

ENVIRONMENTAL HEARING BOARD  
RULES COMMITTEE

Meeting of February 17, 2005

**Attendance:**

The Environmental Hearing Board Rules Committee met on Thursday, February 17, 2005 at 10:15 a.m. In attendance were the following: Committee Chairman Howard Wein, Susan Shinkman, Dennis Strain, Maxine Woelfling, Brian Clark, Phil Hinerman and Tom Scott.<sup>1</sup> Joe Manko participated by telephone. Representing the Board were the following: EHB Chairman and Chief Judge Michael Krancer (by phone), and Connie Wilson.

**Approval of Minutes:**

The Minutes of the November 4, 2004 meeting were moved for approval and the motion was seconded. Mr. Manko noted a correction to the minutes, on page 3, line 14, add the word “of” between the words “filing” and “expert.” The minutes were approved as corrected.

**Rules Package 106-8:**

Ms. Wesdock was unavailable to provide a report on the status of the current rules package. Ms. Shinkman advised that the Office of General Counsel (OGC) was contacted after the November 4, 2004 meeting and agreed to hold the rules package to allow for the inclusion of the rule revision adopted at the November 4, 2004 meeting. The Rules Committee would like the comment period for the rules package to coincide with the Environmental Law Forum, which will be held on April 6-7, 2005. A brief discussion of topics that could be discussed at the Environmental Law Forum followed.

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<sup>1</sup> Mr. Hinerman and Mr. Scott each joined the meeting in progress.

### **Expert Discovery:**

Mr. Wein refreshed the Committee's recollection regarding discussions at the November 4, 2004 meeting and the July 15, 2004 meeting regarding expert discovery. The Committee continued discussing perceived difficulties with identifying and discovering expert opinions and the facts underlying those opinions in the context of practice before the Environmental Hearing Board. During the discourse Ms. Woelfling advanced the idea of developing an initial disclosure requirement similar to the disclosure required under Rule 26 of the Federal Rules of Civil Procedure (Initial Disclosure).

Chief Judge Krancer noted that he liked the Initial Disclosure in federal practice. Mr. Scott opined that in his experience Initial Disclosure often did not produce useful information. Mr. Wein noted that the Initial Disclosure rule provided a good starting point for a Board rule. He further noted that federal and state civil practices and rules of procedure do not always equate well to practice before the Board. He also noted that most cases before the Board involve a decision by the Department and a challenge to that decision which must be made before the basis for the decision is fully known by the challenger. Thus, it should be possible to identify information to be covered by initial disclosures that would help the litigants before the Board.

Mr. Strain volunteered to draft a proposal for consideration by the Committee. Conceptually Mr. Strain envisioned that the parties would file a statement of the case and have the obligation to update that statement in a set time period. Mr. Manko thought the concept sounded eminently fair and could foster settlements. Mr. Clark noted that this process could produce the benefit of narrowing the issues in an appeal.

A discussion ensued regarding whether the initial disclosure concept should be mentioned at the Environmental Law Forum. Mr. Wein and Chief Judge Krancer agreed that a short discussion in the nature of advising practitioners what the Rules Committee is exploring would be appropriate and could generate useful comments from the practicing community.

**Next Meeting**

Since this meeting was moved to February from the originally scheduled January meeting date, the next meeting will be on May 12, 2005 at 10:15 a.m. There will be no meeting on March 17, 2005 as originally scheduled. However, there will be a conference call during that time in order to discuss the Environmental Law Forum presentation.

March 17, 2005

10:00 a.m.

Dial in: 888-232-0362 Code 713987