

ENVIRONMENTAL HEARING BOARD INTERNAL OPERATING PROCEDURES

Section 100 Introduction

The Environmental Hearing Board (“Board” or “EHB”) has adopted these internal operating procedures to implement the Environmental Hearing Board Act, statutory and regulatory provisions and the customs and practices of this Board. No substantive or procedural rights are created or diminished.

Section 101 Definitions

“The Chief Judge and Chairperson”-The Chief Judge and Chairperson of the Board as appointed by the Governor and confirmed by the Senate pursuant to the provisions of the Environmental Hearing Board Act.

“Judge”- A member of the Board, including the Chief Judge and Chairperson, as appointed by the Governor and confirmed by the Senate pursuant to the provisions of the Environmental Hearing Board Act.

“Secretary”- The administrative officer of the Board who shall report directly to the Chief Judge and Chairperson. The Secretary shall carry out assignments necessary to the efficient operation of the Board including:

1. Administrative operations;
2. Budget preparation;
3. Expenditure control;
4. Financial accounting;
5. Procurement of supplies;
6. Facilities Management;
7. Docket control;
8. Direct supervision of nonprofessional Board employees;
and
9. Telecommunications.

“Opinions” - The statement of the Judge or Judges detailing the reasoning for a decision on an issue decided prior to holding a hearing, including an Order implementing the decision.

“Adjudications” – The findings of fact, discussion and conclusions of law adopted by a majority of the Judges following a hearing on the merits based on the testimony and exhibits admitted into evidence.

Section 102 General Duties and Responsibilities

- (a) Every Judge is responsible for ensuring the smooth and efficient operation of the Board. In this regard, every Judge shall devote sufficient time and effort to accomplishing the work of the Board in a thorough, timely, and efficient manner.
- (b) All Judges bear an equal responsibility for the proper disposition of every matter before the Board.
- (c) The assignment of a given matter to a single Judge is solely for the efficiency of the Board, and neither enhances the power of the assigned Judge nor diminishes the duty of the remaining Judges as to its proper disposition.
- (d) It is the intent of the Board to resolve all appeals as expeditiously as possible. In any event, the Board will strive to resolve all appeals within two years of filing.

Section 103 - Assignment of Appeals

- (a) All appeals shall be assigned to a Judge by the Chief Judge and Chairperson unless responsibility to assign an appeal is delegated by the Chief Judge and Chairperson to the Secretary or to another Judge.
- (b) The Chief Judge and Chairperson, or the person delegated the responsibility by the Chief Judge and Chairperson in accordance with (a), may base the assignment on such factors as geographical location of the parties, caseloads of the individual Judges, areas of expertise, or other pertinent factors, including the importance of assigning cases to Judges from outside their regional location.
- (c) The Chief Judge and Chairperson has the duty and authority to review individual case assignments on an ongoing basis and to reassign cases if needed to ensure the smooth operation of the Board.

Section 104 – Timetable for Drafting and Circulating Adjudications and Opinions

- (a) Preparation of adjudication and opinions and responses to circulating adjudications and opinions shall be given the highest priority.
- (b) Adjudications shall be drafted and circulated within 90 days of receipt of the last brief.
- (c) Opinions on motions and petitions shall be drafted and circulated within 60 days of receipt of the last brief.

Section 105 - Circulation of Adjudications and Opinions Prior to Issuance

- (a) Unless otherwise noted, the Judge who authored the draft adjudication or opinion shall be responsible to ensure that the draft document is circulated by e-mail to all other Judges. The draft adjudication or

opinion, as well as copies of relevant background documents including key pleadings, shall be attached to the e-mail. Alternatively, links to the background documents on the Board website may be included instead of providing copies of these documents.

