pennsylvania Environmental Hearing Board



Nature of Dispositions

Nature of Dispositions

Withdrawn	134
Adjudicated	23
Lack of jurisdiction	1
Summary Judgment	12
Failure to respond	2
Miscellaneous	1



Pennsylvania Environmental Hearing Board



Selected Decisions of the Environmental Hearing Board

***Stephen L. Guerin v. Department of Environmental Protection*, EHB Docket No. 2013-078-C (Opinion and Order on Petition for Supersedeas issued January 10, 2014)**

Stephen Guerin appealed an order of the Department that sought to install a monitoring well on his residential property for the purposes of monitoring groundwater for the presence and movement of the hazardous chemicals Trichloroethylene (TCE), Tetrachloroethylene (PCE), and 1,1-Dichloroethylene (1,1-DCE). The order was issued pursuant to the Hazardous Sites Cleanup Act (HSCA). Guerin's property was located in an area of Northampton Township, Bucks County that was designated as a hazardous site due to groundwater contamination suspected to have originated from several industrial parks nearby.

During the Department's investigation of the contamination, the Department sampled Guerin's residential water well and found levels of TCE and PCE that were well in excess of the Maximum Contaminant Levels (MCLs) defined for the chemicals in the Federal Safe Drinking Water Act. Following the Department's investigation, the Department connected the Guerin property and approximately 120 other properties in the area to municipal water and sewer lines. Following the connection of the properties, the Department sought to install monitoring wells in the area to fully define the nature and extent of the contamination plume. Due to its location and its previous positive sampling results for hazardous chemicals, the Department selected the Guerin property as one of the locations.

Guerin filed a petition for supersedeas with the Board, arguing that his property would be devalued by the presence of the monitoring well, that his children's safety would be endangered, and that there were more suitable properties for the monitoring well. The Board held a hearing on Guerin's petition. Board case law holds that a supersedeas is an extraordinary remedy that is only appropriate in limited circumstances. In addition, HSCA directs the Board to uphold a Department order issued under it if the Department proposes to act reasonably in responding to a release or threat of release of a hazardous substance.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

Judge Coleman also found that HSCA grants the Department broad authority to accomplish its statutory mandate to investigate and remedy hazardous sites and that the Department acted reasonably in choosing the Guerin property. Finally, Judge Coleman found that granting a supersedeas would be contrary to the Environmental Hearing Board Act's dictates to not issue a supersedeas in cases where pollution or injury to the public health, safety, or welfare exists or is threatened during the period when the supersedeas would be in effect. Accordingly, the supersedeas was denied.

Edward Wean, Jr. v. Department of Environmental Protection, EHB Docket No. 2012-179-M (Consolidated with 2012-159-M) (Adjudication issued April 11, 2014)

The Department issued a Blasting Activity Permit to Silver Valley Drilling & Blasting, Inc. Edward Wean, Jr. was the president of Silver Valley. After blasting was conducted three excavation workers became ill and suffered from carbon monoxide poisoning. The Department issued two orders to the Appellant following the blasting incident in which three employees of an excavating company, who were excavating a trench for a sewer line, were overcome by carbon monoxide. Both orders were based on the same alleged violation of 25 Pa. Code § 211.152. The Department orders directed Appellant to submit a corrective action plan to the Department for approval before further blasting could continue. The Appellant appealed both of the Department's orders.

First, Appellant asserted that the Department had not established by a preponderance of evidence that the carbon monoxide gas that poisoned the three individuals was generated by the particular blast incident. The Board found that the carbon monoxide in the trench was generated from Appellant's blasting activity. Appellant's theory that the excavating machinery was the source of the carbon monoxide that affected the health and safety of the excavating workers was not well supported and the Department did not abuse its discretion in issuing the Explosives Compliance Order and Suspension Order.

Second, Appellant asserted that the application of § 211.152 was unconstitutional and that this section has an "unconstitutional vagueness." Appellant claimed that the regulation as applied by the Department was not sufficiently specific to give fair notice to persons of ordinary intelligence as to what conduct will render them in full compliance with the regulation. Also, Appellant claimed that the regulation as applied was vague as to the duration of the precautionary measures that should be taken by a blaster and that the regulation was vague as to the duration of time that will be considered part of the conduct of the blast for which the blaster will be held responsible.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

When reviewing a vagueness challenge to a regulation, the Board considers essential fairness of the law and the impracticability of drafting legislation with greater specificity. The Board held that blasting is a regulated ultra-hazardous activity subject to a dual review system and that blasters are held to a broad standard of conduct. The degree of vagueness that the Constitution tolerates of 25 Pa. Code § 211.152 depends in part on the highly dangerous nature of blasting. § 211.152 is a performance standard which establishes that gases generated by a blast shall not affect the health and safety of individuals. This standard is broad yet straightforward and succinct: a professional licensed blaster is required to conduct all blasting activities in such a manner that noxious gases from the highly regulated blasting activities do not adversely affect the health and safety of individuals. If noxious gases from the highly regulated blasting activities adversely affect individuals, then the professionally licensed blaster responsible for the blasting activity has violated this straightforward performance standard. The standard also allows licensed blasters flexibility in selecting the appropriate means to achieve the standard.

Waste Management of Pennsylvania, Inc., Evergreen Landfill, Inc., Laurel Highlands Landfill, Inc., Southern Alleghenies Landfill, Inc., Shade Landfill, Inc., and Waste Management Disposal Services of Pennsylvania, Inc. v. Department of Environmental Protection and Clearfield County, EHB Docket No. 2013-033-L (Opinion and Order on Motions for Summary Judgment issued May 5, 2014)

Waste Management and several other appellants appealed the Department's approval of Clearfield County's revision to its solid waste management plan that was done pursuant to Act 101. Clearfield County faced a deficit in funding its recycling and waste reduction programs. Clearfield issued a request for proposals ("RFP") that sought financial support for its waste management programs. Eight Pennsylvania facilities responded to Clearfield's RFP. Clearfield evaluated the proposals based on defined criteria and awarded points to the bidders based on those criteria. The bidders who were not awarded a contract with Clearfield are the appellants. The appellants filed two motions for summary judgment. The first motion argued that Clearfield effectively charged a fee for recycling, which is preempted by Act 101. The second motion argued that the process leading up to the plan was not fair, open, and competitive.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

Judge Labuskes, writing for the majority of the Board, denied the motions for summary judgment. Analyzing the applicable cases from Pennsylvania Commonwealth Court, the Board found that although Act 101 provides a comprehensive scheme for recycling, with a specified funding source, it does not preclude requests for voluntary assistance as a means to supplement that funding. The Board contrasted a mandatory fee unilaterally imposed by a county, which is preempted by Act 101, and a request for voluntary assistance, which is what Clearfield did. The Board found that Act 101 contemplates that counties will rely on some local financial assistance to achieve the maximum feasible implementation of recycling programs. The Board concluded that the existing record did not support as a matter of undisputed fact the conclusion that Clearfield's actions amounted to the imposition of a unilateral fee.

Discussing the second motion, the Board analyzed the principles of the Commerce Clause prohibiting restrictions on commerce and noted its tension with Act 101's encouragement of such restrictions. The Board found nothing overtly discriminatory about Clearfield's planning process and it noted that the appellants pointed to very little in the record to support their contention. Act 101 and its regulations require that the Department ensure a county provides in its plan reasonable assurances that it used a fair process, but the appellants contended that the Department should scrutinize the plan in great detail to ensure it was fair, open, and competitive. The Board held that summary judgment is meant for cases where the legal question is clear and the facts are limited and undisputed, and this was not such a case.

The appellants then requested that the Board certify its opinion for interlocutory review to Commonwealth Court, which the Board granted. Commonwealth Court has since affirmed the majority of the Board.

***Heywood Becker v. Department of Environmental Protection*, EHB Docket No. 2013-038-C (Opinion and Order on Warrantless Search issued May 7, 2014)**

Heywood Becker appealed an order of the Department that alleged he conducted unlawful and unpermitted earth disturbance work in a waterway. During the hearing on the merits, the Department presented numerous photographs as evidence. Becker, proceeding pro se, objected to many of these photographs as being taken on his property, without his permission and without a warrant, in violation of the Fourth Amendment of the United States Constitution. Becker argued that the photographs constituted fruits of unlawful searches, and therefore, they should be

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

precluded from admission into evidence. The issue repeatedly arose during the first and second days of the hearing. At the conclusion of the second day, Judge Coleman continued the hearing and ordered the parties to submit briefs on warrantless searches and the open fields doctrine.

