

Regulatory Analysis Form

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REGULATORY REVIEW COMMISSION



(1) Agency

Environmental Hearing Board

(2) I.D. Number (Governor's Office Use)

No. 106-5

IRRC Number: 2121

(3) Short Title

Environmental Hearing Board Rules of Practice and Procedure

(4) PA Code Cite

25 Pa. Code § 1021.1 *et seq.*

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mary Anne Wesdock (412) 565-5245

Secondary Contact:

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation X
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No X
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Rule § 1021.24 authorizes the Environmental Hearing Board (EHB) to refer *pro se* parties who claim inability to afford an attorney to organizations designated to provide *pro bono* services.

Rule § 1021.54 authorizes the substitution of parties in the case of a person who has succeeded to the interests of a party to an appeal.

Rule § 1021.99 authorizes the EHB to appoint hearing examiners to preside at hearings and to handle certain other matters designated therein. This rule is patterned after the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 35.187 (authority delegated to presiding officers), which it will supersede and supplant.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The EHB is authorized by Section 5 (c) of the Environmental Hearing Board Act, 35 P.S. § 7515(c), to promulgate rules and regulations relating to practice and procedure.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

§ 1021.24 – While the EHB's current rules permit individuals to appear on their own behalf, they are encouraged to appear through counsel. The rules further state that individuals may be required to appear through counsel if the EHB determines they are acting in concert or as a representative of a group of individuals. Occasionally, the EHB encounters parties who indicate an inability to afford legal counsel. Rule § 1021.24 provides a means for the EHB to refer *pro se* parties, with a claim of financial need, to designated organizations that provide *pro bono* legal services.

§ 1021.54 – The EHB's existing regulations do not provide a means for the substitution of parties where a person succeeds to the interests of a party to an appeal by operation of law, election to public office, appointment or transfer of interest. Rule § 1021.54 provides a means by which a successor in interest may petition the EHB to be substituted for the original party to an appeal. The rule further allows other parties to the proceeding to move to strike the substituted party for just cause.

§ 1021.99 – Rule § 1021.99 substantially incorporates the authority delegated to presiding officers by 1 Pa. Code § 35.187 into the EHB's rules codified at 25 Pa. Code § 1021.1 *et seq.*

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

None.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

§ 1021.24 – Members of the public who wish to challenge an action of the Department of Environmental Protection (DEP), but who cannot otherwise afford legal counsel, will benefit from rule 1021.24 (referral to *pro bono* counsel).

§ 1021.54 – Any person who succeeds by operation of law, election to public office, appointment or transfer to the interests of any other person who is a party to an action before the EHB will benefit from rule 1021.54 (substitution of parties).

§ 1021.99 – Members of the regulated community, the DEP, as a party to all EHB proceedings, and members of the public who wish to appeal a DEP action will benefit from rule 1021.99, which authorizes the EHB to appoint hearing examiners to preside at hearings and handle other specific matters when circumstances may warrant such action, such as during a heavy trial schedule.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

None.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Anyone who is a litigant before the EHB will be affected by the final regulations. This includes DEP and other successor DER agencies, as well as anyone who appeals a DEP action to the EHB. Because DEP regulates a wide variety of activities conducted by individuals and businesses as well as state and local governments, they are all potential litigants before the EHB.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The final regulations were based on the recommendations of the EHB Rules Committee, a nine member advisory committee established by Section 5(a) of the EHB Act. The Committee is comprised of environmental law practitioners from both the public and private sectors, appointed by the Governor, the Secretary of DEP, the majority and minority leadership of the House and Senate, and DEP's Citizens Advisory Council.

The Rules Committee's meetings are sunshined according to law.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

On the whole, the final regulations would have little cost impact on either the public or private sector. They may, in fact, have a favorable economic impact by eliminating potential litigation over existing uncertainties in EHB procedures, authority and requirements and by aiding in trial preparation and presentation.

