

Regulatory Analysis Form

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2001 OCT 25 PM 3:19
REV. L. SCHEIDT

(1) Agency

Environmental Hearing Board

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

No. 106-6

IRRC Number: 2226

(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 X
- Final Order Adopting Regulation
- 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.

The rules have been reorganized and renumbered to make them more user-friendly.

A new rule has been added at § 1021.23 on withdrawal of appearance. The proposed rule states that an attorney's appearance for a party may not be withdrawn without leave of the Board unless another attorney has entered an appearance for the party and the change of attorneys does not delay any stage of the litigation.

Several rules have been amended as follows:

The following definitions have been added to § 1021.2: electronic filing, filing attorney, legal document, registered attorney and registration statement. These were necessitated by the new rules on electronic filing.

The following rules have been amended to authorize electronic filing and service: filing (existing § 1021.30, proposed § 1021.31), service by a party (existing § 1021.32, proposed § 1021.33), date of service (existing § 1021.33, proposed § 1021.34) and docket (existing § 1021.41, proposed § 1021.38).

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The rule on number of copies (existing § 1021.35, proposed § 1021.36) has been amended to clarify that parties must file an original and two copies of memoranda of law, responses and replies.

The rules on motions (general) (existing § 1021.70, proposed § 1021.91) and procedural motions (existing § 1021.71, proposed § 1021.92) have been amended to require that parties attach a proposed order to their motions and responses.

The rule on discovery (existing § 1021.111, proposed § 1021.102) has been amended to state that it supersedes, rather than supplements, 1 Pa. Code §§ 35.145 – 35.152 of the General Rules of Administrative Practice and Procedure.

The rules on reconsideration of interlocutory orders (existing § 1021.123, proposed § 1021.151) and reconsideration of final orders (existing § 1021.124, proposed § 1021.152) have been amended to state that a party may file a memorandum in support of his or her petition for reconsideration.

The rule on composition of certified record on appeal to the Commonwealth Court (existing § 1021.171, proposed § 1021.201) has been amended to correct a typographical error. The rule contained an incorrect citation to Pa.R.C.P. 1951, when, in fact, it should read “Pa.R.A.P. 1951”).

(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.

(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?

Reorganization and renumbering of the rules – The rules have been reorganized into a more orderly format, thereby making them more user-friendly.

Regulatory Analysis Form

Electronic filing and service (proposed amendments to §§ 1021.2, 1021.31, 1021.33, 1021.34, 1021.38, as renumbered) – These amendments will be beneficial to the practicing bar by providing an elective means of filing and service of documents by electronic transmission.

Withdrawal of appearance (proposed § 1021.23) – The EHB currently has no rule on when or how an attorney may withdraw his or her appearance of behalf of a party. The rule is patterned in part on Pa.R.C.P. 1012(b).

Number of copies (proposed amendment to § 1021.36, as renumbered) – The current rule requires multiple copies of motions but is silent as to supporting memoranda of law, responses and replies. The proposed amendment clarifies the number of copies of each type of document that a party must file.

Motions (General) and Procedural Motions (proposed amendments to §§ 1021.91 and 1021.92, as renumbered) – Requiring motions and responses to contain a proposed order conforms to civil practice.

Discovery (proposed amendment to § 1021.102, as renumbered) – This involved a technical change to state that the EHB's rules on discovery supersede rather than supplement the rules on depositions in the General Rules of Administrative Practice and Procedure.

Reconsideration of interlocutory and final orders (proposed amendments to §§ 1021.151 and 1021.152, as renumbered) – Because petitions for reconsideration must be filed within 10 days of the order for which reconsideration is being sought, the EHB has customarily accepted the filing of petitions for reconsideration without a supporting memoranda of law. The proposed amendments clarify that a party may file a memorandum of law in support of a petition for reconsideration but do not require the filing of a supporting memorandum.

Composition of certified record on appeal to the Commonwealth Court (proposed amendment to § 1021.201, as renumbered) – The proposed amendment simply corrects a typographical error.

(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.)

The proposed reorganization of the rules will benefit all litigants appearing before the EHB, as well as members of the public who wish to refer to the EHB Rules of Practice and Procedure. The reorganized rules will be presented in a more orderly and user-friendly format. The proposed rules permitting electronic filing will add to the convenience of the parties in effecting filing and service of legal documents.

The proposed amendments will benefit all litigants who appear before the EHB by either clarifying existing EHB rules or practice and by making the rules and practice before the EHB similar to practice before the courts of common pleas and the federal district courts.