In her opinion on the evidentiary objection, Judge Coleman rejected the Department's argument that earth movement and construction is a heavily regulated industry that is excepted from the protections of the Fourth Amendment. She found that the cases involving heavily regulated industries (mining, automobile junk yards, gun dealers, liquor retailers) were different from the type of activity that one can undertake in one's backyard, as often is the case with Dam Safety and Encroachments Act cases. However, Judge Coleman also rejected Becker's claim that the searches were within the curtilage of his home. Judge Coleman employed the factors outlined by the U.S. Supreme Court in determining whether an area qualifies as curtilage or an open field. She found that, although it was a close decision, the Department's searches occurred outside of Becker's curtilage, he did not enjoy a reasonable expectation of privacy in that area, and therefore the searches were not unlawful.

Judge Coleman also noted that the exclusionary rule is not in itself a constitutional right, but rather a judicially-created doctrine generally applicable only in criminal cases. She looked to the Pennsylvania Supreme Court and numerous cases in Pennsylvania Commonwealth Court that have held that the exclusionary rule does not apply to civil cases. Accordingly, even if the Department's searches were done unlawfully, the exclusionary rule would not preclude the Board from considering the evidence obtained during the searches. Becker's evidentiary objection was overruled.

Loren Kiskadden v. Department of Environmental Protection and Range Resources – Appalachia, LLC, EHB Docket No. 2011-149-R (Opinion and Order on Motion for Contempt in the Form of an Adverse Inference issued June 10, 2014)

This matter involved a landowner in Washington County challenging a determination by the Pennsylvania Department of Environmental Protection (Department) that gas drilling and related activities conducted by Range Resources had not contaminated his water well. The

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

Department reached this determination after an investigation in which it did not find sufficient evidence to support the conclusion that problems with the landowner's well were the result of Range's gas drilling activities. The landowner appealed the Department's decision to the Pennsylvania Environmental Hearing Board (Board). A trial was held before Chief Judge Thomas W. Renwand of the Environmental Hearing Board from September 23, 2014 to November 19, 2014.

During pretrial discovery, the landowner sought to obtain from Range a listing of the products used or stored at the Yeager site and their chemical constituents. Range contended it was not able to fully comply with this request. It contended that much of the information was proprietary and could not be obtained from the manufacturers of the products. Because Range could not produce this information in discovery, the landowner requested that the Board enter an adverse inference that Range had polluted his water supply. Additionally, the landowner requested the adverse inference as a sanction for Range's failure to comply with an earlier discovery order issued by the Board.

Chief Judge Renwand denied the landowner's motion for an adverse inference since it did not meet the requisite criteria, but found that Range, as the party who used the products, and not the landowner, should bear the responsibility for any inability to obtain information about the chemical make-up of the products. Judge Renwand determined, after extensive argument and briefing, that the landowner had a right to such information through discovery and the party in the best position to obtain it was Range, the purchaser and user of the products.

Judge Renwand granted the landowner a rebuttable presumption that the contaminants found in his water supply were used or stored at Range's site, but noted that the landowner still had the burden of demonstrating a hydrogeologic connection between his well and the Range site.

This case is now in the post-hearing briefing stage and is pending adjudication following the filing of all briefs.

Rural Area Concerned Citizens (RACC) v. DEP and Bullskin Stone and Lime, LLC, EHB Docket No. 2012-072-M (Adjudication issued June 11, 2014)

The Department issued a comprehensive Noncoal Surface Mining Permit to Bullskin for the Bullskin Mine including an NPDES permit to Bullskin for discharges from a mine drainage treatment facility and an erosion and sedimentation control facility. The Permit authorized noncoal

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

surface mining and surface activities connected with underground noncoal mining of limestone (Loyalhanna Limestone formation). Rural Area Concerned Citizens filed a Notice of Appeal with the Board objecting to the Department's issuance of the Bullskin Mine Permit for several reasons.

First, the Appellant argued that the Permit's Air Pollution Control plan inadequately controls dust migration, violating the prohibition against fugitive emissions and creating a public nuisance. There are three requirements governing particulate matter emissions: (1) an applicant must submit an Air Pollution Control Plan to the Department for review as part of an application for a Noncoal Surface Mining Permit; (2) the Department's air quality regulations contain a no visible emissions performance standard at the permit boundary which cannot be violated at any time regardless of compliance with the approved Air Pollution and Noise Control Plan; (3) the Department implements and enforces the state ambient air quality standard for total settleable particulate matter set by the Environmental Quality Board.

The Appellant alleged that visible fugitive emissions crossed Appellant's property boundary line. The Board found that the dust control measures outlined in the Permit were the types of dust control measures typically used to control dust at mine sites. Appellant's testimony of three fact witnesses and accompanying photographs were insufficient evidence to demonstrate that the plan was deficient and should not have been approved by the Department. Inspectors responded to Appellant's complaints and witnessed no dust crossing the Permit boundary, nor did four results taken from a dust fall jar show violations of ambient air quality standards for settleable particulate matter. The photographs did not establish that visible dust emissions from Bullskin's site development operations crossed Bullskin's property line. In addition, the three witness observations were either too far away or were blocked to be of real value in establishing that visible dust emissions from Bullskin crossed Bullskin's property line.

Second, the Appellant argued that the Department failed to adequately account for the presence of an exceptional value wetland located within the Permit area. The Appellant asserted that the designation of a segment of Mounts Creek as a wild trout stream changed the legal status of the wetland to an exceptional value wetland. The Board held that the wetland in question is not an exceptional value wetland because it is not located in or along the floodplain of the reach of a wild trout stream. The wetland lies a distance uphill and away from the reach of the part of Mounts Creek that was designated as a wild trout stream.

Pennsylvania Environmental Hearing Board
Selected Decisions of the Environmental Hearing Board

Kevin Casey v. Department of Environmental Protection, Pennsy Supply, Inc., and Dorrance Township, EHB Docket No. 2012-070-C
(Opinion and Order on Motions for Dismissal and Summary Judgment issued June 20, 2014)

Kevin Casey filed an appeal of a Noncoal Surface Mining permit issued to Pennsy Supply for the Small Mountain Quarry III in Dorrance Township, Luzerne County. The permit encompassed and replaced the prior permits for the quarry and added 184 acres to the permit area. Casey argued that the Department acted unreasonably or contrary to law in issuing the permit.

Both the Department and Pennsy Supply filed dispositive motions in the case. The Department argued that because the Board previously granted a motion in limine that precluded Casey from introducing expert testimony, Casey could not make out a prima facie case for his objections, as is required by the party bearing the burden of proof, and therefore dismissal was appropriate. Pennsy Supply filed a motion for summary judgment, making an argument similar to the Department's, contending that Casey did not produce any evidence in support of facts essential to his cause of action, and therefore summary judgment was appropriate under Pennsylvania Rule of Civil Procedure 1035.2(2).

Casey responded to both of the motions in essentially the same manner, but he only discussed two of the six objections listed in his Notice of Appeal. Writing for the Board, Judge Coleman noted that in doing so Casey did not produce any record evidence to rebut the motion for summary judgment on those four issues, and therefore, since he apparently abandoned them, summary judgment was appropriate for those objections. The Board also granted summary judgment for Casey's objection that was premised on using the expert testimony that he was previously precluded from using.

However, the Board denied summary judgment for Casey's objections related to potential adverse impacts to special protection waterways and wetlands. The Board found that based on the information contained in Pennsy Supply's permit application, it was not clear whether the high quality waterway would receive a discharge from the Quarry and whether the Department considered that the waterway was projected to suffer a loss of flow. Based on the record before it, and in consideration of the regulatory provisions affording special protection to high quality waterways,

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

the Board could not conclude as a matter of undisputed fact that the drainage to the waterway, coupled with the projected flow reduction, would not result in degradation of the waterway. Similarly, in terms of the exceptional value wetlands, the Board did not find sufficient evidence in the record to conclude one way or the other whether the quarry's proposed activities with respect to impacts on the supporting hydrology of the wetlands was consistent with the protections afforded in the regulations to exceptional value wetlands. The Board concluded that the issues related to special protection waterways and wetlands were appropriate for a hearing on the merits.

Because the Board resolved the motion for summary judgment, it did not need to reach the motion to dismiss.

***Solebury School v. Department of Environmental Protection and New Hope Crushed Stone & Lime Company*, EHB Docket No. 2011-136-L (Adjudication issued July 31, 2014)**

The Board sustained Solebury School's appeal and rescinded the Department's issuance of a depth correction to New Hope Crushed Stone's noncoal surface mining permit, which authorized it to mine at its quarry to a depth of 170 feet below mean sea level, 50 feet deeper than its prior authorization. Solebury School and New Hope Crushed Stone are located on neighboring properties in Bucks County. The Board presided over a hearing that lasted ten days. Solebury School's primary concern was that the operations at the quarry have significantly lowered the water table beneath the School, which was the overriding cause for the formation of 29 collapse sinkholes on the School's campus from 1989 up to the time of the hearing. Additionally, during the same time period at least another 12 collapse sinkholes formed on properties immediately surrounding the School.