No accounting or consultant procedures will be required by the regulations.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

On the whole, the final regulations would have little impact on either the public or private sector. Some cost savings may be achieved by eliminating potential litigation over existing uncertainties in EHB procedures, authority and requirements and by aiding in trial preparation and presentation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

On the whole, the final regulations would have little cost impact on either the public or private sector. Some cost savings may be achieved by eliminating potential litigation over uncertainties in EHB procedures, authority and requirements and by aiding in trial preparation and presentation.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A -- See above.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
EHB	1,276,000	1,313,000	1,436,000	1,648,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

On the whole, the final regulations would have little cost impact on either the public or private sector. Some cost savings may be achieved by eliminating potential litigation over uncertainties in EHB procedures, authority and requirements and by aiding in trial preparation and presentation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The concept of alternative regulatory approaches is not germane to procedural rules for adjudicatory proceedings, as their content is dictated by relevant statutory, regulatory and constitutional provisions, as well as judicial precedent.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The EHB has not made a study of the rules of procedure before comparable administrative hearing boards of other states but does not believe the proposed rules could in any way put Pennsylvania at a competitive disadvantage. The EHB has been advised by an Allegheny County attorney who has practiced in at least 20 other states that the Pennsylvania EHB is "the most efficient and proficient environmental law tribunal" he had ever encountered.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulations would affect DEP, which is the appellee in every appeal filed with the EHB, as well as any other state agency which may become involved in litigation before the EHB. While agencies under the Governor's jurisdiction normally do not pursue appeals to the EHB to resolve their differences with DEP, those same agencies may be party-appellees with DEP where an appellant challenges an approval given by DEP to another Commonwealth agency (*e.g.* a permit issued to PennDOT to construct a highway culvert). Independent agencies, such as the Game Commission and the Fish and Boat Commission, may challenge approvals granted by DEP (*e.g.* a Fish and Boat Commission appeal of a surface mining permit).

The regulations of other state agencies would not be affected.

EHB regulation § 1021.99 would supersede and supplant § 35.187 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.187.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The rules, as originally proposed, were adopted at a public meeting held on March 14, 2000 at the EHB's main office in Harrisburg, Pa., in accordance with Section 704 of the Sunshine Act, 65 Pa.C.S.A. § 704. Revisions to the proposed regulations, based on comments received from the public and IRRC, were adopted at a meeting of the Board on October 4, 2000. In addition, the new rules are printed, published and distributed with the Board's appeal packet to attorneys in applicable state agencies and in the private sector. The Board's staff is available by telephone for any assistance.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

None.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Rule § 1021.24 (referral to *pro bono* counsel) has been developed to address the needs of indigent parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Implementation will occur immediately after adoption as final rules.

There are no conformity deadlines.

(31) Provide the schedule for continual review of the regulation.

Because the final regulation are rules of procedure for a quasi-judicial tribunal, no sunset date has been assigned. However, the effectiveness of the regulations will be evaluated on an on-going basis by the EHB and the EHB Rules Committee.

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**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

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REGULATORY
REVIEW COMMISSION

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#2121

Copy below is hereby approved as to form and legality. Attorney General.

By: _____
(Deputy Attorney General)

(Date of Approval)

___ Check if applicable
Copy not approved.
Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Environmental Hearing Board
(Agency)

Document/Fiscal Note No. 106-5

Date of Adoption: October 4, 2000

By: George J. Miller

Title: George J. Miller, Chairman

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

By: R.E. Grimaldi

11/9/00
Date of Approval

(Deputy General Counsel)
~~(Chief Counsel, Indep. Agency)~~
(Strike inapplicable title)

___ Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

**TITLE 25 - RULES AND REGULATIONS
ENVIRONMENTAL HEARING BOARD**

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
(25 Pa. Code, Chapter 1021)**

PRACTICE AND PROCEDURE

PREAMBLE

The Environmental Hearing Board (Board) by this order amends Title 25 of the *Pennsylvania Code* as set forth at Annex A. The amendments modify the rules of practice and procedure before the Board by implementing improvements in practice and procedure.

The Board approved the final regulations at its October 4, 2000 meeting.

Effective Date

The amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

Contact Person

For further information, contact William T. Phillipy^{IV}, Secretary to the Board, 2nd Floor, Rachel Carson State Office Building, P.O. Box 8457, Harrisburg, PA 17105-8457 (717) 787-3483. If information concerning this notice is required in an alternative form, Mr. Phillipy may be contacted at the above number. TDD users may telephone the Board through the AT&T Pennsylvania relay center at 1-800-654-5984.

Statutory Authority

The regulations are promulgated under the authority of Section 5 of the Environmental Hearing Board Act (35 P.S. § 7515) which empowers the Board to adopt regulations pertaining to practice and procedure before the Board.

Comments and Revisions to Proposed Rulemaking

The Board received comments on the proposed revisions from the Independent Regulatory Review Commission (IRRC) and from John W. Carroll, Esq. of Pepper Hamilton LLP. The comments will be addressed on a section-by-section basis.