The Department of Environmental Protection (DEP) will be similarly affected by the proposed regulations since, with few exceptions, the DEP is the appellee in all appeals filed with the EHB.

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. The proposed amendments relating to electronic filing will serve as a convenience to the parties and may result in an overall reduction of paperwork, thereby resulting in a potential cost savings.

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. In addition, the proposed amendments relating to electronic filing may result in an overall reduction of paperwork, thereby resulting in a potential cost savings.

(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. In addition, the proposed amendments relating to electronic filing may result in an overall reduction of paperwork, thereby resulting in a potential cost savings.

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(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	1,313,000	1,436,000	1,648,000	1,816,000

(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. In addition, the proposed amendments relating to electronic filing may result in an overall reduction of paperwork, thereby resulting in a potential cost savings.

(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. In addition, the proposed rules on electronic filing should allow for even more efficient operation of the EHB.

(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 that 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.

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

The proposed rules were adopted by the EHB at a public meeting held on May 9, 2001 at the EHB's main office in Harrisburg, Pa., in accordance with Section 704 of the Sunshine Act, 65 Pa.C.S.A. § 704. Following final rulemaking, 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. In addition, 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.

A minor increase will be required as a result of the proposed amendment to the rule on number of copies of legal documents to be filed with the EHB in hard copy. However, there is an opportunity for parties to avoid this requirement by electing to use the EHB's system for electronic filing and service.

(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.

The proposed reorganization of the rules should provide a benefit to any members of the general public who may need to refer to the EHB's rules, including pro se appellants.

(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.

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

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REVIEW COMMISSION

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#2226

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

By: *Cristina S. Caproni*

(Deputy Attorney General)

SEP 12 2001

(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. 106-6

Date of Adoption: May 9, 2001

By: *George J. Miller*

Title: George J. Miller, Chairman

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

By: *B. Scott Ray*

(Deputy General Counsel)

8/17/01

(Date of Approval)

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

NOTICE OF PROPOSED RULEMAKING

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

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

PRACTICE AND PROCEDURE

PROPOSED RULEMAKING

ENVIRONMENTAL HEARING BOARD [25 PA. CODE CH. 1021] PRACTICE and PROCEDURE

PREAMBLE

The Environmental Hearing Board (EHB) proposes to revise Chapter 1021 (relating to practice and procedures) by adding new procedural rules to read as set forth in Annex A.

The proposed procedural rules have the following objectives:

- (1) To provide the regulated community and the Department of Environmental Protection (Department) and other potential litigants with more specific guidance on how to represent their interests before the EHB.
- (2) To improve the rules of practice and procedure before the EHB.

I. *Statutory Authority for Proposed Revisions*

The EHB has the authority under section 5 of the Environmental Hearing Board Act (act) (35 P.S. § 7515) to adopt regulations pertaining to practice and procedure before the EHB.

II. *Description of Proposed Revisions*

The proposed revisions are modifications to provisions of the rules to improve practice and procedure before the EHB. These proposed revisions are based on the recommendations of the EHB Rules Committee, a nine member advisory committee created by section 5 of the act to make recommendations to the EHB on its rules of practice and procedure. The EHB may promulgate proposed regulations based in whole or in part on the recommendations of the Rules Committee.

This summary provides a description of (1) the existing rules of practice and procedure when relevant to proposed revisions, (2) the EHB's proposed revisions; and (3) how the proposal differs from the EHB Rules Committee's recommendations.

Where the recommendations of the EHB Rules Committee were not in proper legislative style and format, they have been modified to conform to those requirements. Similarly, where recommendations did not contain proper cross references to 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure), references to those rules have been added.

The proposed rulemaking can be divided into four categories: 1) reorganization of the EHB's existing rules of practice and procedure; 2) adoption of a new rule; 3) substantive amendments to existing rules; and 4) changes limited to superseding the General Rules of Administrative Practice and Procedure. Substantive amendments or additions were made as follows: definitions (§ 1021.2); withdrawal of appearance (new rule added at § 1021.23); filing (existing § 1021.30, proposed § 1021.31); service by a party (existing § 1021.32, proposed § 1021.33); date of service (existing § 1021.33, proposed § 1021.34); number of copies (existing § 1021.35, proposed § 1021.36); docket (existing § 1021.41, proposed § 1021.38); motions – general (existing § 1021.70, proposed § 1021.91); procedural motions (existing § 1021.71, proposed § 1021.92); reconsideration of interlocutory orders (existing § 1021.123, proposed § 1021.151); reconsideration of final orders (existing § 1021.124, proposed § 1021.152); composition of the certified record on appeal to Commonwealth Court (existing § 1021.171, proposed § 1021.201). The rule on discovery (existing § 1021.111, proposed § 1021.102) was amended only for the purpose of superseding the General Rules of Administration Practice and Procedure.