The appeal required the Board to weigh the competing opinions of expert witnesses from Solebury School, New Hope Crushed Stone, and the Department. Ultimately, the Board found the School's experts to be the most experienced and credible. However, the Board found that the appeal was first and foremost about health, safety, and public welfare.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

The Board pointed out that one of stated purposes of the Noncoal Surface Mining Act is to prevent and eliminate hazards to public health and safety. In addition, the Board highlighted many of the regulations promulgated pursuant to the Noncoal Act that share a common thread of the recognition of the importance of health, safety, and public welfare. Based on those provisions, Judge Labuskes, writing for the Board, found that the Department clearly had the authority to deny a permit based on an unavoidable and serious hazard to health and safety. Further, the Board found that the Department's duty to ensure that mining can be reasonably accomplished before approving a permit application meant that the Department must ensure that mining can be performed without causing an undue risk to the health, safety, and welfare of the public.

The Board agreed with Solebury School that the evidence overwhelmingly established that New Hope Crushed Stone was the predominate cause of the sinkhole problem on its campus. In concluding that the Department approved the depth correction contrary to both law and reason, the Board found that the Department applied the wrong standard of review, charging the School with demonstrating that approval of the depth correction would cause the sinkhole problem to get worse. The Board determined that had the Department evaluated the permit application in terms of whether quarrying would perpetuate a health and safety hazard, it would have concluded that the depth correction should not have been issued.

Loren Kiskadden v. Department of Environmental Protection and Range Resources – Appalachia, LLC, EHB Docket No. 2011-149-R (Opinion and Order on Motion to Strike Expert Reports and Expert Rebuttal Reports issued September 12, 2014)

This matter involved a landowner in Washington County who filed an appeal with the Pennsylvania Environmental Hearing Board (Board) challenging a determination by the Pennsylvania Department of Environmental Protection (Department) that gas drilling and related activities conducted by Range Resources had not caused contamination to his water well. A trial was held before Chief Judge Renwand from September 23, 2014 to November 19, 2014.

Prior to trial multiple pretrial motions were filed by the parties. Among those was the landowner's Motion to Strike Expert Report and Expert Rebuttal Reports, seeking to strike expert reports filed by Range one month before the start of trial and six weeks after the deadline for the filing of expert reports. The reports were extensive and were filed in contravention of the Board's Pre-Hearing Order which was issued after a pre-

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

hearing conference with all counsel in which counsel had agreed to certain deadlines, including the filing of expert reports.

In granting the landowner's motion and striking the expert reports, Chief Judge Renwand held that the late production of the expert reports "constitutes not only unfair surprise and prejudice to the Appellant [landowner], but also a textbook case of 'trial by ambush.'" Judge Renwand found manifest prejudice to the landowner by Range's last-minute filing of the expert reports.

Chief Judge Renwand cited the Board's seminal decision in *Borough of Edinboro v. Department of Environmental Protection*, 2003 EHB 725, 772, in which "the Board in a unanimous Adjudication announced bright-line rules regarding expert witnesses, requiring that they be fully identified and provide timely expert reports." He noted that the uniform and fair enforcement of deadlines set forth in the Board's Orders, especially those where counsel are closely consulted and involved as they were here, helps to ensure that parties and their counsel can adequately prepare for trial without having to address new information raised at the eleventh hour in contravention of the Board's rules and orders.

This case is now pending adjudication. All briefs have been filed.

***Department of Environmental Protection v. Sunoco Logistics Partners, L.P., and Sunoco Pipeline, L.P.*, EHB Docket No. 2014-020-CP-R (Opinion and Order on Motion for Partial Summary Judgment issued October 24, 2014)**

This case involved a discharge of approximately 12,000 gallons of gasoline from a section of pipeline owned by Sunoco in Westmoreland County. Some of the gasoline entered waters of the Commonwealth. The Department of Environmental Protection filed a Complaint for Civil Penalties with the Pennsylvania Environmental Hearing Board.

Sunoco moved for partial summary judgment on the question of how many days of violation had occurred. Sunoco argued that it should be liable for, at most, one day of violation - the day on which the discharge occurred. The Department opposed the motion, asserting that the violation continued for days during which the gasoline moved from the soil to the groundwater and surface water.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

Oral argument on the motion was held before the full Board in Pittsburgh. In an Opinion and Order, the Board dismissed Sunoco's motion on the basis that a full record of the facts needed to be developed at trial. Pursuant to the Board's rules of practice and procedure, a motion for summary judgment may be granted only where there are no issues of material fact and it is clear that the moving party is entitled to judgment as a matter of law.

Writing for the Board, Chief Judge Renwand noted that many facts and issues remained in dispute: "Sunoco's legal argument focuses on gasoline being discharged from the pipeline. But is this the real legal question we should focus on or should we be focused on the migration of the gasoline to the groundwater and the surface water of the Commonwealth? Is that migration from soil to groundwater to surface water relevant in assessing civil penalties under the Clean Streams Law?...We are not ready to decide this issue without development of the facts in proper context."

The case will proceed to trial.

National Fuel Gas Midstream Corporation, NFG Midstream Trout Run, LLC and Seneca Resources Corporation v. Department of Environmental Protection, EHB Docket No. 2013-206-B (Opinion and Order on Motions for Summary Judgment and Motion for Partial Summary Judgment issued November 4, 2014)

National Fuel Gas Midstream Corporation and NFG Midstream Trout Run, LLC ("NFG Midstream") applied for coverage under one of the Department of Environmental Protection's general permits to construct and operate a natural gas compressor facility in Lycoming County. In reviewing whether NFG Midstream's proposed facility would comply with the terms of the general permit, the Department determined that the facility's emissions should be aggregated for the purposes of air pollution regulation with the emissions from a natural gas well pad owned by Seneca Resources. NFG Midstream appealed to the Environmental Hearing Board, challenging the Department's "single source determination" regarding the compressor station and Seneca's well pad. NFG Midstream and Seneca (intervening) both filed motions for summary judgment, arguing that aggregation of the two sources was inappropriate because the two sources: were not located on contiguous or adjacent properties, were not subject to common control, and were not classified in the same major industrial grouping.

Judge Steven C. Beckman, writing for the Board, denied the motions because the record was unclear that NFG Midstream and Seneca were entitled to judgment as a matter of law. Judge Beckman observed that "the air aggregation issue in the oil and gas industry context is complex and

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

typically poses mixed issues of fact and law.” At the current stage in the proceedings, it was unclear based on the limited evidence whether the compressor station was designated under the proper Standard Industrial Classification, for example, or whether the sources were located on one contiguous piece of property. Thus, Judge Beckman found that the parties’ arguments about the single source determination criteria raised issues that were inappropriate to resolve on summary judgment. He noted the Board’s strong belief that the matters raised by the appeal—matters of first impression in Pennsylvania—were best decided with the benefit of a full hearing on the merits.

Sludge Free UMBT, Jim and Donna Dellatore, Mike and Dianne Zimmerer, Debra and Tom Bodine, John and Tracy Gorman, Bob and Terry Schneider, Delaware Riverkeeper Network, and Maya van Rossum v. Department of Environmental Protection and Synagro, a.k.a. Synagro Mid-Atlantic, Inc., EHB Docket No. 2014-015-L (Opinion and Order on Motion to Compel issued November 17, 2014)

The citizens group Sludge Free UMBT, along with five pairs of individual members, appealed the Department’s approval of three site suitability notices submitted by Synagro for the application of biosolids on three sites in Upper Mount Bethel Township in Northampton County. The appellants’ overarching concern is that the three sites are not appropriate for the application of biosolids.

Synagro filed a motion to compel requesting that the appellants provide more complete responses to its discovery requests. Judge Labuskes noted that although the Board favors and encourages broad discovery, it is important to keep in mind the scope of the appeal and how the information sought to be compelled is relevant in determining whether the Department erred in approving the site suitability notices. For the purposes of the current appeal, such a determination would likely turn on things such as the topography and characteristics of the sites, the buffers observed from bodies of water and other features, and the nature of the material to be placed on the sites.

However, Synagro’s requests did not appear to be tailored to that specific question. Instead, Synagro, for instance, asked each appellant to describe the ventilation system of their homes, all of the computers and electronic devices in their homes, and all activities they conducted on their

Pennsylvania Environmental Hearing Board
Selected Decisions of the Environmental Hearing Board

property in the last three years. Synagro asked whether the appellants smoked or chewed tobacco. Synagro inquired about the frequency with which the appellants clean their homes and the extent and duration of the cleaning. In considering these requests, Judge Labuskes found that Synagro repeatedly failed to explain how the information it sought was relevant or reasonably calculated to lead to the discovery of admissible evidence and the requests must be denied.

Synagro's motion presented the Board with its first opportunity to consider a discovery dispute related to social media. However, in doing so, Judge Labuskes found that an analysis of the discoverability of information on a Facebook page is fundamentally no different than an analysis of the discoverability of information contained in any other media. A decision of whether to compel the information sought is still governed by the relevant Pennsylvania Rules of Civil Procedure, which require a showing that the information requested be reasonably calculated to lead to the discovery of admissible evidence. Since Synagro failed to make that showing, the requests related to Sludge Free UMBT's Facebook page were denied.

