

**ENVIRONMENTAL HEARING BOARD
RULES COMMITTEE MINUTES**

Meeting of March 18, 2009

Attendance:

The Rules Committee met by conference call at 10:30 a.m. on March 18, 2009. The purpose of the call was to update the Committee members on the outcome of the Environmental Hearing Board's (Board) meeting with the Independent Regulatory Review Commission (IRRC). Participating on the conference call were the following Committee members: Chair Howard Wein, Vice Chair Maxine Woelfling, Jim Bohan and Joe Manko. Participating from the Board were the following: Acting Chairman and Chief Judge Tom Renwand, Judge George Miller, Senior Assistant Counsel Maryanne Wesdock and Board Intern Debbie Schwab.

Rules Package 106-9:

Ms. Wesdock reported that she and Judge Renwand met with IRRC Chief Counsel Leslie Johnson and Staff Attorney Heather Emery on March 4 to discuss IRRC's comments to the Board's proposed rules package 106-9. IRRC agreed with all of the changes recommended by the Rules Committee at its January 8, 2009 meeting. However, they had a concern about the proposed revision to subsections (h)(1) and (i) of Rule 1021.51. Those subsections set forth who constitutes an automatic party in a third party appeal before the Board. The language previously read "recipient of a permit, license, approval or certification." In other words, a permittee or holder of a license, certification or other form of approval from the Department of Environmental Protection (Department) is automatically added as a party in a third-party appeal of that permit, license, certification or approval.

It was pointed out by attorney Alan Miller at the Environmental Law Forum's Environmental Hearing Board Roundtable a few years ago that the language did not include the

recipient of an order. Following that program, the Rules Committee proposed adding the word “order” to the language of 1021.51 (h)(1) and (i). At a subsequent meeting, it was proposed that the language “recipient of a permit, license, approval or certification [or order]” be deleted and instead replaced with “person to whom the action of the Department is directed or issued.” The latter language was determined to be more comprehensive, and it avoided the problem of inadvertently omitting any other type of “action” that might be issued by the Department.

IRRC expressed a concern with the new language, specifically that it might be impermissibly expanding the scope of the Board’s personal jurisdiction. At the meeting with Judge Renwand and Ms. Wesdock, IRRC stated that they read the new language as including anyone who might be impacted by a Department action, regardless of whether that person had placed itself before the jurisdiction of the Department or the Board. The example they gave was the case of a homeowner who has lost his water supply and the mining company that is ordered by the Department to restore or replace it. If the mining company appeals the Department’s order, IRRC felt that the Board could use the language of (h)(1) and (i) to require the homeowner to be a party to the appeal. IRRC was concerned that the homeowner, who they perceived to be an innocent bystander to the water loss, could be forced to expend a huge amount of money in legal fees by being made an automatic party to the mining company’s appeal.

At the March 18, 2009 conference call, Mr. Bohan raised the question of whether IRRC was concerned with the entire set of proposed language to (h)(1) and (i) or whether it was specifically concerned with the word “directed.” The Committee recommended deleting the word “directed” so that the proposed language would read as follows: “the person to whom the action of the Department is issued.” If that change did not alleviate IRRC’s concern, then it was

suggested that the language go back to its original form with the addition of the word “order,” i.e., “the recipient of a permit, license, approval, certification or order.”

Ms. Wesdock agreed to call Attorney Emery at IRRC to discuss the recommendations of the Committee.

Rules Committee Members:

Judge Renwand announced the newest member of the Rules Committee is Representative Kate Harper. Mr. Wein has sent her office the background materials regarding the Committee’s activities.

The Rules Committee and the Board extended their sincere thanks and appreciation to Stan Geary for his years of service on the Rules Committee. Judge Renwand praised Mr. Geary as “a valued member of the Rules Committee, whose vast experience and knowledge of Board practice and procedure has greatly benefited us.”

General Permits:

Mr. Bohan gave a preview of the discussion of the timeliness of appealing issues related to a general permit, which will be addressed at the May 14 Rules Committee meeting. He prepared a report of his findings and analysis, and it will be distributed by Ms. Wesdock one to two weeks prior to the meeting so that the Committee members have an opportunity to review it in preparation for the discussion.

Next Meeting:

The next meeting of the Rules Committee is at **10:15 a.m. on Thursday, May 14, 2009** at the offices of the Environmental Hearing Board, Courtroom 2, 2nd Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg.

Future meetings are tentatively scheduled as follows: May 14, July 9, Sept. 10, November TBA. All meetings will begin at 10:15 a.m. unless otherwise noted.