



**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
HARRISBURG, PENNSYLVANIA**

**COMPLIANCE AUDIT
FOR THE FISCAL PERIOD JULY 1, 2002 THROUGH JUNE 30, 2005**

**FINANCIAL AUDIT
FOR THE FISCAL YEAR ENDED JUNE 30, 2005**

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**DEPARTMENT OF THE AUDITOR GENERAL
REPORT SUMMARY
COMPLIANCE AND FINANCIAL AUDIT

ENVIRONMENTAL HEARING BOARD**

COMPLIANCE AUDIT:

Audit Objectives

In accordance with *Government Auditing Standards* applicable to performance audits and for the period of July 1, 2002 through June 30, 2005, to determine:

1. whether EHB acted independently and in compliance with the provisions of Act 94 of 1988 on Department of Environmental Protection cases brought before EHB. (See Compliance Report on page 7)

Audit Results – Compliance Objectives

EHB should obtain a statement of possible conflicts of interest from all administrative law judges and have these statements updated periodically to ensure all clients or affiliations are properly documented and kept current, and to ensure EHB decisions are independent and impartial. (See Finding on page 23)

FINANCIAL AUDIT:

Audit Objective

To audit the Environmental Hearing Board's (EHB) financial schedules for the fiscal year ended June 30, 2005, in accordance with *Government Auditing Standards* applicable to financial audits.

Auditor's Report Issued

We issued an unqualified opinion on EHB's financial schedules on the basis of accounting as described in Note A. (See Opinion Letter on page 11)

Internal Control Over Financial Reporting

We did not report any findings related to internal control over financial reporting.

Noncompliance or Other Matters Material to the Financial Schedule

We did not identify any instances of noncompliance or other matters applicable to the financial schedules that are required to be reported under *Government Auditing Standards*.



ENVIRONMENTAL HEARING BOARD

BACKGROUND

Established by Act 275 of 1970, the Environmental Hearing Board (EHB) was an administrative board in the Department of Environmental Resources, now the Department of Environmental Protection (DEP). Act 94 of 1988 made EHB a five-member independent quasi-judicial agency.

EHB operates as a court and provides a forum where persons, citizen groups, businesses and corporations etc., displeased with DEP actions regarding environmental regulations, can seek judicial-like relief. EHB judges abide by Pennsylvania's judicial rules of conduct and an agency-specific Procedural Rule package. EHB is not part of the judicial branch of government but is part of the executive branch. Board members are appointed by the Governor and confirmed by the Senate for six-year terms; the Governor designates one member as chairperson. EHB is empowered to hold hearings and issue adjudications and orders on DEP orders, permits, licenses or decisions under 2 Pa. C.S., Ch.5, Subchapter A.

EHB's central office is located on the second floor of the Rachel Carson State Office Building, Harrisburg. EHB's two other offices are located in the DEP Southeast Regional Office and Court Facility in Norristown and the Pittsburgh State Office Building in Pittsburgh. EHB manages its caseload by distributing cases and rotating judges between locations as needed, and maintaining two judges in the Norristown office, two in the Harrisburg office, and one in the Pittsburgh office.



COMPLIANCE AUDIT SECTION



The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Rendell:

We have conducted a compliance audit of the Environmental Hearing Board for the period July 1, 2002 through June 30, 2005. The audit was conducted pursuant to authority derived from Section 402 of the Fiscal Code and in accordance with *Government Auditing Standards* applicable to performance audits, issued by the Comptroller General of the United States.

The objective of the audit was to determine:

- whether the Environmental Hearing Board acted independently and in compliance with the provisions of Act 94 of 1988 on Department of Environmental Protection cases brought before the Environmental Hearing Board.

Our compliance audit was limited to the area related to the objective identified above, and included the following procedures:

- reviewing applicable legislation, policies and procedures;
- interviewing Environmental Hearing Board personnel; and
- reviewing statements of possible conflicts of interest.

The results of our tests indicated that in all significant respects, the Environmental Hearing Board complied with the objective of our audit, except as noted in the following finding further discussed later in this report: The Environmental Hearing Board Did Not Obtain a Statement of Possible Conflicts of Interest From All Administrative Law Judges. As the finding explains, the Environmental Hearing Board should have these statements updated periodically to ensure all clients or affiliations are properly documented and kept current, and to ensure Environmental Hearing Board decisions are independent and impartial.

We also audited the Schedule of Sources and Disposition of Authorizations and Schedule of Revenue of the Environmental Hearing Board for the fiscal year ended June 30, 2005, issued under a separate section of this report.