Synagro's requests were also denied because the appellants indicated that they had already provided Synagro all of the information in their possession. Judge Labuskes reiterated that the Board cannot compel a party to produce information that it does not have.

***Joseph D. Chimel and Paul Pachuski v. DEP*, EHB Docket No. 2011-033-M (Consolidated with 2011-034-M) (Adjudication issued November 25, 2014)**

The Department issued the renewal of an Anthracite Surface Coal Mining Permit and revised the permit by adding acreage to the Permit area for a proposed alternate access road. The Permit allows Molesevich & Sons to operate the Atlas Coal Breaker in Atlas, Pennsylvania. Appellants live close to the coal breaker and filed appeals objecting to the Department's issuance of the permit transfer, renewal and revision to Molesevich.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

Appellants objected to the Department's issuance of the renewal, transfer and revision because the Permit was not renewed prior to its expiration date and the Department should have required Molesevich to apply for a new permit. Additionally, Appellants alleged that valid existing rights on the property were abandoned and that the Department erred by issuing an insignificant boundary correction and should have instead required Molesevich to apply for a new permit to add acreage for an alternate access road. Finally, Appellants argued that the Permit insufficiently mitigates noise and dust produced by operations at the site.

The Board held that there is a presumption of successive renewals in 25 Pa. Code § 86.55(a) and that although the permit expired before the Department approved the renewal application for the permit, the Department never expressly denied any of the permit renewal applications, nor did it ever issue a renewal permit for reclamation only. The Board also found that the failure to file a renewal application at least 180 days before the expiration of the Permit does not preclude the Department from issuing a renewal of the Permit. The provisions of § 86.55(c) do not provide a mandatory due date after which point failure to submit a renewal application requires the Department to reject the application. Instead, the goal of the provision is to provide ample time for the Department to conduct its review of a renewal application, respond with any necessary corrections, and provide opportunity for public notice.

The Board also found that the Appellants failed to carry their burden to prove that the Department erred in finding that the Permit carried with it valid existing rights and that those valid existing rights have not been abandoned. The Board agreed with the Department's conclusion that an original permit boundary and proposed permit boundary were the same except for 2.8 acres that were added through a permit revision for an alternate access road. The Board determined that it should follow the definition of valid existing rights as defined by state laws that cross-referenced § 522 of the Federal Surface Mining Control and Reclamation Act and the federal regulations at 30 CFR 761.5.

The Board disagreed with Appellant's argument that the addition of the 2.8 acres does not qualify as an insignificant boundary correction. A person may submit a request for a permit revision along with a request for a permit renewal which is what the Department ultimately approved. The Department did not approve Molesevich's permit revision as an insignificant boundary correction; the permit revision merely added 2.8 acres to the permit to allow an alternative access road which the regulations allow as that term is used in the Department's regulations.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

The Board caselaw establishes that the Board will find that the Department abused its discretion if Appellants can demonstrate either that the Department failed to evaluate noise when reviewing an application or that the noise to be generated by the breaker will constitute a public nuisance. The record before the Board established that the Department considered the noise to be generated from the mining operation when it reviewed the combined application for permit renewal, transfer and revision. The Department held a public hearing to hear Appellants concerns about noise and considered the noise impacts. Moreover, Appellants did not demonstrate that the noise constituted a public nuisance. The Board looked to the Restatement of Torts 2nd for the applicable standard for determining public nuisance, as well as PA Supreme Court caselaw to rule that Appellants must demonstrate that the noise was unreasonable or unnecessary considering all of the circumstances; absolute quiet in the use of enjoyment is not required. There was no evidence at the hearing regarding appropriate noise levels to evaluate whether noise from a particular operation constituted a public nuisance other than the Department's witnesses. The Appellants relied primarily on their own testimony to assert that the noise from the breaker constituted a public nuisance and this testimony did not satisfy their burden.

***Hatfield Township Municipal Authority, et al. v. Department of Environmental Protection*, EHB Docket No. 2004-046-B (Consolidated with 2004-045-B and 2004-112-B) (Opinion and Order on Remand on Appellants' Applications for Attorneys' Fees and Costs issued December 12, 2013)**

In 2004, a group of owners and operators of publicly owned sewage treatment works in the Neshaminy Creek watershed ("Appellants") appealed the Department's creation of a Total Maximum Daily Load Assessment for the watershed ("TMDL"), which had been reviewed and ultimately approved by the U.S. Environmental Protection Agency. While responding to discovery requests early in the pendency of the appeal, the Department discovered a modelling error in the TMDL that could undermine the TMDL's data and conclusions. However, the Department only withdrew the appeal approximately four years later, in 2008.

The Board initially denied the Appellants' petitions for attorneys' fees and costs. The Commonwealth Court reversed that decision of the Board, finding that the Appellants had obtained the relief they sought in filing the appeals, that the appeals advanced the objectives of the Clean

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

Streams Law, and that Appellants' refusal to settle was reasonable. On remand, the Board had the parties submit briefs addressing the question of whether the Board had subject matter jurisdiction over the initial appeals and, specifically, whether the Department's issuance of the TMDL constituted a final appealable action. After briefing and en banc oral arguments on those issues, the Board ultimately determined that the issue of jurisdiction was no longer germane where the matter was terminated approximately five years earlier following the parties' stipulation of settlement. The only task remaining for the Board was to decide whether the Appellants were eligible and entitled to attorneys' fees and costs under Section 307(b) of the Clean Streams Law.

After determining that the appeals in this matter were proceedings pursuant to the Clean Streams Law, the Board then applied the three-part catalyst theory to determine the Appellants' eligibility for an award of attorneys' fees and costs. Under this test, the Board considers (1) whether the applicant has shown that the appeal stated a genuine claim, (2) whether the applicant has received from the Department some of the benefit sought in the appeal, and (3) whether the applicant has shown that its appeal was a substantial cause of the Department's action providing relief. In this case, the Board found that the Appellants' met all three criteria and thus, were eligible for an award of attorneys' fees and costs.

The Board next determined if the fees requested by the Appellants' were appropriate and reasonably incurred under the facts of the case. The Board utilized the lodestar method—the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. The burden is on the party seeking fees to present credible evidence of the fees sought; where that evidence is not provided or is insufficient, the Board has the discretion to reduce the award accordingly. The party opposing the fee petition has the burden of challenging with specificity any part of the fee petition that it deems to be improper. In addition to the lodestar, the Board also considered numerous other factors to determine an appropriate amount of fees to be awarded, including but not limited to the degree of success, the extent to which the litigation brought about the favorable result, whether litigation fees overlap fees unrelated to the litigation itself, the size, complexity, importance and profile of the case and the degree of responsibility incurred and risk undertaken.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

After an exhaustive analysis of the evidence in support of and in opposition to the Appellants' fee petitions, the Board ultimately awarded attorneys' fees and costs to each Appellant. The Board used its discretion, however, to reduce the each award to a reasonable and appropriate level, based on its finding that certain hours were claimed for work that was unnecessary, redundant, or excessive. The Board also reduced the awards where parties had provided insufficient information to support their invoices, and, for one fee petition, on the grounds that that party had contributed minimally to the litigation and the favorable result.

The Board's Opinion and Order was affirmed in whole following an appeal to the Commonwealth Court. The Department of Environmental Protection is currently petitioning the Pennsylvania Supreme Court to review the decision of the Commonwealth Court.

Maple Creek Mining Co and Canterbury Coal Co. v Department of Environmental Protection, EHB Docket No. 2014-066-R (Opinion and Order on Motion for Summary Judgment issued December 31, 2014)

This matter involved the interpretation of Consent Orders and Agreements entered into between the Pennsylvania Department of Environmental Protection (Department) and two coal companies, Maple Creek Mining and Canterbury Coal. The purpose of the agreements was to treat long standing environmental problems caused by mining operations.

As part of the agreements, the two mining companies signed participation agreements with the Clean Streams Foundation to set up trusts to be funded by eleven annual payments. For the first payment the companies had a grace period of ninety days in which to make their payment. The question involved in the matter before the Environmental Hearing Board was the date on which subsequent payments were due and whether penalties were owed for late payment.

In a decision authored by Chief Judge Renwand, the Board granted the Department's motion for summary judgment. Judge Renwand found that there was no ambiguity in the agreements and that the coal companies had submitted their payments after the due date. Under the terms of the agreement, the Board found that the Department was entitled to the penalties it requested for late payment.

