

NRB reconsideration of District Environmental Commission decisions:

-District Commission:

- process stays the same/remains informal, or as is now, more formal if highly contested
- record of filings and documentary/physical evidence remains the same
- allow/require video in addition to audio (fee for video; DC can require video for contested cases, but not others.)

-NRB reconsideration of Commission decision:

- NRB composition: JNB approval/professional/set terms
- Parties participating before the Commission can seek or participate in reconsideration
- Commission decision and record is starting point and central – not starting with a blank slate on the issue to be reconsidered and thus not pure *de novo*.
- Reconsideration based on record consisting of Commission decisions, all documents, exhibits and other evidence presented to the Commission, audio/video tapes of Commission proceedings.
- Record can be supplemented before the NRB. Standard for supplementation designed to preserve informal Commission process while discouraging parties from presenting known issues to NRB in first instance.
 - Standard[s] for supplementation:
 - The Board determines that the new evidence is material and good cause exists for the party's failure to present the additional evidence to the District Commission. (Standard from H.513 (2012).) E.g:
 - New information not reasonably available before Commission
 - Board believes that further information is needed to address material Commission error
- Limited discovery may be allowed and managed by Board to:
 - Address material Commission error
 - Explore supplemental evidence
 - Prefiled would supplant some discovery needs
 - Limited to issues being reconsidered
- Process:
 - Reconsideration limited to specific aspects of Commission decision
 - Panels of three Board members or hearing officer may preside over matters or preliminary issues (subject to full Board approval?)
 - On paper if no need for hearing (contested fact standard);
 - Process must be accessible to pro se parties
 - Sufficient time shall be allowed for parties to prepare
 - Schedule and discovery can be addressed at conference with Chair or General Counsel or hearing officer
 - Prefiled testimony would be the norm for new testimonial evidence

- Quasi-judicial contested case under VAPA
- Video of any evidentiary proceedings
- oral argument on legal issues may be requested

-Board would be ex-parte/separation of functions procedures apply. Commission support and enforcement screened from appellate function

-NRB would promulgate procedural rules

-Appeal to VT Supreme Court on the record developed by the District Commission and as supplemented by the NRB

-Add positions to NRB legal staff