Sincerely,

February 22, 2007

JACK WAGNER
Auditor General

FINANCIAL AUDIT SECTION



Independent Auditor's Report

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Rendell:

We have audited the Schedule of Sources and Disposition of Authorizations and Schedule of Revenue of the Environmental Hearing Board for the fiscal year ended June 30, 2005. These financial schedules are the responsibility of the Environmental Hearing Board's management. Our responsibility is to express an opinion on these financial schedules based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

As discussed in Note A, the Environmental Hearing Board's financial schedules are on a prescribed basis of accounting that demonstrates compliance with the budget laws of the Commonwealth of Pennsylvania, which practices differ from accounting principles generally accepted in the United States of America. The effect on the financial schedules of the variances between these regulatory accounting practices and accounting principles generally accepted in the United States of America, although not reasonably determinable, is presumed to be material. As further discussed in Note A, the financial schedules of the Environmental Hearing Board are intended to present the schedule of sources and disposition of authorizations and schedule of revenue of only that portion of the funds of the Commonwealth of Pennsylvania attributable to the transactions of the Environmental Hearing Board.

In our opinion, because of the effects of the matter discussed in the preceding paragraph, the financial schedules referred to above do not present fairly, in conformity with accounting principles generally accepted in the United States of America, the financial position of each fund of the Environmental Hearing Board as of June 30, 2005, or changes in financial position or, where applicable, its cash flows for the year then ended.

In our opinion, the financial schedules referred to above presents fairly, in all material respects, the schedule of sources and disposition of authorizations and schedule of revenue of the Environmental Hearing Board for the fiscal year ended June 30, 2005, on the basis of accounting described in Note A.

In accordance with *Government Auditing Standards*, we have also issued our report dated February 22, 2007, on our consideration of the Environmental Hearing Board's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

This report is intended solely for the information and use of management of the Environmental Hearing Board, the Pennsylvania Senate, and the Pennsylvania House of Representatives, and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

February 22, 2007

JACK WAGNER
Auditor General

ENVIRONMENTAL HEARING BOARD
SCHEDULE OF SOURCES AND DISPOSITION OF AUTHORIZATIONS
FOR THE FISCAL YEAR ENDED JUNE 30, 2005

	AMOUNT
SOURCES OF AUTHORIZATIONS	
Appropriations	\$ 1,771,000
Commitments Carried Forward	77,792
Balances Carried Forward	70,035
Augmentations	5,202
	\$ 1,924,029
 DISPOSITION OF AUTHORIZATIONS	
Expenditures	\$ 1,742,560
Commitments	26,254
Lapses	109,561
	\$ 1,878,375
 AVAILABLE BALANCE	 \$ 45,654

-The notes to the financial schedules are an integral part of this schedule.-

**ENVIRONMENTAL HEARING BOARD
SCHEDULE OF REVENUE
FOR THE FISCAL YEAR ENDED JUNE 30, 2005**

REVENUE	AMOUNT
<hr/>	
<i>Augmenting Revenue:</i>	
Payment for Departmental Services	\$ 4,755
Purchasing Card Rebates	447
	<hr/>
TOTAL REVENUE	\$ 5,202
	<hr/> <hr/>

-The notes to the financial schedules are an integral part of this schedule.-

ENVIRONMENTAL HEARING BOARD

**NOTES TO FINANCIAL SCHEDULES
FOR THE FISCAL YEAR ENDED JUNE 30, 2005**

NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation: The Environmental Hearing Board (EHB) receives and expends monies from the General Fund. The accompanying financial schedules report the sources and disposition of authorizations and schedule of revenue of funds for which EHB has been designated as the receiving or disbursing agency, and do not report all transactions of the fund. All financial transactions in the Commonwealth's General Fund are reported annually in the Commonwealth of Pennsylvania's *Comprehensive Annual Financial Report* (CAFR). The CAFR provides more extensive disclosures regarding the Commonwealth's significant accounting policies; budgeting, budgetary control, and legal compliance; and pension and other postemployment benefits. Accordingly, the accompanying financial schedules report the budgetary operations and conditions at EHB's level which differs significantly from the reporting model required by accounting principles generally accepted in the United States applicable to governments.

Budgetary Accounting: The Constitution of Pennsylvania requires an annually balanced operating budget. Therefore, a budget is legally adopted each year. The budget is prepared on a budgetary basis which is a regulatory basis of accounting. Operating budget appropriations may not exceed the actual and estimated revenue and surplus. Budgetary control occurs at the appropriation level; this is the lowest level of legislative spending control. After an appropriation has been made, it is allocated to various subcategories by major object. These allocation amounts are approved by the Office of the Budget. EHB is responsible for operating its programs within these allocation amounts.