Pennsylvania Environmental Hearing Board

Selected Decisions of the Environmental Hearing Board

Shane M. Winner v. Department of Environmental Protection and Limestone Township Supervisors, EHB Docket No. 2013-120-B (Adjudication issued December 2014)

The Board dismissed Shane Winner's appeal of the Department of Environmental Protection's approval of a Component 1 Planning Module under the Sewage Facilities Act. Winner believed that the sewage needs of a proposed two-lot subdivision on adjoining property could not be met through an on-lot system. The Sewage Enforcement Officer for Limestone Township tested soils at the site and determined that, though marginal soil conditions existed, long-term sewage disposal needs could be met by the use of a system with primary and replacement absorption areas. Based on the SEO's work, the Department determined that Limestone Township would not be required to revise its official sewage facilities plan.

Winner argued that the testing conducted by the SEO was insufficient to demonstrate the site's suitability, and that the Department was aware of the inadequacy of the soils testing. He and his expert witness argued that prior soil testing in the vicinity of the site showed mottled and poorly-draining soils, which were thus unsuitable for on-lot sewage disposal. Additionally, Winner argued that the SEO should have strictly followed testing procedures outlined in the Department's Field Manual for Pennsylvania Sewage Enforcement Officers. Winner desired that the soils be thoroughly retested in accordance with the Field Manual's procedures, including the excavation of multiple test pits per absorption area.

The Board determined that the SEO's testing procedures were governed by Act 537 regulations, and that results of previous soil testing did not have a legal effect on those requirements. Writing for the Board, Judge Steven C. Beckman, specifically found that the plain language of the regulations required "at least one" pit, not "more than" one. While the Field Manual suggested it would, in some cases, be prudent to conduct more extensive testing, the Board noted that the regulations take precedence over Departmental guidance or policy. The Board had "no difficulty determining, like the Department," that the information submitted about the development was sufficient to determine that the Township need not revise its official sewage facilities plan, so that the planned development could go forward.

Pennsylvania Environmental Hearing Board



Significant Rule Changes

There were two rules packages presented to and approved by the Independent Regulatory Review Commission (IRRC) in 2014.

One primarily dealt with the adoption of the new rules pertaining to electronic filing (e.g., mandatory e-filing, allowing pro se appellants to e-file, etc.). That Rules package was approved by IRRC on June 19, 2014. The preamble is below. The other rules package made changes to EHB rules on dispositive motions and summary judgment motions and was approved by IRRC on November 6, 2014.

ENVIRONMENTAL HEARING BOARD RULES OF PRACTICE AND PROCEDURE FINAL RULEMAKING 106-10

PREAMBLE

The Environmental Hearing Board (Board) by this order amends Title 25 of the Pennsylvania Code as set forth at Annex A. The amendments modify the rules of practice and procedure before the Board by implementing improvements in practice and procedure.

The Board approved the final regulations at its meeting on December 17, 2013.

Effective Date

The amendments will go into effect upon publication in the Pennsylvania Bulletin as final rulemaking, with the exception of Section 1021.51(f)(1)(v) which will go into effect 30 days after publication. Until such time as Section 1021.51(f)(1)(v) goes into effect, persons who choose to electronically file a notice of appeal shall follow the service requirements for a conventional filing set forth at Section 1021.51(f)(2)(vi).

Pennsylvania Environmental Hearing Board

Significant Rule Changes

Contact Person

For further information, contact Maryanne Wesdock, Senior Counsel, Environmental Hearing Board at: mwesdock@pa.gov, (412) 565-5245, or Suite 310 Piatt Place, 301 Fifth Avenue, Pittsburgh, PA 15222. If information concerning this notice is required in an alternative form, please contact Vincent Gustitus, Secretary to the Board, at vgustitus@pa.gov or (717) 787-1638. TDD users may telephone the Board through the AT&T Pennsylvania relay center at 1-800-654-5984.

Statutory Authority

The regulations are promulgated under the authority of Section 5 of the Environmental Hearing Board Act (35 P.S. § 7515) which empowers the Board to adopt regulations pertaining to practice and procedure before the Board.

Comments and Revisions to Proposed Rulemaking

The proposed rulemaking amendments were adopted by the Board at its meeting of November 8, 2012 and published at 43 Pa.B. 2591 (May 11, 2013), with a 30-day public comment period. Comments were submitted by the Independent Regulatory Review Commission (IRRC), Citizens for Pennsylvania's Future (PennFuture) and the Department of Environmental Protection (Department). The comments and the Board's responses were discussed at a public meeting/conference call of the Board's Rules Committee held on July 25, 2013. In response to comments received during the official public comment period on the proposed rulemaking, a draft final rulemaking was prepared. A summary of the comments and Board's responses is set forth below:

Pennsylvania Environmental Hearing Board

Significant Rule Changes

Section 1021.32(a) - Filing – heading of subsection (a)

PennFuture noted that under the proposed revisions, subsections (a) and (e) of Section 1021.32 would have the same heading of “Conventional filing.” PennFuture pointed out that contrary to its heading, subsection (a) of the rule is not limited to conventional filing, but instead identifies documents that “shall be conventionally filed or facsimile filed.” It recommended changing the heading of subsection (a) to “Exceptions to electronic filing.”

Upon reviewing the contents of subsection (a), the Rules Committee and the Board agreed with PennFuture’s comment but felt it would be appropriate to give subsection (a) the title “General filing requirements.”

Section 1021.32(a) – Filing – documents that must be conventionally or facsimile filed

The proposed revisions to Section 1021.32(a) would have required that only two categories of documents be filed conventionally or by facsimile: complaints, and motions to be excused from the mandatory electronic filing requirement. During preparation of the final rulemaking it became apparent that two other categories of documents must be filed conventionally or by facsimile due to limitations in the Board’s electronic filing system: entries of appearance filed by recipients of an action, pursuant to Sections 1021.32(h) and (j); and documents filed by persons who are not parties to the action at the time of the filing. Those two categories have been added to Section 1021.32(a) as subsections (3) and (4).

Section 1021.32(c)(14) and (15) and Section 1021.51(f)(1) – completion, acceptance and rejection of electronic filings

Proposed subsection 1021.32(c)(14) provided that “[a]n electronic filing complete before midnight Eastern Time will be considered to be filed on that date so long as it is accepted by the Board.” 43 Pa.B. at 2596 (col. 1) (emphasis added). This same language (with the addition of a comma after the word “date”) also appeared in proposed subsection 1021.51(f)(1)(ii) governing the commencement of an appeal through the electronic filing of a notice of appeal. 43 Pa.B. at 2599 (col. 1). Proposed subsection 1021.32(c)(14) further went on to distinguish completion of a

Pennsylvania Environmental Hearing Board

Significant Rule Changes

filing from acceptance or rejection of the filing by the Board, by stating, “[u]pon completion of the filing,” the Board’s filing system “will issue a transaction receipt including the date and time the document was received,” but that “[i]f the Board rejects the submitted documents following review,” the filer will be notified and may have to refile the rejected documents. 43 Pa.B. at 2596 (col. 1) (emphasis added).

PennFuture raised a concern that, given the jurisdictional nature of the 30-day deadline for commencement of an appeal before the Board, the application of proposed subsections 1021.32(c) and 1021.51(f)(1)(ii) would determine whether an appeal is dismissed for lack of jurisdiction and, therefore, the rules should specify the grounds on which the Board may reject the electronic filing of a notice of appeal or other document. IRRC also requested this information.

PennFuture’s and IRRC’s comments illustrate that there is much confusion over the use of the terms “completion,” “reject,” and “accept” with regard to electronic filing. The “rejection” of an electronic filing does not act to deprive the Board of jurisdiction over the appeal. It merely acts as a notification to the appellant that additional material may be required by the Board in order for the Board to consider the appeal perfected. The Board’s “rejection” of an electronic filing acts in the same manner as does a notice to perfect sent out upon receipt of a hard copy filing of a notice of appeal where additional information is required. The “rejection” of an electronically filed notice of appeal does not affect the appeal’s timeliness; it merely requires the appellant to file an amended version of the notice of appeal containing the missing information. A notice of appeal is considered filed upon completion of the transmission of the notice of appeal by means of the Board’s electronic filing system.

Because the inclusion of the terms “reject” and “accept” were confusing and did not accurately describe the action taken by the Board upon receipt of a notice of appeal with missing information, Section 1021.32(c)(14) has been amended to eliminate those terms.

Additionally, subsection 1021.32(c)(15) has been amended to clarify that a party who experiences technical difficulty while filing a document electronically may seek relief under Section 1021.53a (dealing with nunc pro tunc relief).

Pennsylvania Environmental Hearing Board

Significant Rule Changes

Section 1021.34(g) – Service by a party

Under proposed subsection 1021.34(g), if an electronic filing were not successfully transmitted, the party sending the filing would need to “immediately upon notification of the deficiency” serve the document by other listed methods. IRRC commented that the requirement of immediate notification lacked clarity. Therefore, this provision has been amended to clarify that a party has until 4:30 p.m. of the next business day to correct the deficiency and serve the document.

