

Questions and Answers 2022

November 2, 2021

1. Though standing is not an issue that is officially presented to be briefed (R. at 2), the district court opinion explains the court's satisfaction with CLW's standing (R. at 11). Thus, is the competition expecting teams to address standing in their briefs, in addition to the 4 officially presented issues, since CLW's standing has not been stipulated by each party?

Answer: The teams are not expected to brief the issue of standing.

2. Does the TMDL itself require the State of New Union to write NPDES permits with the specified limits in the TMDL? In other words, is there enforceable language in the TMDL itself that requires the State to implement the NPDES permits OR is the State required to implement the NPDES permits immediately simply because the State is the issuer of NPDES permits within the State? Can I see the provision in the TMDL that requires the State to implement the NPDES permit limits without delay or the provision that specifies the permit limits?

Answer: The record will not be supplemented on this issue.

3. I wanted to confirm that we are allowed to write our brief for whichever side—petitioners or respondents—we would like to. Then we will be assigned to argue for either side in the oral argument stage.

Answer: Correct, you may argue in your brief for whichever side you choose.

4. Why does it say on page 7, end of paragraph 2 that CAFOs are point sources under CWA but then the Chesaplain Report considers them to be non-point sources on page 9 in the chart. Are they point or nonpoint? Are they exempt or something?

Answer: The record will not be supplemented on this issue.

5. First paragraph on Page 10 mentions CLW demanded 63 mt annual reduction be achieved by requiring 0 phosphorus discharge from the two identified point sources(the slaughterhouse at 38.5 mt and sewage treatment plant 23.4 mt). These two point sources only equal 61.9 mt; not 63 mt. Is CLW also including the CAFO manure spreading as a point source as well?

Answer: The record will not be supplemented on this issue.

6. What is the significance of the cited administrative records in the problem?

Answer: The record will not be supplemented on this issue.

7. What type of document is the document we are citing in our brief?

Answer: The record will not be supplemented on this issue.

8. Can you describe the Hog CAFO position concerning the TMDL, which EPA prevented New Union from adopting?

Answer: The record will not be supplemented on this issue.

9. Are team members permitted to use the Brief for the current problem as a writing sample for job applications?

Answer: This is not a question pertaining to the problem or rules.

10. What are the respective cover color requirements?

Answer: As stated in the rules, for purpose of this competition, Teams should use the cover colors on briefs specified as follows: CHESAPLAIN LAKE WATCH, Blue; THE STATE OF NEW UNION Green; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Red. The name of the court shall be the United States Court of Appeals for the Twelfth Circuit.

11. What is the required line spacing for text and footnotes?

Answer: All briefs shall comply with Federal Rules of Appellate Procedure 28 and 32, except as modified by these Rules.

12. Do the Briefs have to be postmarked by Nov. 22, or received by Nov. 22? (fact sheet says received, Rules say postmarked).

Answer: Since the rules updated on November 1, both Measuring and Non-measuring briefs should be emailed by November 22 by 11:59PM, EST.

13. Is the final round remote on Feb. 26? (Rules state the final round will be held, if possible, in person on March 11; website says final round will be remote on Feb. 26)

Answer: The final round is scheduled online, February 26 at 1:30PM, EST.

14. Are coaches permitted to provide assistance between arguments?

Answer: No. Please refer to Rule IV A. Only the members of the Team who are arguing may participate in writing the brief. The use of the work product of any person other than a Team member to prepare the brief is strictly prohibited. Work product does not include materials of the type generally used by attorneys to prepare briefs and that are available for public use.

15. When will the uniform background for virtual arguments be provided to Teams?

Uniform background is not required, however its to your teams benefit to have a professional, non-distracting background.

16. Are coaches permitted to be in the room during oral arguments?

Answer: Yes, but this should be kept to a minimum, 1 coach or faculty member per round.

17. When will a schedule for technological training provided by the Board be released?

Answer: Teams should be familiar with basic zoom features such as have ability to rename themselves, mute, hide non-video participants. We have created a training video for teams to watch on our website: <https://law.pace.edu/nelmcc> scroll down to training videos. (please note, this video is from last year and names have changed.)

18. I am looking for any guidance in finding past Pace briefs. I would just like to see any, if possible, as a guide while the team is constructing their brief.

Answer: The winning briefs can be found in our library research guide: <http://libraryguides.law.pace.edu/nelmcc>