The accounting records of EHB are maintained in accordance with the various budgetary, constitutional and statutory provisions. The accounting system provides a means to record the budget plan and related financial transactions.

EHB's annual budget represents appropriations authorized by the General Assembly in the form of appropriation acts and executive authorizations issued by the Governor. A single appropriation is normally made to EHB for salaries, wages and other necessary expenses. This appropriation covers normal operating expenses of subordinate departmental units carrying on the programs assigned to EHB. Separate appropriations are normally made for other specific purposes, including grants and subsidies, fixed charges, and miscellaneous special programs and purposes.

ENVIRONMENTAL HEARING BOARD

**NOTES TO FINANCIAL SCHEDULES
FOR THE FISCAL YEAR ENDED JUNE 30, 2005**

NOTE A - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting: EHB uses a prescribed basis of accounting that demonstrates compliance with the budget laws of the Commonwealth of Pennsylvania, which differs from accounting principles generally accepted in the United States of America. Generally, EHB records revenue and receipts when received and expenditures when documents are submitted to the Treasury Department for payment. Encumbrance accounting is employed as an extension of formal budgetary integration in the accounting system. Purchase orders, contracts, and other commitments are recorded as encumbrances in order to reserve that portion of the applicable appropriation for subsequent expenditure. Lapsable appropriations and executive authorizations that remain unexpended and unencumbered as of the statutory lapse date, usually June 30, are lapsed.

Fixed Assets and Depreciation: Fixed assets are recorded as expenditures when purchased and depreciation is not recorded.

Compensated Absences: Employees earn annual leave based on 2.7 percent to 10 percent of regular hours paid to a maximum of 45 days. Employees are paid for accumulated annual leave upon termination or retirement.

Employees earn sick leave based on 5 percent of regular hours paid to a maximum of 300 days. Retiring employees that meet service or disability requirements are paid between 30 percent and 50 percent of their accumulated unused sick leave depending on the amount accumulated.

Accumulated annual and sick leave liability payable in subsequent fiscal years was \$100,646 at June 30, 2005. It is EHB's policy to record the cost of annual and sick leave when paid.

NOTE B - RETIREMENT CONTRIBUTIONS

Membership in the State Employees' Retirement System is mandatory for all state employees except: elected officials, appointed heads and deputies of administrative departments, departmental or advisory boards or commissions, legislative employees, Department of Education employees, and school employees. The administering agency is the State Employees' Retirement Board.

ENVIRONMENTAL HEARING BOARD

**NOTES TO FINANCIAL SCHEDULES
FOR THE FISCAL YEAR ENDED JUNE 30, 2005**

NOTE B - RETIREMENT CONTRIBUTIONS

Contributions on behalf of active members are required to be made by the Commonwealth or other employers into the State Employees' Retirement Fund. Contributions are also made by active members at the rate of 5 percent or 6.25 percent of employee compensation, depending on the class of service selected. The Commonwealth contributes the additional amount necessary to fund the program. EHB's retirement contribution was \$16,353 for the fiscal year ended June 30, 2005.

Data with respect to the excess, if any, of the actuarially computed value of vested benefits over the total of the pension fund and any balance sheet pension accruals, less any pension prepayments or deferred charges, is not available on a department basis.

Postemployment Health Care Benefits: In addition to providing pension benefits, EHB provides certain health care benefits for retired employees that meet specified length-of-service and age requirements. These benefits are provided as a result of negotiated union contracts and through administrative policy. EHB recognizes the cost of providing these benefits, which for the fiscal years ended June 30, 2005, totaled \$88,749, as paid.

NOTE C - CONTINGENT COMMITMENTS

During the fiscal year ended June 30, 2005, EHB committed future funds for goods and services to be delivered during subsequent years. These commitments were contingent upon eventual passage of appropriations, and monies could not be paid out or goods and services delivered until such appropriations had been made. Contingent commitments at June 30, 2005, were \$97,589.



**Report on Internal Control Over Financial Reporting and on Compliance and Other
Matters Based on an Audit of Financial Statements Performed in Accordance With
*Government Auditing Standards***

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Rendell:

We have audited the financial schedules of the Environmental Hearing Board for the fiscal year ended June 30, 2005, and have issued our report thereon dated February 22, 2007. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Environmental Hearing Board's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinion on the financial schedules and not to provide an opinion on the internal control over financial reporting. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be material weaknesses. A material weakness is a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial schedules being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Environmental Hearing Board's financial schedules are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial schedule amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of management of the Environmental Hearing Board, the Pennsylvania Senate, and the Pennsylvania House of Representatives, and is not intended to be and should not be used by anyone other than these specified parties.