The Department suggested adding a provision to subsection 1021.34(g) of the proposed rules to allow parties to effect service by email when there is a problem with the electronic service using the Board’s electronic filing system. The Department felt that allowing service by email, where the receiving party consents to service in that manner, will be more convenient for both the filer and the receiving party, particularly for those filers who may lack a facsimile machine. The Board agreed with the Department’s suggestion and added language to subsection 1021.34(g) to allow service by email when there is a problem with electronic service under the Board’s electronic filing system.

Section 1021.51(f)(1)(iii) – Notice of appeal, notice of filing

IRRC noted that subsection 1021.51(f)(1)(iii) uses the terms “notice of appeal” and “notice of filing” and questioned what is the difference between the terms. Because there is no difference in the terms and because “notice of appeal” is the proper term to be used, this subsection has been amended to use “notice of appeal” instead of “notice of filing.”

Section 1021.51(f)(1)(iv) – Service on the Department

PennFuture recommended that the rules authorize electronic service of notices of appeal on the Department’s Office of Chief Counsel and program office, and suggested that automatic electronic service on the Department should be built into the Board’s electronic filing system.

Pennsylvania Environmental Hearing Board

Significant Rule Changes

In response to PennFuture's comment, the Board's electronic filing system has been upgraded in order to allow automatic service of an electronically filed notice of appeal on the Department's Office of Chief Counsel and program office. In other words, an appellant who electronically files a notice of appeal will no longer have to serve a copy of the appeal on the Department. This revision to the Board's rules will go into effect 30 days from the date of publication in the Pennsylvania Bulletin.

Appellants who electronically file notices of appeal will still need to serve a copy of the appeal on a permittee, where applicable.

Section 1021.81 – Intervention

The Board's rule at Section 1021.81 deals with traditional means of intervention. A comment has been added to Section 1021.81 to reference Section 1021.51(j) which allows persons who are "recipients of an action," as that term is defined in Section 1021.51(h), to intervene by simply filing an entry of appearance.

Sections 1021.94 and 1021.94a – Responses to dispositive motions

In its proposed rulemaking, the Board had proposed changes to Sections 1021.94 and 1021.94a to address the following problem: When a party files a dispositive motion (such as a motion to dismiss under Section 1021.94 or a motion for summary judgment under Section 1021.94a), the other parties to the case have 30 days to file a response. In most cases, any such response will be a response in opposition to the motion. However, in the case of a third party appeal, one party may wish to file a response in support of the motion. For example, in the case of Party A v. Party B and Party C, if Party C files a motion to dismiss against Party A, Party B may wish to file a response in support of the motion. Party A, presumably, would file a response in opposition to the motion. A problem arises where the response in support of the dispositive motion is filed at or near the end of the 30 day response period, but raises new facts or legal theories not raised in the original motion. In that case, the party opposing the motion has little or no time to respond to the new facts or legal theories. Two alternative solutions to this problem were proposed:

Pennsylvania Environmental Hearing Board

Significant Rule Changes

Option 1 would prohibit parties from filing a response in support of a dispositive motion that contained new facts or legal theories. If a party wished to file a response in support of a dispositive motion containing new facts or legal theories, he/she would need to obtain leave of the Board.

Option 2 would permit the filing of a response in support of a dispositive motion containing new facts or legal theories, and would give the opposing party additional time in which to respond.

Both approaches were mentioned in the Preamble to the proposed rulemaking, but only one approach – Option 1 – appeared in the proposed text of the rule (Annex A). The Preamble stated that the Board was seeking comments on both approaches and considered each one to have equal merit.

The Board received extensive comments on the proposals from PennFuture and the Department, as well as comments from IRRC seeking clarification.

PennFuture supported Option 1, i.e., limiting responses supporting a motion for summary judgment or other dispositive motion to the legal and factual bases raised in the motion. However, PennFuture also commented that this approach did not by itself eliminate the need for the party opposing the motion to be given additional time to address both the dispositive motion and the response in support of the dispositive motion. To ensure that the party opposing a motion for summary judgment or other dispositive motion has sufficient time to address all of the arguments and authorities presented by the moving party and any supporting parties, PennFuture recommended that the deadline for filing a response in opposition to a dispositive motion should be 30 days after service of the later of: a) the motion or b) the last timely-filed notification of joining the motion that is accompanied by a supporting memorandum of law or brief.

The Department filed comments that raised concerns about Option 1, and recommended an approach closer to that set forth in Option 2. The Department felt that parties should not be prohibited from filing a response in support of a dispositive motion that contains new facts or legal theories. The Department set forth a number of reasons in support of its position: First, the Department stated that parties often have

Pennsylvania Environmental Hearing Board

Significant Rule Changes

appropriate reasons for not wanting to join in one another's dispositive motions. It pointed out that even where parties are aligned, they may have different interests with respect to the filing of a particular dispositive motion. For example, in third-party appeals, the Department's interest may be in defending the integrity of the Department process that resulted in the action, whereas the recipient of the action is simply focused on prevailing in the current litigation.

Second, the Department felt that prohibiting parties from filing responses in support of dispositive motions except as permitted by order of the Board would frustrate the "just, speedy, and inexpensive" determination of Board proceedings. For example, the Department felt that in some instances, the Board may be able to dispose of issues or entire cases based on what is included in the supporting response, saving the parties and Board the expense and time that would be necessary to resolve them after a hearing on the merits.

Third, the Department felt that Option 1 could have a chilling effect on both the Department and other parties filing supporting responses and that Option 2 allowed for a more complete record before the Board.

The Department noted that the minutes of the Rules Committee meeting where this issue was discussed identified only one problem with the current Board rules with respect to supporting responses: the current rules do not address whether parties opposing the motions have a right to respond to the supporting responses. The Department felt that the most reasonable way to address this problem would be to amend the rules to provide that the party opposed to the dispositive motion has a right to respond, rather than to amend the rules to prohibit the filing of supporting responses except as permitted by order of the Board.

Finally, the Department felt that Option 1 was unclear because of the following: it does not address when an opposing party must respond to a supporting motion, it does not provide that an opposing party may have additional time to respond to a dispositive motion when a supporting response is filed, it does not address whether a party that files a supporting response may file a reply brief, it does not address whether a supporting response should take the form of a motion or memorandum, it does not address which "response" controls for purposes of calculating the reply time by the moving party, it does not address whether a party opposing a dispositive motion is to file one response to both the motion and the supporting response or file separate responses, and it does not contain a deadline for filing a motion requesting the Board to allow the filing of a supporting response with new facts or legal theories.

Pennsylvania Environmental Hearing Board

Significant Rule Changes

In its comments, the Department recommended an alternative amendment to the rules that would allow parties to file responses in support of a dispositive motion containing new facts or legal theories, but also provided an additional time period for the opposing party to respond to the new facts and legal theories raised in the supporting response, as well as additional time to respond to the original motion.

IRRC did not take a position on either Option 1 or 2 but raised the following questions about Option 1: What form, if any must a notification that a party is joining a dispositive motion take? How did the Board determine that 15 days is a reasonable amount of time in which to file a notification? Under what circumstances would the Board permit, by way of an order, a party to raise additional issues in support of the dispositive motion? How does a party wishing to raise additional issues request such permission in the notification and must a separate pleading or motion be filed?

After an extensive review and consideration of all of the comments, the Rules Committee recommended and the Board agreed with the alternative approach suggested by the Department in its comments. Under this approach, a party is able to file a response in support of a dispositive motion within 15 days of service of the original motion or within 15 days of the deadline for filing dispositive motions, whichever comes first. The opposing party would then have 30 days to respond to the supporting response and between 30 and 45 days to respond to the original motion, depending on how long after the original motion the response in support was filed. This approach takes into consideration PennFuture's comment that the opposing party should be given additional time to address both the response in support and the original motion.

Both Section 1021.94 and Section 1021.94a have been revised accordingly.

Section 1021.103 – Subpoenas

Section 1021.103 of the Board's current rules, titled "Subpoenas," provides that "requests for subpoenas and subpoenas shall be governed by Pa.R.C.P. 234.1—234.4 and 234.6—234.9." 25 Pa. Code § 1021.103(a). Under the proposed amendments to section 1021.103, the title of the section would remain "Subpoenas." The only change to this section would be the addition of citations to additional Rules of Civil Procedure governing subpoenas, specifically the rules governing the use of subpoenas in discovery found at Pa.R.C.P. 4009.21—4009.27. As explained in the preamble, the proposed amendments to section 1021.103 simply makes clear that Pa.R.C.P. 4009.21—4009.27 also are incorporated into the Board's rules.

Pennsylvania Environmental Hearing Board

Significant Rule Changes

PennFuture commented that the proposed amendment would carry forward an unnecessary ambiguity that exists in the current version of section 1021.103: Although Section 1021.103 refers exclusively to “subpoenas,” the Rules of Civil Procedure that it currently incorporates (and would continue to incorporate under the proposed amendment), Pa.R.C.P. 234.1—234.4 and 234.6—234.9, are not limited to subpoenas alone. They also cover similar devices, the “notice to attend” and “notice to produce.”

