

**ENVIRONMENTAL HEARING BOARD  
RULES COMMITTEE MINUTES**

**Meeting of September 17, 2009**

**Attendance:**

The Environmental Hearing Board Rules Committee met by teleconference on September 17, 2009 at 10:30 a.m. Participating on the call were the following committee members: Committee Chairman Howard Wein, Vice-chair Maxine Woelfling, Susan Shinkman, Jim Bohan, Joe Manko and Phil Hinerman. Participating from the Environmental Hearing Board were: Acting Chairman and Chief Judge Tom Renwand, Board Secretary Bill Phillipy and Senior Assistant Counsel Maryanne Wesdock.

**Minutes of May 14, 2009 Meeting:**

On the motion of Ms. Shinkman, seconded by Mr. Manko, the minutes of the May 14, 2009 meeting were approved.

**Rules Package 106-9:**

Ms. Wesdock reported on the status of the Board's Rules Package 106-9, which was approved by the Independent Regulatory Review Commission (IRRC) on August 6, 2009.<sup>1</sup>

**General Permits – Timing of Appeals:**

There was nothing further to report on this issue which was discussed at the May meeting. Judge Renwand stated that the Board will continue to examine the issue and report back to the Rules Committee.

**Mandatory Electronic Filing:**

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<sup>1</sup> The rules package was approved by the Office of the Attorney General on September 29, 2009 and has been forwarded to the Legislative Reference Bureau for publication.

Judge Renwand proposed the idea of mandatory electronic filing. This would apply to all filings except notices of appeal and filings by pro se appellants. He provided three reasons why he believed the Board should adopt mandatory electronic filing:

1. All U.S. District Courts in Pennsylvania require electronic filing, so most practitioners are familiar with the practice.
2. The Board's inability to fill vacancies in administrative and legal staff has resulted in increased workload, which would be somewhat alleviated by electronic filing.
3. Some large firms have stopped filing their documents electronically in order to keep their work product private.<sup>2</sup> This has occurred at the same time as the Board has seen an increase in the number of motions for protective orders. There has also been an increase in the number of firms monitoring the Board's cases and requesting copies of various filings. This has resulted in extra work for the Board staff that could be alleviated by electronic filing. Documents that are available on the electronic docket are more easily accessible to persons requesting them, thereby eliminating the need for staff to access and copy or scan the documents for the purpose of mailing or emailing them.

Judge Renwand acknowledged that he did not want the Board's electronic filing system to be overtaxed by mandatory e-filing or have it result in significant additional cost to the Board. Therefore, he requested the Board's Secretary, Bill Phillipy, to look into the cost associated with mandating electronic filing.

Mr. Phillipy reported that only about 15 – 25% of the Board's filings are done electronically. The vendor that manages the Board's website and electronic filing system can

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<sup>2</sup> Filings with the Board are public documents unless they are covered by a protective order. Documents that have not been filed electronically may only be accessed by an in-person visit to the Board's office or by having a staff person at the Board photocopy or scan the document and mail or email it to the requesting person.

handle a significant increase in electronic filings with the hardware that is currently in place; therefore, the implementation of mandatory electronic filing would not require the purchase of additional hardware. However, peripheral matters such as electronic signatures and registration concerns would need to be addressed.

Prior to the meeting, Ms. Wesdock had surveyed the legal secretarial staff in the Department of Environmental Protection's Pittsburgh office as to their thoughts on mandatory e-filing. They are in favor of mandatory e-filing, but recommended a few improvements. For example, they would like to see an expanded dropdown menu for filings. This would be no problem for the vendor to address. Additionally, they suggested allowing electronic signatures. This would require more work by the vendor but can be done.

Mr. Phillipy reported that it would require approximately 80-100 hours of work by the vendor, at a total cost of \$15,000 to \$20,000, to increase the number of electronic filings to approximately 75 – 85% over the next 18 months and to develop the technology to allow electronic signatures.

Mr. Wein noted that a PDF document would not require an e-signature. The committee members discussed the various ways they deal with the requirement of electronic signatures.

Mr. Manko pointed out that if the Board is going to mandate electronic filing, it must consider every nuance. For example, he had an electronic filing rejected by the Montgomery County Court of Common Pleas because he did not file the certificate of service separately. In federal court, the certificate of service is a separate document but part of one filing. Mr. Bohan noted that the U.S. District Court's website provides an explanation of its electronic filing system.

Judge Renwand noted that if a document were rejected by the Board's electronic filing system, it would not result in anyone's appeal being thrown out. Notices of appeal are the only document with a statutory deadline, and they may not be filed electronically. It was suggested that the Board's rules contain a statement that the Board will be lenient with regard to any such filing problems.

The group next discussed whether pro se appellants should be required to file electronically. Ms. Shinkman noted that the U.S. District Court for the Eastern District provides a computer at its filing office that may be used for the electronic filing of documents. Mr. Phillipy stated that he would like to see pro se appellants included in mandatory e-filing in the future if possible. Judge Renwand noted that pro se appellants would be allowed to file electronically; he was not sure whether it should be mandatory, however, since he would not want to deny access to someone who is unable to file electronically.

Ms. Woelfling advised the committee that the Middle District allows pro se parties to file with the clerk of courts who then converts the document to an electronic format. While it was agreed this would be helpful if the Board could do the same, it may not be possible due to the lack of staff to handle it.

Mr. Bohan asked whether the Board would require the e-filing of all documents, including correspondence and status reports. Judge Renwand stated he would like to see all documents e-filed, not just motions, responses and briefs. Exhibits that are not 8 ½ by 11 inches may be filed in hard copy.

A discussion ensued as to whether pre-hearing exhibits should be filed in hard copy or electronically. Judge Renwand preferred electronic filing, while Ms. Wesdock thought it might

be easier to have them filed in hard copy rather than having the Board print them. One suggestion was to require filings in both hard copy and electronically.

Mr. Wein felt it would be helpful to give practitioners some notice and an opportunity to provide input before the committee begins drafting the rule. There are two opportunities to do so: 1) the PBA Environment and Energy Law Section's (EELS) October 13 retreat<sup>3</sup> and 2) the EELS Section Day meeting on December 3. Mr. Wein suggested that the topic should be broached with the Section as follows: Section members should be advised that the Board is giving serious consideration to adopting mandatory e-filing and is asking the Section for its input.

Finally, it was noted that there are many advantages to the Board requiring e-filing from the standpoint of efficiency, sustainability and budgetary concerns.

**Other:**

Mr. Manko recommended that the Environment and Energy Law Section plan to honor Judge George Miller, who will be retiring from the Board, at next year's Environmental Law Forum. It was suggested that this topic be addressed at the next Section meeting on December 3, 2009.

**Next Meeting:**

There will be no meeting in November. The next meeting will be on January 14, 2010 at the Board's Harrisburg Office, 2<sup>nd</sup> Floor, Rachel Carson State Office Building. Ms. Wesdock will send out the meeting schedule for 2010.

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<sup>3</sup> Note: During an EELS council conference call, Ms. Wesdock checked with Mr. Hinerman, the Section chair, as to whether this item could be placed on the agenda for the October 13 retreat, but unfortunately, the agenda is full.