

Commonwealth of Virginia		
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Administrative Law Advisory Committee		

MEETING SUMMARY
Administrative Law Advisory Committee
Wednesday, August 28, 2013
12:00 PM
House Room 2
Capitol Building

MEMBERS PRESENT: Thomas A. Lisk (Chair), Elizabeth Andrews, Cindy Berndt, Roger L. Chaffe, Jeffrey S. Gore, Edward A. Mullen, Eric M. Page, Karen Perrine, Brooks Smith, Katya Herndon, Alexander Skirpan, Mike Quinan

MEMBERS ABSENT: N/A

STAFF PRESENT: Andrew Kubincanek, Jane Chaffin

Call to order and Welcome: Thomas Lisk called the meeting to order at 12:05 PM and welcomed new member Edward Mullen to the group. Each member of the committee took a moment to introduce him or herself.

Work Group Updates:

Hearing Officer Deskbook

Eric Page stated that the work group received 19 responses to a questionnaire about the Deskbook. The group will now begin incorporating suggested changes and circulate a copy to the committee by late September. In addition, the Executive Secretary of the Supreme Court is currently revising the Hearing Officer Rules of System Administration (Appendix A).

Mr. Page explained that the work group plans to have updates to the Deskbook completed and approved by October or November. The Executive Secretary of the Supreme Court intends to approve the updates by December, in time for the annual hearing officer training session. The work group is currently on track and will advise the committee of any changes.

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 Brooks Smith

Mr. Lisk encouraged the members of the committee to read the Deskbook and make any suggestions to Mr. Page.

Regulation Adoption Date

Ms. Andrews presented a set of amendments the work group had drafted to address the issue of what constitutes adoption of a regulation for the purpose of appealing a regulation. Ms. Andrews also presented several new amendments that had been drafted as a result of a conversation with the Registrar regarding a Marine Resources Commission (MRC) exemption.

Karen Perrine explained how, prior to a 2001 recodification, MRC could make regulations effective upon filing. During the recodification, MRC's exemption was improperly placed with other exemptions in § 2.2-4006 of the Code of Virginia. This meant that MRC could no longer be exempt from the 30-day final adoption period.

Ms. Andrews stated that MRC was currently reviewing the amendments and requested more time for the work group to discuss the issue.

Mr. Lisk suggested meeting in late September to approve the amendments.

Discuss Model State APA Recommendations: The committee resolved to address this fully at the next meeting or in October.

New Business: Brooks Smith informed the committee that he and Cindy Berndt have been working on a Department of Environmental Quality panel to address a peculiarity related to Total Maximum Daily Loads (TMDL). The Clean Water Act compels states to compile TMDLs to ascertain the total amount of pollutants a body of water may receive before it fails to meet water quality standards.

In the 1990's, the Commonwealth operated under a consent decree to develop TMDLs. Under this decree, TMDLs were approved by the EPA and added into the Virginia Administrative Code under the exemption for federally-required actions.

The consent decree has, however, expired and DEQ has thus convened a panel to consider APA Amendments that would outline a new approval process for TMDLs.

Mr. Smith stated that he hopes to have a proposal by mid-September and intends to share this proposal with the committee.

Public comment; adjournment: Mr. Lisk opened the floor for public comment. Hearing no public comment, Mr. Lisk adjourned the meeting at 12:26 PM.

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