§ 1021.24 Referral to *Pro Bono* Counsel

Mr. Carroll questioned why the *pro bono* program is limited to *pro se* litigants and to “parties” and suggested that the rule should also apply to organizations and all persons before they become “parties.” The Board agreed with this comment and has changed the rule to apply to any person who appears or intends to appear before the Board on a *pro se* basis and who claims inability to afford a lawyer.

Subsection (a) of the proposed rule authorized the Secretary to the Board to refer to *pro bono* counsel parties “who claim not to be able to afford a lawyer.” Both the staff of IRRC and Mr. Carroll questioned whether the Board should include a process and

standard for verifying a party's financial need. Proposed subsections (a)(3) and (b), which authorized the Board Secretary to refer parties to "an individual attorney, law firm or organization whose name appears on the Board's register of attorneys who have volunteered to take on the representation," were also opposed for these and other reasons.

The Board's consideration of these and other comments has led it to withdraw subsection (a)(3) and (b) of this rule. The final proposed rule only seeks authority to refer persons who claim to be unable to afford a lawyer to the appropriate state or county bar association with respect to their request for *pro bono* representation. Any such bar association may then make its own decision as to whether or not to seek *pro bono* representation for the applicant based on its standards for determining whether the applicant is able to afford a lawyer. The Board has therefore added the following language to the proposed final rule: "The financial standard for determining a person's ability to afford a lawyer will be the standard adopted or applied by the appropriate bar association at the time of referral."

The Board's ability to refer persons not represented by counsel is important not only to the Board but also to other litigants before the Board. Persons who represent themselves in Board proceedings waste both the Board's time and that of business or municipal entities involved in the litigation as a result of favorable Department action with respect to their application. This is because persons who represent themselves are not versed in either the Board's rules of procedure or the Pennsylvania Rules of Evidence. These complex rules are applied in the hearing on the merits of the claims of the parties. In addition, persons who represent themselves have been known to improperly conduct discovery proceedings through the issuance of subpoenas to the great cost and annoyance of the other parties to the litigation.

The proposed final regulation will serve these interests by authorizing the Board's Secretary to direct these persons to the Pennsylvania Bar Association, or any relevant county bar association, for referral to *pro bono* counsel willing to provide such services without payment of a fee. The Board and the Pennsylvania Bar Association have inaugurated such a program under which the Secretary to the Board refers any such person to the Pennsylvania Bar Association. The Pennsylvania Bar Association will attempt to secure representation for any person who can demonstrate to the bar association an inability to pay for such legal services.

The standard for providing *pro bono* services to persons unable to afford legal representation through the Pennsylvania Bar Association was developed through a committee of that Bar Association's Environmental, Mineral and Natural Resources Law Section in consultation with members of the Board. The standard reflects the fact that totally destitute persons ordinarily do not take appeals from actions of the Department of Environmental Protection. However, persons owning some property may be adversely affected by Department action, but may be unable to afford legal representation. This standard also reflects the consideration that the *pro bono* program must be designed so that paying clients will not be taken away from attorneys in Pennsylvania who charge comparatively low legal fees. Accordingly, a standard was developed which is somewhat

more liberal than what is applied under strict Legal Services Corporation guidelines. The standard applied by the Pennsylvania Bar Association under the current program is that the individual must meet one of the following eligibility criteria:

1. Income greater than 187.5% of the official federal poverty threshold (OPT) guideline but no more than 200% of the OPT.
2. Income below 187.5% of the OPT who are nevertheless ineligible for free legal services through another program either as a result of a lack of appropriate funding or lack of environmental training on the part of program attorneys.

The Pennsylvania Bar Association will seek *pro bono* counsel for an appellant referred to it by the Board with a full financial disclosure that the applicant meets this standard. In the event an individual does not fall into either of these categories, he or she may qualify for *pro bono* services by submitting an *in forma pauperis* affidavit pursuant to the requirements of Pa.R.C.P. 240(h). This rule requires the party to make a complete financial disclosure and supply an affidavit from his attorney stating his belief that the party is unable to pay for legal services and that the attorney is providing free legal service to the party.

The financial standard referred to above will permit individuals having an income level somewhat above that which would qualify them for free representation in federally funded programs as well as those persons who may be eligible for other federally funded programs, but to whom such free legal services are unavailable or where there is a lack of appropriate environmental training on the part of program attorneys.

The Board expects that the standard for inability to pay for legal services approved by the Pennsylvania Bar Association or any relevant bar association will vary from time to time depending upon changing economic circumstances of likely applicants and of the practice of law. These standards may also vary depending on changes in state and federal standards for providing public service to needy persons without charge. Accordingly, the Board has not proposed a fixed standard for bar associations to follow in making their decision as to whether to seek *pro bono* counsel for any particular applicant. However, the Board believes that the Pennsylvania Bar Association standard is most appropriate and that the bar associations will apply adequate standards for anyone who is unable to pay for legal services as circumstances may change.

