

**ENVIRONMENTAL HEARING BOARD  
RULES COMMITTEE**

**MINUTES OF MEETING OF MARCH 12, 2015**

**Attendance:**

The Environmental Hearing Board Rules Committee met on March 12, 2015 at 10:15 a.m. The following Rules Committee members participated in the meeting by teleconference: Committee Chairman Howard Wein, Maxine Woelfling, Jim Bohan, Brian Clark, Rep. Kate Harper, Gail Conner, Phil Hinerman and Matt Wolford. Representing the Environmental Hearing Board (Board or EHB) were the following: In Harrisburg – Board Secretary Vince Gustitus and John Dixon, who took the minutes. By teleconference – Chief Judge and EHB Chairman Tom Renwand; Judge Steve Beckman, Tim Estep and Christine Walker.

**Approval of Minutes of January 8, 2015 Meeting:**

The minutes from the January 8, 2015 Rules Committee meeting have not yet been circulated. The minutes will be circulated and voted on for approval at the May 2015 Rules Committee meeting.

**Signing of Notice of Appeal:**

Mr. Wein stated that Judge Labuskes suggested revising 25 Pa. Code § 1021.51(c) to say that a notice of appeal must be signed by a party or his/her attorney. 1021.51(c) currently states:

“The notice of appeal must set forth the name, mailing address, e-mail address and telephone number of the appellant. If the appellant is represented by an attorney, the notice of appeal shall be signed by at least one attorney of record in the attorney’s individual name.”

Chief Judge Renwand stated that the rule was stilted and needed to include that the Notice of Appeal must be signed by the party if there is no attorney involved. Chief Judge Renwand estimated that around 15% of Appellants are pro se.

Mr. Bohan suggested looking into 1021.31(a) and questioned whether we are looking for something different with respect to the Notice of Appeal.<sup>1</sup> Mr. Wein stated that over the years, the Committee has tried to keep rules consistent and compartmentalized, so when someone needs to file a Notice of Appeal, they go to 1021.51. Mr. Bohan then suggested that the Committee could change the second sentence in 1021.51(c) to track the language in 1021.31(a). Upon the motion of Ms. Connor, seconded by Ms. Woelfling, the change was approved.

**Filing deadline that falls on a Saturday, Sunday or legal holiday:**

Mr. Wein noted that the rules for filing deadlines that fall on Saturdays, Sundays or legal holidays can be found in the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 31.12 (filing) but not in the Board rules. Mr. Wein thought it would be a good idea to have the language specifically included in the Board rules. Mr. Bohan noted that the Board does address holiday and weekends in the definition of “business day” in the rules. Mr. Wein then stated that there are also places in the rules that refer to “day” but not “business day.”

Mr. Wein suggested a two-step approach to the issue. First, he recommends going through the Board rules and changing the word “day” to “business day.” Then, Mr. Wein suggested having a section under 1021.32 state that when a filing deadline falls on a Saturday, Sunday or legal holiday, the filing is not due until the next business day. Mr. Bohan initially proposed waiting to make such a change because he wanted a full understanding of the scope of the problem first. Mr. Bohan stated that it made sense to first identify where the rules refer to “day” or “date” and then based on those findings, determine if it makes sense to alter the definition as opposed to changing the language in 1021.32.

---

<sup>1</sup> § 1021.31 (a) “Every document directed to the Board and every discovery request or response of a party represented by an attorney shall be signed by at least one attorney of record in the attorney’s individual name or, if a party is not represented by an attorney, shall be signed by the party. Each document must state the signer’s mailing address, e-mail address and telephone number.”

Mr. Clark made a motion approving the change. Ms. Woelfling stated that Mr. Clark's motion will be sufficient regardless of whether or not the Committee holds off on changing 1021.32. Ms. Connor and Chief Judge Renwand agreed that the Committee should not wait to make such a change. Mr. Clark's motion was seconded by Rep. Harper and the change was approved.

**Scheduling of hearings:**

Mr. Estep circulated a proposal of a revision to 1021.101(c) and (d). In regards to subsection (c), Mr. Estep explained that while hearings do not take place until all dispositive motions are resolved, it is common Board practice to schedule hearings well in advance of rulings on dispositive motions. In Mr. Estep's opinion, a revision to subsection (c) will better reflect Board practice. Mr. Estep proposed the following revision to 1021.101 (c):

~~“After the Board resolves all dispositive motions, it will establish a hearing date for the remaining issues. The Board will establish a hearing date for the issues in the appeal.~~ The Board may also direct that the parties meet prior to the hearing to stipulate to uncontested facts, the qualifications of experts and the admissibility of exhibits.”

Mr. Estep's proposal also adds language to 1021.101(d). Mr. Estep explained that the Board has been issuing Pre-Hearing Order 2's after dispositive motions and while the Board has a rule stating that pre-hearing memos must be filed 20 days before the scheduled hearing date, the additional language clarifies that the Board may schedule a specific set of deadlines as it typically does in a Pre-Hearing Order 2. Chief Judge Renwand explained in detail the judges' practices regarding scheduling of hearings. Mr. Estep proposed the following revision to 1021.101(d):

“The parties shall file their prehearing memoranda at least 20 days before the scheduled hearing date. **The Board may issue an order scheduling specific dates on which each party is to file its prehearing**

**memorandum, deadlines for filing motions in limine, and a prehearing conference.”**

Upon the motion of Ms. Woelfling, seconded by Mr. Bohan, both changes were approved.

**Correction of an error in Section 1021.152(a):**

Mr. Wein explained that this section addresses reconsideration of final orders. Mr. Wein proposed that the word “motion” in the second sentence of the rule should be “petition,” as this section deals with petitions for reconsideration. Mr. Estep noted that the same typographical error occurs in 1021.151(a) dealing with interlocutory orders. In both cases, the offending sentence refers to the motion whereas the rest of the rules refer to petitions. Mr. Estep proposed striking the word “motion” and replacing it with “petition.”

Upon the motion of Mr. Hinerman, seconded by Mr. Bohan, the changes were approved.

**Other:**

At the close of the meeting, Mr. Gustitus noted that the Governor’s executive budget was supportive towards the Board. Mr. Hinerman congratulated the Board and the Judges because the Board will be receiving a sustainability award this year at the Environmental Law Forum.

**Adjournment and Next Meeting:**

The meeting adjourned at approximately 10:50 a.m. The next meeting will be held on May 14, 2015 at 10:15 a.m.