PennFuture felt that the Board should take advantage of the pending rulemaking to eliminate this ambiguity, and to do so in favor of authorizing the use of all of the mechanisms available under the Rules of Civil Procedure – subpoenas, notices of attend, and notices to produce. PennFuture recommended changing the title of the section to “Subpoenas, notices to attend, notices to produce,” and including a reference to all three in the rule itself.

The Rules Committee requested an opportunity to review this matter further and report back to the Board. The Board agreed to move forward with the proposed revision to Section 1021.103 at this time and to add PennFuture’s suggestion to the agenda for the next Rules Committee meeting. If recommended, PennFuture’s suggested revision will be incorporated into future rulemaking.

Sunset Date

A sunset date has not been established for these regulations. The effectiveness of the regulations will be evaluated on an ongoing basis by the Board and the Rules Committee.

Regulatory Review

As required by Section 5(a) of the Regulatory Review Act, Act of June 30, 1989, P.L. 73, 71 P.S. § 745.4(a), the Board submitted copies of the proposed rulemaking, which was published in the Pennsylvania Bulletin 43 Pa.B. 2591 (May 11, 2013), to IRRC and the Senate and House

Pennsylvania Environmental Hearing Board

Significant Rule Changes

Environmental Resources and Energy Committees for review and comment. The Board, in accordance with Section 5(b.1) of the Regulatory Review Act (71 P.S. § 745.5(b.1)), also provided IRRC and the Committees with the Regulatory Analysis prepared in compliance with Executive Order 1982-2 (relating to improving government regulations) and copies of comments received.

In preparing the final form regulations, the Board has considered all comments received. No comments on the proposed regulations were received from either of the legislative committees.

These final form regulations were submitted to the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee on April 30, 2014. Because no action was taken by the Committees within 20 days after submission of the final form regulations, they are deemed approved. IRRC met on June 19, 2014 and approved the regulations pursuant to Section 5(c) of the Regulatory Review Act.

Findings of the Board

The Board finds that

- (1) Public notice of the proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968, P.L. 769, No. 240, 45 P.S. §§ 1201 and 1202 and the regulations thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) These regulations are necessary and appropriate for administration of the Environmental Hearing Board Act.

Pennsylvania Environmental Hearing Board

Significant Rule Changes

Order

- (1) The regulations of the Board are amended by Annex A.
 - (2) The Chairman of the Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel as to legality and form as required by law.
 - (3) The Chairman of the Board shall submit this order and Annex A to the House Environmental Resources and Energy Committee, the Senate Environmental Resources and Energy Committee, and IRRC, as required by law.
 - (4) The Chairman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
 - (5) This order shall take effect upon publication in the Pennsylvania Bulletin, except for the amendment to Section 1021.51(f)(1)(iv), providing for automatic service of an electronically filed notice of appeal on the Department, which shall take effect 30 days after publication in the Pennsylvania Bulletin.
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Pennsylvania Environmental Hearing Board



The Environmental Hearing Board Rules Committee

Statutory Provisions

The Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, *as amended*, 35 P.S. §§ 7511-7516, established the Environmental Hearing Board Rules Committee. The Committee consists of nine attorneys who are in good standing before the Bar of the Supreme Court of Pennsylvania and who have practiced before the Board for a minimum of three years or who have comparable experience. 35 P.S. § 7515(a).

The membership shall consist of the following appointments:

- One member by the President pro tempore
- One member by the Minority Leader of the Senate
- One member by the Speaker of the House of Representatives
- One member by the Minority Leader of the House of Representatives
- One member by the Chairman of the Citizens Advisory Counsel to the Department of Environmental Protection
- Two members by the Governor, upon the advice of the Pennsylvania Bar Association
- Two members by the Secretary of the Department of Environmental Protection

The members shall serve two year terms and may be reappointed for additional terms.

The Committee reviews and makes recommendations to the Board regarding the procedural rules for matters brought before the Board. 35 P.S. § 7515(c). As of December 31, 2014, the Rules Committee consisted of the following members:

CHAIRMAN

Howard J. Wein has served as the chair of the Rules Committee for more than a decade. He is a shareholder with Buchanan Ingersoll & Rooney, PC and a member of the firm's Environmental Practice Group in its Energy Law Section resident in its Pittsburgh office. Mr. Wein began his legal career as Assistant Attorney General and later served as Assistant Counsel for the Pennsylvania Department of Environmental Resources, entering private practice in 1986. Mr. Wein's environmental practice has focused on transactional, counseling and litigation matters involving a wide variety of important water quality, waste management, Brownfields redevelopment, energy & natural resources issues including mining and oil & gas matters, and air quality matters at both the state and federal levels. Mr. Wein has successfully litigated and resolved complex environmental matters involving the Pennsylvania Department of Environmental Protection ("DEP") and the United States Environmental Protection Agency ("USEPA") by negotiating consent agreements with DER and USEPA. He has served in a number of leadership positions including as Chairman of the Allegheny County Bar Association's Environmental

Pennsylvania Environmental Hearing Board

The Environmental Hearing Board Rules Committee

& Energy Law Section, Chairman of the Pennsylvania Bar Association's Environmental, Mineral and Natural Resources Law ("EMNRL") Section and as the Section's delegate to the PBA. In 2009, Mr. Wein was honored by the PBA EMNRL Section by being named the recipient of its Environmental Achievement Award. In addition, Mr. Wein served on Governor Tom Ridge's Transition Team Study Group on Environmental issues as well as on Governor Ed Rendell's Transition Team. Mr. Wein is also the President of the Board of Directors of Construction Junction, a non-profit organization in Pittsburgh dedicated to the reuse of used and surplus building materials.

VICE-CHAIR

Maxine Woelfling is Of Counsel in the Harrisburg Office of Morgan, Lewis & Bockius LLP and practices in the Firm's Environmental Practice Group. Her work includes regulatory counseling, transactional analyses, and litigation of permitting and enforcement issues before state and federal administrative and judicial tribunals. She received a B.S. in biology from the University of Pittsburgh and her J.D. from the Notre Dame Law School. She also did graduate work in environmental health engineering in the University of Notre Dame's Graduate School of Civil Engineering. She served as the Chair of the Pennsylvania Environmental Hearing Board from 1985 to 1995. Prior to her appointment to the Environmental Hearing Board, she was an Assistant Counsel and Director of the Bureau of Regulatory Counsel in the Pennsylvania Department of Environmental Resources. Ms. Woelfling is a member of the Pennsylvania Bar Association. She served as the Chair of its Environmental, Mineral, and Natural Resources Law Section and is currently the co-editor of the Section's newsletter. In 1995 she received the Section's annual award for outstanding achievements in the field of environmental law. Ms. Woelfling is a Master of the James S. Bowman American Inn of Court. She lectures frequently on administrative practice and procedure and environmental law.

MEMBERS

James F. Bohan is the Department of Environmental Protection's Liaison with the Environmental Hearing Board and an Assistant Counsel in the Department's Southcentral Regional Office. His duties include supervising attorneys, providing counseling and litigation support to the Southcentral Region's waste management program, and counseling the Department on electronic discovery issues. Previously, Mr. Bohan was an Assistant Counsel with the Environmental Hearing Board. He received his undergraduate degree from Hamilton College (B.A. biology), studied biology at the University of Notre Dame, and received his J.D. from the University of Notre Dame Law School.

Brian J. Clark is a shareholder and chairs the environmental practice group of Buchanan Ingersoll's Harrisburg office. Mr. Clark represents clients in environmental matters relating to Superfund, RCRA, and various waste management, water quality, and air quality compliance issues. As the former Majority Counsel to the Pennsylvania Senate Environmental Resources and Energy Committee, he was involved in drafting various environmental statutes. Mr. Clark also served on the Pennsylvania Department of Environmental Resources' Environmental Quality Board, is President of the Pennsylvania Resources Council, is chairman of the Environmental Affairs Committee of the Pennsylvania Chamber of Business and Industry, is a member of the Environmental Hearing Board Rules Committee, and is also a member of the Environmental Law Section of the Pennsylvania Bar

Pennsylvania Environmental Hearing Board

The Environmental Hearing Board Rules Committee

Association. Mr. Clark is an active lecturer on a variety of environmental topics for PBI, the Pennsylvania Chamber of Business and Industry, and other industry and civil organizations. Mr. Clark received his J.D. from the Dickinson School of Law and his B.A. from the Pennsylvania State University.