Sincerely,

February 22, 2007

JACK WAGNER
Auditor General

FINDING AND RECOMMENDATION



ENVIRONMENTAL HEARING BOARD
JUNE 30, 2005

FINDING AND RECOMMENDATION

Finding – The Environmental Hearing Board Did Not Obtain a Statement of Possible Conflicts of Interest From All Administrative Law Judges

Condition: The Environmental Hearing Board (EHB) did not obtain the required statement of possible conflicts of interest from one of its five administrative law judges. In addition, we noted that filed statements were dated as far back as 1995.

Criteria: EHB's Internal Operating Procedures require each of the five administrative law judges to file a statement of possible conflicts of interest promptly after assuming his or her duties to identify all former clients or affiliations who are likely to appear in EHB matters to ensure that impartiality is maintained when assigning cases to law judges.

Cause: EHB's management stated that it wasn't necessary for the law judge in question to file a statement of possible conflicts of interest because the judge's only prior employment was with the Department of Environmental Protection (DEP) which presented no perceived conflict of interest. We disagree due to the impact that DEP's oversight of various orders, permits, and licenses regarding environmental issues are routinely brought before EHB.

Effect: Failure to require all administrative law judges to file a statement of possible conflicts of interest could result in impartiality on the part of a law judge in any case pending before them.

Recommendation: EHB should obtain a statement of possible conflicts of interest from all administrative law judges. In addition, EHB should consider revising its Internal Operating Procedures to have these statements updated periodically to ensure all clients or affiliations are properly documented and kept current. This will help ensure that EHB decisions are independent and impartial.

Agency Response: The EHB recognizes the need to maintain proper documentation regarding avoidance of any possible Conflict of Interest with any and all Judicial activities performed by staff Judges in this agency. To this point, the EHB has been diligent in collecting appropriate Conflict of Interest statements from Judicial appointees upon their initial employment with this agency, except in the referenced audit finding. At that time, it was apparently believed (this manager was not employed herein during this period) that prior associations were collectively and comprehensively not conflictive in nature, and no statement was therefore received or solicited by the agency.

ENVIRONMENTAL HEARING BOARD
JUNE 30, 2005

FINDING AND RECOMMENDATION

Finding

It is now understood that regardless of the prior employment and/or personal history of a new Judicial appointee, a Conflict of Interest statement will be obtained from every Judge immediately upon beginning employment with the agency. Additionally, heretofore it has not been a policy of the EHB to collect updated statements on a periodical basis, but new operational procedures shall be put into effect whereby updated Conflict of Interest statements are collected and retained for all actively employed EHB Judges on a biannual basis. The understanding gained, and the changes made, from exposure to this Compliance Audit shall clearly move the agency toward a posture which is fully compliant with the spirit and the intent of regulation requiring collection and retention of this data.

Auditors' Conclusion: Based on EHB's response, the finding and recommendation remain as previously stated. We will review any corrective action in the subsequent audit.

DISTRIBUTION

**ENVIRONMENTAL HEARING BOARD
FOR THE FISCAL YEAR ENDED JUNE 30, 2005
DISTRIBUTION LIST**

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

The Honorable Gibson E. Armstrong
Chair
Senate Appropriations Committee
281 Main Capitol Building
Harrisburg, PA 17120

The Honorable Gerald J. LaValle
Acting Democratic Chair
Senate Appropriations Committee
545 Main Capitol Building
Harrisburg, PA 17120

The Honorable Dwight Evans
Chair
House Appropriations Committee
512-E, Main Capitol Building
Harrisburg, PA 17120

The Honorable Mario Civera
Republican Chair
House Appropriations Committee
245 Main Capitol Building
Harrisburg, PA 17120

The Honorable Robert M. Tomlinson
Chair
Senate Consumer Protection and
Professional Licensure Committee
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Harrisburg, PA 17120

The Honorable Mark B. Cohen
C/O Leon Czikowsky
House of Representatives
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The Honorable Joseph Martz
Secretary of Administration
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Harrisburg, PA 17120

The Honorable Roger A. Madigan
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The Honorable Donald L. Patterson
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Executive House
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Ms. Sharon Anderson (4)
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The Honorable William T. Phillipy, IV (3)
Secretary
Environmental Hearing Board
2nd Floor, Rachel Carson State Office Building
400 Market Street
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Ms. Mary K. DeLutis (2)
Comptroller
Environmental Hearing Board
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901 North Seventh Street
Harrisburg, PA 17102

The Honorable Robin L. Wiessmann (2)
State Treasurer
129 Finance Building
Harrisburg, PA 17120

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at www.auditorgen.state.pa.us.