A major feature of the substantive changes to the rules are amendments permitting counsel for the parties to elect to file and serve their legal documents through the Board's website. This system has been the subject of a pilot program of existing cases pending with the Board. The pilot project has been successful and has been greeted with enthusiasm by counsel participating in this pilot program. The Board anticipates that this will be of great convenience to litigants, will result in some cost savings to them and will reduce the volume of paper that otherwise would have to be filed with the Board and served on other parties. The proposed rules on electronic filing comply in all material respects with the Supreme Court's Rule 205.4 authorizing lower courts to implement electronic filing and service.

1. *Reorganization of rules*

The EHB adopted the Rules Committee's proposal to reorganize the Rules of Practice and Procedure in an effort to make the rules more user-friendly for practitioners and the public. The rules have been reorganized as set forth in Annex A. No rules have been deleted; they have simply been renumbered in the order in which they become relevant in a proceeding before the EHB. Where text has been amended, this is shown in bold in Annex A.

The proposed reorganization of the rules is demonstrated by the cross-reference table that appears at the end of Annex A. The EHB will seek to have the table published in the Pennsylvania Bulletin and the Pennsylvania Code as an annex to the rules so that there will be a ready reference table showing how the rules have been reorganized for at least the first five years after the reorganized rules have been published as final regulations.

Additionally, the EHB intends to have the reorganized rules published with a unified Table of Contents, rather than a separate Table of Contents by subchapter, in order to facilitate the location of applicable rules. The EHB has discussed this proposal with personnel at the Legislative Reference Bureau, who have indicated they would not object to this format.

2. *Definitions*

The EHB proposes amending its rule on definitions (§1021.2) to add the following definitions: electronic filing, filing attorney, legal document, registered attorney, and registration statement. These definitions are necessitated by the EHB's proposed rule on electronic filing.

3. *Withdrawal of Appearance*

The EHB rules currently have no provision governing the withdrawal of appearance by counsel. Proposed rule § 1021.23 sets forth the procedures to be followed in the case of an attorney seeking to withdraw his or her appearance in a matter before the EHB. Subsection (a) of the rule parallels Pa.R.C.P. 1012(b) by requiring that an attorney seek leave to withdraw unless another attorney has entered his or her appearance and the change of parties does not delay any stage of the litigation. Subsection (b) sets forth the factors the EHB will consider in ruling on a motion to withdraw, as follows: the reasons why withdrawal is being sought, any prejudice that may result to the litigants, any delay in resolution of the case that would result from withdrawal, and the effect of withdrawal on the efficient administration of justice. Where withdrawal will result in the party being unrepresented in the proceeding, subsection (c) requires the withdrawing counsel to provide the EHB with the name of a contact person for future service.

4. *Filing, Service, and Docket*

The EHB proposes amending its rules on filing (existing § 1021.30, proposed § 1021.31), service by a party (existing § 1021.32, proposed § 1021.33), date of service (existing § 1021.33, proposed § 1021.34), and docket (existing § 1021.41, proposed § 1021.38) to allow for electronic filing and service. In the fall of 2000, the EHB initiated a pilot project to allow parties to file documents electronically through its website. Instructions and guidelines for the pilot project appear on the EHB's website at www.ehb.verilaw.com. The pilot project has demonstrated that electronic filing and service provides a benefit to the practicing bar as an elective means of filing and service. As a result, the EHB now intends to adopt amendments to its rules of practice and procedure to allow all parties the option of electronic filing and service.

The EHB proposes to amend its rule on filing (existing § 1021.30, proposed § 1021.31) to allow the electronic filing of "legal documents" not exceeding 50 pages in length. The term "legal document" has been defined in the amendments to § 1021.2 to include "a motion, answer or other paper filed in a proceeding before the Board other than a notice of appeal or complaint that is original process naming defendant or defendants." Exhibits to legal documents may be filed and served either electronically or by hard copy in accordance with the rules on filing and service.

