

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

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

“Decision Record” - A form attached to all circulated opinions by which the reviewing Administrative Law Judges can set forth their views on the opinion.

“Secretary”- The administrative officer of the Board who shall report directly to the Chairman. 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 term includes adjudications, opinions, and one-judge opinions.

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

Section 102 General Duties and Responsibilities

- (a) Every Administrative Law Judge is responsible for ensuring the smooth and efficient operation of the Board. In this regard, every Administrative Law Judge shall devote sufficient time and effort to accomplishing the work of the Board in a thorough, timely, and efficient manner.
- (b) All Administrative Law 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 Administrative Law Judge is solely for the efficiency of the Board, and neither enhances the power of the assigned Administrative Law Judge nor diminishes the duty of the remaining Administrative Law 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 by the Chairman.
- (b) The Chairman may base this assignment on such factors as geographical location of the parties, caseloads of the individual Administrative Law Judges, areas of expertise, or other pertinent factors, including the importance of assigning cases to Administrative Law Judges from outside their regional location.
- (c) The Chairman may delegate this initial assignment based on the above guidelines to the Secretary or to another Administrative Law Judge.
- (d) The Chairman 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 - Internal Reporting

- (a) Each Administrative Law Judge shall keep a list of all cases assigned to that Administrative Law Judge.
- (b) If a case is more than two years old then the Administrative Law Judge shall file quarterly reports with the Chairman detailing, *inter alia*, what steps are being taken to bring the matter to conclusion.
- (c) Each Administrative Law Judge shall file quarterly reports with the Chairman setting forth (1) all adjudications that have not been completed and in which the last brief was filed more than 90 days earlier; and (2) all opinions that have not been completed and in which the last brief was filed more than 45 days earlier. The reports shall detail, *inter alia*, what steps are being taken to complete the opinions and when they will be in circulation or completed.

- (d) The Chairman 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.

Section 105 - Opinions and Adjudications

- (a) Preparation of opinions and adjudications and responses to circulating opinions and adjudications 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/or circulated within 45 days of receipt of the last brief.
- (d) The other Administrative Law Judges shall respond to the opinion-writing Administrative Law Judge within 7 days.
- (e) Absent a request for additional time, failure to respond within that time period shall be deemed an approval of the opinion as drafted.

Section 106 - Decisions, Concurrences and Dissents

- (a) Within 7 days of receipt of a draft opinion or adjudication requiring concurrence by a majority of Administrative Law Judges the other Administrative Law Judges shall forward their decision record forms with their comments to the opinion-writing Administrative Law Judge and all other Administrative Law Judges.
- (b) If an Administrative Law Judge requests a Board Conference Call to discuss a proposed opinion, the Chairman or the Secretary shall attempt to schedule such a conference call within 3 days of the request.
- (c) If an Administrative Law Judge indicates that a concurring or dissenting opinion will be filed then such opinion shall be circulated to the Board 20 days after circulation of the completed decision record by the concurring or dissenting Administrative Law Judge.
- (d) If after return of the decision records it is apparent that the initial opinion is not the majority opinion of the Board, the Chairman may reassign the writing of the majority opinion. Such reassignment may also include the reassignment of the future handling of the case.

Section 107 - Circulation of Adjudications and Opinions Prior to Issuance

- (a) Drafts of the following actions must be circulated to all Administrative Law Judges for comment prior to issuance:
 1. All adjudications.
 2. All decisions 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.
- (b) All Administrative Law Judges should be consulted prior to the issuance of an order on a motion for reconsideration or on a motion asking for consideration by the full Board.
 - (c) 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 Administrative Law 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.
 - (d) Drafts of one-judge opinions which are not subject to the foregoing principles of circulation or consultation should be circulated to the Administrative Law 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 Administrative Law Judge desires to seek advice of all other Administrative Law Judges.

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

- (e) Circulation of one-judge opinions when an Administrative Law Judge desires to so seek the advice of all other Administrative Law Judges will be subject to the following ground rules:

1. A lack of response within 5 business days will be treated as a concurrence.
2. Responses from other Administrative Law Judges should be advisory only.
3. No back-up needs to be circulated unless requested.
4. The reviewing Administrative Law 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. A cover memo would be helpful not only generally, but in directing the other Administrative Law Judges to the key parts of the opinion.

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