Gail M. Conner is the founder and President of G&C Environmental Services, Inc. (G&C). She provides legal services related to environmental law, real estate transactions and contracts. Ms. Conner was appointed in 2005 and reappointed in 2008 to the Citizens Advisory Council of the Department of Environmental Protection (CAC) from which she also served on the Environmental Quality Board, Air Quality Technical Advisory Committee and Mercury Rulemaking Work Group. She served on the CAC for 8 years from 2005 to 2013. Ms. Conner has performed environmental consulting and regulatory compliance work for more than 25 years. She served as a Peer Review expert for the U.S. Environmental Protection Agency (EPA), with expertise in asbestos science, demolition engineering, monitoring, industrial hygiene, and human health risk. She also performs peer review for the Federal Aviation Administration Capacity Enhancement Program for air quality, hazardous waste and Environmental Justice. Prior to founding G&C Environmental Services, Ms. Conner served as a scientist for an engineering firm and in several environmental roles for the State of Wisconsin, including State Asbestos Coordinator for the Wisconsin Department of Industry, Labor and Human Relations, where she assisted in the development of the Wisconsin Asbestos Policy and legislation. Ms. Conner also worked for the Wisconsin Department of Natural Resources, Bureau of Air Management and was responsible for training programs for field inspection and enforcement staff. Ms. Conner received her J.D. from Widener University School of Law in Wilmington, Delaware and her B.S. in Biology/ Education from the University of Wisconsin-Madison.

Philip L. Hinerman is a member of the Environmental Law Group of Fox Rothschild, LLP. He has extensive experience in environmental regulatory litigation. Mr. Hinerman also provides advice to both buyers and sellers in acquisitions and real estate matters, and assists companies in developing effective environmental programs and policies. He has also served as multi-party joint defense counsel in litigation regarding the Metcoa Recovery Facility, Novak Sanitary Landfill, Pt. Refinery Mercury Site and the Malvern TCE Site. Previously, Mr. Hinerman was associate corporate counsel with Leaseway Transportation Corporation. While there, he developed the company's environmental program and supervised all environmental litigation and regulatory matters. Mr. Hinerman is a former chair of the Environmental Law Section of the Pennsylvania Bar Association. Mr. Hinerman is a member of the board of directors of the Pennsylvania Environmental Council and a founding director of the Delaware Valley Green Building Council. He serves on the Pennsylvania Bar Association's Task Force on Multi-jurisdictional Practice of Law. His interest in wines has led Mr. Hinerman to obtain a diploma in Wines and Spirits from the Wine & Spirits Education Trust, based in London. The WSET promotes, provides and develops education and training in wine and spirits. He is also a Certified Specialist in Wines by the Society of Wine Educators. Mr. Hinerman received his J.D. from Washington & Lee University School of Law in 1979 and his A.B. cum laude from Marshall University in 1975.

Kate M. Harper is State Representative of the 61st Legislative District, which includes North Wales Borough, all of Towamencin and Upper Gwynedd townships, and portions of Lower Gwynedd and Whitpain townships. She was appointed chairman of the House Local Government Committee for the 2015-16 legislative session and continues to serve as a solicitor to local government bodies. She previously served as chairman of the House Children and Youth Committee and the Ethics Committee. In recognition of her dedicated public service and environmental advocacy, Rep. Harper has received numerous awards. She obtained her undergraduate degree from LaSalle University and went on to earn her law degree from Villanova University. A practicing lawyer for more than 30 years, she is a partner with the Fort Washington-based firm Timoney Knox LLP and represents individuals, families, entrepreneurs, and municipal agencies

Pennsylvania Environmental Hearing Board

The Environmental Hearing Board Rules Committee

Matthew L. Wolford practices law as a solo practitioner in Erie, PA, where he concentrates on environmental matters. Before going into private practice, he served as an Assistant Counsel and Regional Counsel for the Pennsylvania Department of Environmental Protection ("DEP"). Prior to joining DEP, he served as a prosecutor with the PA Office of Attorney General ("OAG"), Environmental Crimes Section; and as a civil litigation attorney for the OAG's Torts Litigation Section. He also served as a Special Prosecutor of environmental crimes for both the OAG and the U.S. Attorney for the Western District of Pennsylvania. He is a regular lecturer for the Pennsylvania Bar Institute, and has lectured for the U.S. EPA (National Enforcement Training Institute), the DEP, the PA Fish and Boat Commission, PA's Minor Judiciary, and the Erie County Bar Association. He is an Adjunct Professor at Gannon University in Erie, PA, where he teaches a course on environmental law. He is also a Committee Member of the State Water Plan Statewide and Great Lakes Regional Committees and serves on the Boards of several environmental organizations in the Erie area. He received his undergraduate degree from the Pennsylvania State University and his Juris Doctorate degree from the Temple University School of Law, and is a member of the Erie County and Pennsylvania Bar Associations.

Dennis A. Whitaker is the Chief Counsel for the Department of Environmental Protection, the executive agency responsible for administering and enforcing Pennsylvania's environmental statutes and regulations. He was appointed in November 2013. The Department's Office of Chief Counsel is the largest environmental "law firm" in Pennsylvania and provides a wide variety of counseling, transactional and litigation services to the agency. As Chief Counsel, Mr. Whitaker oversees an office of more than seventy attorneys, nine investigators and attendant administrative staff. Among other duties, he also serves as a member of the Environmental Hearing Board Rules Committee. Prior to his current appointment, Mr. Whitaker was Chief Counsel for the Department of Conservation and Natural Resources, the executive agency charged with stewardship over Pennsylvania's one hundred twenty state parks and 2.2 million acres of state forest land. From November 1990 until May 2012, he served the Department of Environmental Protection and its predecessor agency, the Department of Environmental Resources, as an assistant counsel, as a Supervisory Attorney, as Assistant Chief Counsel-Litigation Coordinator and as Executive Deputy Chief Counsel. An experienced trial and appellate lawyer, Mr. Whitaker was lead trial counsel for three Commonwealth agencies in their action to prevent the privatization of a portion of the Little Juniata River, a world class trout fishery. He also was counsel in the appeal in which the discovery rule first was applied to Clean Streams Law matters, and successfully argued before the Pennsylvania Supreme Court that strict liability applies to landowners and occupiers under The Clean Streams Law without regard to knowledge or fault. He has litigated other issues as diverse as the First Amendment right to petition government and the effect of the Eleventh Amendment on the relationship between federal regulators and state mining programs. From 1988 to 1990, Mr. Whitaker clerked for the Honorable Joseph T. Doyle of the Commonwealth Court of Pennsylvania. Active in the bar, he currently is a member of the Pennsylvania Bar Institute's Board of Directors and serves on the PBA Environment and Energy Law Section Council in addition to his membership in the Administrative Law Section and Appellate Advocacy, Government Lawyers, Statutory Law and Shale Energy Law Committees. Mr. Whitaker is a past Chair of the Administrative Law Section and served two terms as the Section's delegate to PBA's House of Delegates. He is a Master Emeritus in the James S. Bowman American Inn of Court and has been active in the planning of several CLE programs with PBI. He has served on the faculty of and authored CLE materials for PBI's Environmental Law Forum, PBI's Advocacy before Administrative Law Judges program, and its Administrative Law Symposium, among many others. He also has instructed the minor judiciary on access and entry issues. Mr. Whitaker has written on subjects including state sovereign immunity and the Eleventh Amendment, and on the admissibility of hearsay evidence relied upon by experts. He received his J.D. from the Dickinson School of Law and his B.S. from the Pennsylvania State University.

Pennsylvania Environmental Hearing Board

The Environmental Hearing Board

Also, Richard Morrison and Lisa Long were appointed to the Committee in 2015.

Lisa M. Long is a staff attorney for the Republican Caucus of the Pennsylvania House of Representatives. Currently she serves as a research analyst for the Environmental Resources and Energy Committee. Her duties include analysis of case law pertaining to current and proposed legislation, preparation of written and delivery of oral analyses to members of the House Republican Caucus, and drafting legislation regarding regulatory issues such as gas and oil, water and air quality, waste, recycling, conservation, and permitting. Previously, Ms. Long practiced as an advocate for families and students with medical and intellectual disabilities. She received her undergraduate degree from Gettysburg College (B.A. political science and English) and her J.D. from the Widener University School of Law.

Richard Morrison was named Chief Counsel of the Department of Environmental Protection in March 2015. Prior to his appointment, he served as Chief Counsel for the Department of Conservation and Natural Resources. Richard has previously served in several capacities while at DEP. He was the Acting Chief Counsel and Executive Deputy Chief Counsel for the DEP's Office of Chief Counsel. He was also the Assistant Director of DEP's Bureau of Regulatory Counsel. He joined DEP in January 2005 and served as Program Counsel for the Department's Mining program, for the Bureau of Radiation Protection and the Bureau of Waste Management. Prior to joining DEP, Mr. Morrison was in private practice in the New Jersey office of Ballard, Spahr, Andrews and Ingersoll where he practiced environmental litigation and franchise law. From 2001-04, he was an Assistant Counsel to the Pennsylvania Environmental Hearing Board. He is a 1994 honors graduate of Rutgers School of Law, Camden.