The EHB proposes to amend its rule on service by parties (existing § 1021.32, proposed § 1021.33) to allow the service of legal documents electronically. The rule also permits an attorney who has registered to file and receive service electronically to withdraw

his or her registration statement for purposes of a specific case if he or she chooses not to receive service electronically in that case.

The EHB proposes to amend its rule on date of service (existing § 1021.33, proposed § 1021.34) to state that the date of service for electronically transmitted documents shall be the date on which the document is transmitted electronically. This would permit the filing of documents up to midnight of the date required for filing. Where exhibits to an electronically filed document are served by mail, three days shall be added to the time for responding to the document.

The EHB proposes to amend its rule on docket (existing § 1021.41, proposed § 1021.38) to state that the EHB will maintain a docket on its website and will accept filings of legal documents by electronic transmission from attorneys who have filed a registration statement. The docket will register the date of filings and the time of filing if made electronically. When a document is filed electronically, the EHB will electronically transmit a message to all registered attorneys in the proceeding. The official copy of an electronically filed document shall be that appearing on the EHB's website.

5. *Number of copies*

The EHB's current rule on number of copies (existing § 1021.35, proposed § 1021.36) requires that multiple copies of a motion be filed but does not require multiple copies of supporting memoranda of law, responses or replies. It also does not require multiple copies of notices of appeal and complaints. Except in the case of documents filed electronically, the proposed rule will require that an original and two copies of the following documents shall be filed with the EHB: notices of appeal, complaints, answers, post-hearing briefs, and dispositive motions and related memoranda, responses and replies. The proposed rule will only require that an original and one copy of the following documents shall be filed with the EHB: petitions for supersedeas and any related responses, pre-hearing memoranda, non-dispositive motions and petitions (other than motions for stays, extensions and continuances of procedural deadlines) and related memoranda, responses and replies. The proposed rule will require an original of all other documents.

The Rules Committee also considered whether the rule should address the service of courtesy copies on individual judges, for example, when the document must be filed in Harrisburg but the presiding judge is in Pittsburgh. The Committee determined that this should not be incorporated into the rule since each judge had different requirements with regard to courtesy copies.

6. *Motions*

The EHB proposes to amend its current rules on motions (general) (existing § 1021.70, proposed § 1021.91) and procedural motions (existing § 1021.71, proposed § 1021.92) to require that proposed orders be attached to motions, responses and requests for extensions or continuances.

7. *Discovery*

Subsection (e) of the EHB's current rule on discovery (existing § 1021.111, proposed § 1021.102) states that the rules supplement 1 Pa. Code §§ 35.145 – 35.152 of the General Rules of Administrative Practice and Procedure (General Rules), relating to depositions. Under these sections of the General Rules, depositions may only be taken with notice to and the approval of the agency or presiding officer. Because the EHB does not require parties to notify or obtain approval prior to the taking of a deposition, the Rules Committee was asked to consider whether subsection (e) of the EHB's discovery rule should be amended to state that it supersedes rather than supplements the General Rules. Both the Rules Committee and the EHB voted to approve the recommended change.

8. *Reconsideration*

The EHB's rules on reconsideration of interlocutory and final orders (existing §§ 1021.123 and 1021.124, proposed §§ 1021.151 and 1021.152) have been amended to state that a party *may* file a memorandum of law in support of a petition for reconsideration or response to a petition for reconsideration. This revision was made in recognition of the fact that parties have a very short time period (10 days) in which to prepare a petition for reconsideration, so that they may dispense with the necessity of preparing a supporting brief.

9. *Certified Record on Appeal to Commonwealth Court*

The EHB rule on composition of certified record on appeal to the Commonwealth Court (existing § 1021.171, proposed § 1021.201) has been amended to correct a typographical error. The reference to "Pa.R.C.P. 1951" in subsection (a) of the rule has been corrected to read "Pa.R.A.P. 1951." This change will properly designate the application of the Pennsylvania Rules of Appellate Procedure rather than the erroneous designation of the Pennsylvania Rules of Civil Procedure.

The EHB concurred with the recommendations set forth above.

III. *Fiscal Impact of the Proposed Revisions*

The proposed amendments will have no measurable fiscal impact on the Commonwealth, political subdivision or the private sector. The amendments may have a favorable economic impact in that they may eliminate potential litigation over existing uncertainties in EHB procedures, authority and requirements. Further, the amendments providing for electronic filing may result in an overall reduction in the use of paper because they will permit parties to file legal documents electronically.