The Board received other comments with respect to the now withdrawn provisions of the rule. It is unnecessary to respond to these comments in connection with this proposed final rule.

§ 1021.54 Substitution of Parties

Both IRRC and Mr. Carroll commented that the use of the word “election” in subsection (a) was unclear and that it should be clarified to indicate that it meant election

to public office. The Board agreed with this comment and added the language “to public office” after the word “election” in subsection (a) of the final rule.

Mr. Carroll stated that the last sentence of subsection (b) referring to § 1021.53 was confusing. He questioned whether the reference should specifically be to § 1021.53(b)(2). The Board agreed and revised subsection (b) of the final rule to refer to § 1021.53(b)(2).

§ 1021.99 Authority Delegated to Hearing Examiners

IRRC submitted no comments on this proposed rule. Mr. Carroll had two comments. First, he suggested that the word “appoint” in subsection (a) should be replaced with “assign.” The Board disagreed, determining that “appoint” was the proper term. While the Board might assign the duties of a hearing examiner to an assistant counsel employed by the Board, the rule should be more expansive in order to include the appointment of someone not in the employ of the Board, such as a former administrative law judge, to act as a hearing examiner in times of a heavy caseload.

Mr. Carroll also felt that the use of the phrase “dispose of procedural matters” in subsection (a)(4) was too broad. The Board disagreed and determined that use of the word “dispose” was appropriate. The intent of the rule is that an assigned hearing examiner will work closely with the Board Member in disposing of important objections or motions.

Sunset Date

A sunset date has not been established for these regulations. The effectiveness of the regulations will be evaluated on an ongoing basis by the Board and the Rules Committee.

Regulatory Review

As required by Section 5(a) of the Regulatory Review Act, Act of June 30, 1989, P.L. 73, 71 P.S. § 745.4(a), the Board submitted copies of the proposed rulemaking, which was published in the *Pennsylvania Bulletin* Vol. 30, No. 23 (June 3, 2000), to IRRC and the Senate and House Environmental Resources and Energy Committees for review and comment. The Board, in accordance with Section 5(bj.1) of the Regulatory Review Act (71 P.S. § 745.5(b.1)), also provided IRRC and the Committees with the Regulatory Analysis prepared in compliance with Executive Order 1982-2 (relating to improving government regulations) and copies of comments received.

In preparing the final form regulations, the Board has considered all comments received from the public and IRRC. No comments on the proposed regulations were received from either of the legislative committees.

These final form regulations were approved by the House Environmental Resources and Energy Committee on _____ and by the Senate Environmental Resources and Energy Committee on _____. IRRC met on _____ and approved the regulations pursuant to Section 5(c) of the Regulatory Review Act.

Findings of the Board

The Board finds that

- (1) Public notice of the proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968, P.L. 769, No. 240, 45 P.S. §§ 1201 and 1202 and the regulations thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) These regulations are necessary and appropriate for administration of the Environmental Hearing Board Act.

Order

- (1) The regulations of the Board are amended by Annex A.
- (2) The Chairman of the Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel as to legality and form as required by law.
- (3) The Chairman of the Board shall submit this order and Annex A to the House Environmental Resources and Energy Committee, the Senate Environmental Resources and Energy Committee, and IRRC, as required by law.
- (4) The Chairman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (5) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ANNEX A

TITLE 25. ENVIRONMENTAL PROTECTION
PART IX. ENVIRONMENTAL HEARING BOARD
CHAPTER 1021. PRACTICE AND PROCEDURE
Subchapter A. PRELIMINARY PROVISIONS

REPRESENTATION BEFORE THE BOARD

§ 1021.24. Referral of *pro se* parties to pro bono counsel.¹

(a) The Secretary to the Board is authorized to refer parties PERSONS who appear before the Board on a pro se basis, and who claim not to be able to afford a lawyer, to one of the following:

- (1) The pro bono committee of the Pennsylvania Bar Association's Environmental, Mineral and Natural Resources Law Section.
- (2) A county bar association lawyer referral service.
- ~~(3) An individual attorney, law firm or organization whose name appears on the Board's register of attorneys who have volunteered to take on the representation.~~

~~(b) If the Secretary to the Board exercises authority under subsection (a)(3), the Secretary shall establish a register of qualified pro bono attorneys, law firms and organizations and will refer pro se parties to counsel from the register on a rotational basis. To participate on the Board's register of attorneys, an attorney shall:~~

- ~~(1) Be admitted to practice before the Supreme Court of Pennsylvania.~~
- ~~(2) Have indicated a willingness and commitment not to charge a fee for services (but may be permitted to charge the reasonable expenses of the litigation).~~

¹ Key: A "strike through" denotes deletions from the proposed rulemaking package. Capitalization denotes additions to the proposed rulemaking package.

