

## **ENVIRONMENTAL HEARING BOARD RULES COMMITTEE**

### **Minutes of Meeting of September 8, 2022**

#### **Attendance:**

The Environmental Hearing Board Rules Committee met by videoconference on September 8, 2022 at 10:30 a.m. Committee Chairman Howard Wein presided. The following Committee members participated in the meeting: Brian Clark, Gail Conner, Tom Duncan, Phil Hinerman, Doug Moorhead, Jean Mosites and Matt Wolford. Attending on behalf of the Environmental Hearing Board (Board) were Chairman and Chief Judge Tom Renwand, Assistant Counsel Eric Delio and Alisha Hilfinger, Board Secretary Christine Walker and Senior Counsel Maryanne Wesdock, who took the minutes.

#### **Minutes of May 12, 2022 Meeting:**

On the motion of Mr. Clark, seconded by Mr. Duncan, the minutes of the May 12, 2022 Rules Committee meeting were approved.

#### **Rules Packages: 106-13 and 106-14:**

Ms. Wesdock reported that Final Form Rulemaking 106-13 was at the Office of the Attorney General for review. That is the final step in the rulemaking process before publication as final rulemaking in the Pennsylvania Bulletin.<sup>1</sup> Ms. Wesdock reported that the Judges expected to hold a meeting to vote on Proposed Rulemaking 106-14 before the November Rules Committee meeting.<sup>2</sup>

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<sup>1</sup> Final Form Rulemaking 106-13 was published in the Pennsylvania Bulletin on October 22, 2022 and became effective upon publication.

<sup>2</sup> The Judges held a public meeting on October 19, 2022 at which they discussed and voted on the rule changes recommended by the Rules Committee as part of Proposed Rulemaking 106-14.

Judge Renwand, Mr. Wein and Mr. Hinerman expressed thanks to the Rules Committee for the thought and hard work that went into developing and drafting the rule changes.

**New Business:**

The Committee discussed agenda items for future meetings. Mr. Clark suggested reviewing prior minutes of the Rules Committee to determine if any items had been tabled. Mr. Wein volunteered to review the prior minutes and also encouraged newer members of the Rules Committee to do the same. Mr. Clark asked the Board how far back its records go. Ms. Wesdock stated that she began preparing the minutes in January 2000. Minutes from 2000 to the present are available on the Board's website. Minutes of meetings held before January 2000 may be available in hard copy in the Board's Harrisburg Office.

Mr. Moorhead proposed that the Rules Committee discuss the Board's rules pertaining to expert discovery and expert reports. Several members noted that this topic had been raised by Mr. Hinerman at previous meetings, but they agreed that it might be worth revisiting. Ms. Wesdock agreed to provide Mr. Moorhead with the minutes where the expert discovery discussion took place.<sup>3</sup>

Ms. Hilfinger suggested amending the Board's rule on signing (Rule 1021.31) to make it clear that electronic signatures are permissible. Ms. Wesdock suggested revisiting topics that had been raised by Jim Bohan when he was a member of the Rules Committee. Some of those discussions ended with no consensus on how to proceed. Mr. Moorhead also agreed to poll his colleagues.

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<sup>3</sup> Discussions regarding expert discovery and expert reports took place most recently at the following meetings: March 11, 2021 (under "Amendment of PreHearing Order No. 1") and May 13, 2021 (under "Timing of Expert Discovery").

Mr. Duncan suggested revising the Board's rule on service by a party (Rule 1021.34) to allow parties to provide service by email where they agree to do so. Mr. Delio noted that when parties have a substantial number of exhibits to file with the Board, they may decide to send the documents to the Board on a USB drive rather than efile them. Service of the documents on opposing counsel may be done by file sharing. The Board allows those practices.

Ms. Mosites suggested discussing in-person and remote proceedings and the current state of the Board's practice with regard to both types of proceedings.

Ms. Conner suggested that the Board make its website more user-friendly. She felt that the website should explain who the Board is and provide for easier access by nonlawyers. Mr. Duncan suggested that the "About Us" and "History" sections of the website could be made simpler and shorter. Ms. Conner agreed; she felt that the website could be much more user-friendly and less intimidating to the public. She felt that the website "goes straight to legal" and should be more easily understandable by the general public. Ms. Wesdock reported that the Board recently added a Citizens Guide to its website. The Citizens Guide was prepared by Megan Rulli, the Board's Summer 2021 Intern. Ms. Wesdock noted that the Guide covers the entire process before the Board in an easy-to-understand and user-friendly fashion. The Guide also includes templates for forms that are used in Board proceedings.

Mr. Wein felt it was important for the website to convey the message that the Environmental Hearing Board is not simply a continuation of the Department of Environmental Protection.

Mr. Moorhead stated that the Office of General Counsel is looking at ways to modernize its website. The focus is on modernizing how the website looks; they do not intend to change the content, but the interface.

Mr. Hinerman raised a question as to whether the EHB website is ADA compliant. Mr. Wolford agreed and stated that he believes certain language must appear on the website in order to comply with ADA requirements. Ms. Conner discussed issues relating to cybersecurity.

Judge Renwand thanked everyone for their comments and suggestions. He said the Board has received very good feedback on its website: It's easy to use, easy to navigate and very transparent. He has been on other Commonwealth websites that have been modernized and he found them difficult to navigate. However, he said he would take the Committee members' suggestions into consideration. He reported that the Board has asked to be transferred to a pa.gov website but there has been no forward movement on it by the Office of Administration.

**Next Meeting:**

The next meeting of the Rules Committee will be held on November 10, 2022 at 10:00 a.m.

**Adjournment:**

On the motion of Ms. Conner, seconded by Mr. Wolford, the meeting was adjourned at 11:32 a.m.