

**ENVIRONMENTAL HEARING BOARD
RULES COMMITTEE MINUTES**

Meeting of January 14, 2010

Attendance:

The Environmental Hearing Board Rules Committee met on January 14, 2010 at 10:15 a.m. Chairman Howard Wein presided. The following members were present: Jim Bohan, Brian Clark, Rep. Kate Harper, Phil Hinerman, Susan Shinkman and Maxine Woelfling. Attending on behalf of the Environmental Hearing Board were Judge Rick Mather and EHB Assistant Counsel Frank Tamulonis and Maryanne Wesdock, who took the minutes.

Update on Final Rulemaking 106-9:

Ms. Wesdock reported that there was an error in the revisions to the EHB Rules of Practice and Procedure that were published in the October 17, 2009 issue of the Pennsylvania Bulletin. In Rule 1021.51(i), the language of the first sentence was revised as follows:

- (i) The service upon the recipient of a permit, license, approval [or] certification **or order** as required by subsection (h)(1), shall subject the recipient to the jurisdiction of the Board without the necessity of filing a petition for leave to intervene pursuant to § 1021.81....

The second sentence of subsection (i) should have been revised accordingly, in order to keep it consistent with the language of the first sentence. In other words, the second sentence should read:

- (i) ...The recipient of a permit, license, approval [or] certification **or order** who is added to an appeal pursuant to this section must still comply with §§ 1021.21 and 1021.22 (relating to representation of parties; and notice of appearance.)

Judge Mather explained a procedure that may be available to correct the error without having to go through the full process of rulemaking again. It involves having the agencies and committees involved in the rulemaking process simply sign off on the correction, without having to go through a public comment period. He will speak with Andrew Clark at OGC and other contacts about it and work with Ms. Wesdock in getting the rule corrected.

Dispositive Motions:

The Board requested the Rules Committee to consider a revision to Rule 1021.94 (Dispositive motions other than summary judgment motions) to bring it into conformity with Rule 1021.94a (Summary judgment motions) which requires parties to file a response to a summary judgment motion or risk summary judgment being entered against them. Rule 1021.94, dealing with dispositive motions other than summary judgment motions, simply states that “a response to a dispositive motion *may* be filed within 30 days of the date of service of the motion....” 25 Pa. Code § 1021.94(b) (emphasis added).

Ms. Woelfling moved that the word “may” in 1021.94(b) be replaced with “shall.” Ms. Shinkman seconded. All were in favor.

Mr. Wein asked whether this rule revision could be implemented quickly. Mr. Clark asked whether there were any other technical “clean ups” to the rules and, if so, suggested they be incorporated into one expedited rules package. He suggested that Ms. Wesdock check with the other judges and assistant counsel regarding this matter.

Non Pros:

The Committee discussed the Board's request for a rule on non pros, to address situations where an appellant fails to pursue his or her appeal. Ms. Woelfling stated that two issues should first be addressed: 1) how extensive is the problem? and 2) will the solution involve more than the problem merits?

Ms. Wesdock explained that the problem occurs fairly frequently and is often dealt with by the issuance of a Rule to Show Cause. Judge Mather agreed that the problem is common and noted that there is no uniformity in how it is addressed. For example, some judges issue Rules to Show Cause on a fairly regular basis, whereas Judge Renwand never uses them.

Mr. Bohan pointed out that the Board has the ability to impose sanctions pursuant to Rule 1021.161, including dismissal of an appeal, where a party has failed to follow a rule of practice and procedure. A question arose as to whether a further rule was needed to address this problem.

Since Judge Krancer had raised the issue but was unable to attend the meeting due to his trial schedule, the Committee agreed to defer further discussion of the topic until the next meeting.

Proposed Orders:

Two of the Board's rules require parties to attach proposed orders to their motions: Rule 1021.91(b) (dealing with Motions in General) and Rule 1021.94a(e) (dealing with Summary Judgment Motions). Despite this fact, the Board sees a large number of motions that do not contain proposed orders. It was

suggested that the Board remind practitioners about this requirement during the EHB Roundtable at the Environmental Law Forum.

Judge Miller:

A suggestion was made for the Rules Committee to present a plaque to Judge Miller at the Environmental Law Forum.

Electronic Filing:

The topic of mandatory electronic filing was tabled until the next meeting where Judge Renwand would be available to discuss it. Mr. Wein requested Ms. Wesdock to re-send the minutes of the September 2009 meeting where this topic was first raised.

Next Meeting:

The next meeting of the Rules Committee will be on March 11, 2010.

Adjournment:

On the motion of Mr. Clark, seconded by Mr. Bohan, the meeting was adjourned.