~~(3) Have registered with the Secretary.~~

(b) THE FINANCIAL STANDARD FOR DETERMINING A PERSON'S INABILITY TO AFFORD A LAWYER WILL BE THE STANDARD ADOPTED BY THE APPROPRIATE BAR ASSOCIATION AT THE TIME OF REFERRAL.

Subchapter C. FORMAL PROCEEDINGS

APPEALS

§ 1021.54. Substitution of parties.

(a) A person who has succeeded to the interests of a party to an appeal by operation of law, election TO PUBLIC OFFICE, appointment or transfer of interest may become a party to the pending action by filing with the Board a verified petition for substitution of party, which includes a statement of material facts upon which the right to substitute is based.

(b) The substituted party shall have all the rights and liabilities of the original party to the proceeding provided that any other party to the proceeding may move to strike the substituted party for just cause. A substituted party-appellant is limited to pursuing only those objections raised by the original appellant in its appeal, unless both the original appellant and the substituted appellant meet the conditions of ~~§ 1021.53 (relating to amendments to appeal; nunc pro tunc appeals)~~ § 1021.53(b)(2) (RELATING TO DISCOVERY OF FACTS WHICH COULD NOT HAVE BEEN PREVIOUSLY DISCOVERED THROUGH DUE DILIGENCE).

HEARING EXAMINERS

§ 1021.99. Authority delegated to hearing examiners.

(a) The Board may appoint hearing examiners to preside at hearings. Subject to the approval of the Board member assigned to the case, the hearing examiner shall have the following authority:

- (1) To schedule and regulate the course of the hearings.
- (2) To administer oaths and affirmations.

- (3) To rule on motions in limine, offers of proof and the admission or exclusion of evidence.
- (4) To conduct pretrial conferences, settlement conferences and related pretrial proceedings and to dispose of procedural matters.
- (5) To schedule the filing of posthearing briefs following the conclusion of the hearing.
- (6) To recommend to the Board member or to the Board an opinion and order or adjudication disposing of the matters considered at the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers.)

Final Rulemaking Package 106-5

Comments on Proposed Rulemaking were submitted by the following:

John W. Carroll, Esq.
Pepper Hamilton LLP
200 One Keystone Plaza
North Front and Market Streets
P.O. Box 1181
Harrisburg, PA 17108-1181

The Environmental Hearing Board considered and addressed all comments.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
2ND FLOOR - RACHEL CARSON STATE OFFICE BUILDING
400 MARKET STREET, P.O. BOX 8457
HARRISBURG, PENNSYLVANIA 17105-8457
(717) 787-3483
TELECOPIER: (717) 783-4738

November 8, 2000

Honorable Mary Jo White
Majority Chairman
Senate Environmental Resources
and Energy Committee
168 Capitol Building
Harrisburg, PA 17120

Honorable Arthur D. Hershey
Majority Chairman
House Environmental and Energy
Committee
214 Capitol Annex
Harrisburg, PA 17120

Honorable Raphael J. Musto
Minority Chairman
Senate Environmental Resources
and Energy Committee
17 Capitol, East Wing
Harrisburg, PA 17120

Honorable Camille George
Minority Chairman
House Environmental and Energy
Committee
38-B Capitol, East Wing
Harrisburg, PA 17120

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Madam and Gentlemen:

In accordance with the provisions of the Regulatory Review Act, the Environmental Hearing Board is transmitting a copy of the final regulatory package to its rules of practice and procedure to the Senate Environmental Resources and Energy Committee, to the House Environmental and Energy Committee, and to the Independent Regulatory Review Commission for their review.

Sincerely,

ENVIRONMENTAL HEARING BOARD

William T. Phillipy IV
Secretary to the Board

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 106-5
SUBJECT: Practice & Procedure
AGENCY: ENVIRONMENTAL HEARING BOARD #2121

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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
11-8-00	<u>Cindy Zinn</u>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
11-8-00	<u>D. Neunt</u>	
11-8	<u>JH Wallace Koon</u>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
11-8	<u>A. Valera</u>	
11-8	<u>Ann Eckert</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

November 8, 2000