- (b) Drafts of the following actions must be circulated to all Judges for comment prior to issuance:
 - 1. All adjudications.
 - 2. All opinions on motions which finally dispose of any claim of a party even though it is not a complete disposition of all claims by that party.
 - 3. All opinions on motions granting reconsideration of a full Board adjudication or opinion.
- (c) All Judges should be consulted prior to the issuance of an order on a motion asking for reconsideration by the full Board.
- (d) Orders which preclude or substantially obstruct a party from presenting a claim as a result of his or her failure to respond to a Board order frequently can be issued by one judge with signatures of all Judges without consultation. These include a failure to respond to an order requiring the appellant to supply information required to be included in the appeal or requiring the appellant to retain counsel. Consultation or circulation of an opinion is likely to be appropriate for orders imposing sanctions for other failures to follow Board orders.
- (e) Drafts of one-judge opinions which are not subject to the foregoing principles of circulation or consultation should be circulated to the Judges for comment where:
 - 1. The opinion establishes a standard or principle of law that is new for the Board.
 - 2. The opinion imposes severe sanctions (short of the termination of a party's claim).
 - 3. The opinion goes against prior Board precedent or resolves conflicting prior Board cases.
 - 4. The opinion involves a high-profile case (*e.g.*, a lot of press coverage or an expressed legislative interest).

5. A particularly close call is being made.
6. The Judge desires to seek advice of all other Judges.

This principle of circulation and consultation for one-judge opinions is advisory only.

- (f) Circulation of one-judge opinions when a Judge is only seeking the advice of all other Judges will be subject to the following ground rules:
 1. Judges shall respond within 5 business days.
 2. Responses from other Judges should be advisory only.
 3. The reviewing Judges' primary focus should be upon that part of the opinion that justified circulation in the first place. For example, if an opinion is establishing a new standard, the focus should be upon enunciation of the standard more than the application of that standard to the facts at hand. An explanatory note from the Judge would be helpful not only generally, but in directing the other Judges to the key parts of the opinion.

Section 106 - Decisions, Concurrences and Dissents

- (a) Judges shall forward by e-mail a response setting forth their position on the draft adjudication or opinion to all other Judges within 7 business days of receipt of a draft adjudication or opinion requiring concurrence by a majority of Judges.
- (b) Absent a request for additional time, failure to respond within that time period shall be deemed an approval of the adjudication or opinion as drafted.
- (c) If a Judge requests a Board Conference Call to discuss a proposed adjudication or opinion, the Chairperson or the Secretary shall attempt to schedule such a conference call within 3 business days of the request.
- (d) If a Judge indicates that a concurring or dissenting adjudication or opinion will be filed then such adjudication or opinion shall be circulated to all other Judges within 10 calendar days after circulation of the original draft adjudication or opinion unless special circumstances necessitate additional time.
- (e) If after receipt of responses from the Judges, including any concurring or dissenting adjudication or opinion, it is apparent that the initial adjudication or opinion is not supported by the majority of the Board, the Chief Judge and Chairperson may reassign the writing of the

majority adjudication or opinion. Such reassignment may also include the reassignment of the future handling of the case.

Section 107 - Internal Reporting

- (a) Each Judge shall keep a list of all cases assigned to that Judge. The list should include pending motions and otherwise briefly describe the status of each case. An up to date copy of this list should be provided to the Chief Judge and Chairperson on the last business day of each month.
- (b) Each Judge shall file quarterly reports with the Chief Judge and Chairperson on the first business day of January, April, July and October setting forth (1) all appeals assigned to that Judge that have been pending for more than two years; (2) all adjudications for which that Judge is responsible that have not been completed and in which the last brief was filed more than 90 days earlier; and (3) all opinions for which that Judge is responsible that have not been completed and in which the last brief was filed more than 60 days earlier. The reports shall detail, *inter alia*, what steps are being taken to resolve the appeal or complete the adjudications/opinions and when they will be in circulation or completed.
- (c) The Chief Judge and Chairperson may order the reassignment of such cases or other cases in the interests of justice and to ensure the smooth and efficient operation of the Board.
- (d) The Secretary shall circulate the following to each of the Judges and Assistant Counsel within 3 business days of the end of the month: 1) a list of all new appeals filed with the Board during the preceding month, including the name of the Judge to whom the appeal has been assigned and 2) a list of active cases in which one or more of the Judges has been recused, including the name of the Judge or Judges that are recused.

January 1, 2014