IV. *Paperwork Requirements for Proposed Revisions*

The proposed revisions will not require the EHB to modify its standard orders.

V. *Public Meeting on Proposed Rules*

In accordance with § 704 of the Sunshine Act, Act of October 15, 1998, P.L. 729, 65 Pa.C.S.A. §§ 701 – 716, a quorum of the members of the EHB voted to adopt the proposed rules at a public meeting held on May 9, 2001 at the EHB's Harrisburg office, Hearing Room 2, Second Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania.

VI. *Government Reviews of Proposed Revisions*

On October 25, 2001, as required by section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the EHB submitted copies of the proposed revisions to the Independent Regulatory Review Commission (IRRC) and the Senate and House Standing Committees on Environmental Resources and Energy. The EHB also provided the IRRC and the Committees with copies of a Regulatory Analysis Form prepared by the EHB in compliance with Executive Order 1982-2 (relating to improving government regulations). Copies of the Regulatory Analysis Form are available to the public upon request.

If the IRRC has objections to any of the proposed revisions, it will notify the EHB within 10 days of the close of the Committee's review period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures for review, prior to final publication of the proposed revisions, by the EHB, the General Assembly and the Governor of objections raised.

VII. *Public Comment Regarding Proposed Revisions*

The EHB invites interested persons to submit written comments, suggestions or objections regarding the proposed revisions to William T. Phillipy, ^{IV} Secretary to the Environmental Hearing Board, 2nd Floor, Rachel Carson State Office Building, P.O. Box 8457, Harrisburg, PA 17105-8457, within 30 days of this publication.

GEORGE J. MILLER
Chairman

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
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CHAPTER 1021. PRACTICE AND PROCEDURE**

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- 1021.116.** Conduct of hearings
- 1021.117.** Presentation by the parties
- 1021.118.** Transcript

EVIDENCE

- 1021.121.** Motions in limine
- 1021.122.** Burden of proceeding and burden of proof
- 1021.123.** Evidence
- 1021.124.** Written testimony
- 1021.125.** Official notice of facts
- 1021.126.** Limiting number of witnesses and additional evidence

POST-HEARING PROCEDURES

- 1021.131.** Post-Hearing Briefs
- 1021.132.** Oral argument after hearing
- 1021.133.** Reopening of record prior to adjudication
- 1021.134.** Adjudications

TERMINATION OF PROCEEDINGS

- 1021.141.** Termination of proceedings

RECONSIDERATION

- 1021.151.** Reconsideration of interlocutory orders
- 1021.152.** Reconsideration of final orders

SANCTIONS

1021.161. Sanctions

ATTORNEYS FEES AND COSTS AUTHORIZED BY THE COSTS ACT

1021.171. Scope
1021.172. Application for Fees and Expenses
1021.173. Response to Application
1021.174. Disposition of Application

ATTORNEYS FEES AND COSTS AUTHORIZED BY STATUTE OTHER THAN THE COSTS ACT

1021.181. Scope
1021.182. Application for Costs and Fees
1021.183. Response to Application
1021.184. Disposition of Application

ATTORNEYS FEES AND COSTS UNDER MORE THAN ONE STATUTE

1021.191. Application for Counsel Fees under more
than One Statute

APPELLATE MATTERS

1021.201. Composition of the Certified Record on Appeal to
Commonwealth Court

[Subchapter A.] PRELIMINARY PROVISIONS

GENERAL

§ 1021.2. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Electronic filing – The electronic transmission of legal documents by means of a computer or device, other than by facsimile transmission, in the format of Word Perfect for Windows or Microsoft Word for Windows or such other format as the Board may permit.

Filing attorney – A registered attorney who files a legal document by means of electronic filing on behalf of a client whom the attorney represents in a proceeding before the Board.

* * * * *

Legal document – A motion, answer or other paper filed in a proceeding before the Board other than a notice of appeal or a complaint that is original process naming a defendant or defendants. A subpoena or a bond or check issued to secure payment of a penalty is not a legal document; the original of the documents excluded from this definition must be filed or served.

* * * * *

Registered attorney – An attorney admitted to practice in Pennsylvania, or other counsel permitted by Board order to represent a party for purposes of a particular proceeding, who has filed an electronic filing registration statement with the Board and to whom the Board has issued a password authorizing filing and service through the Board's website.

Registration statement – A statement made on professional or organizational letterhead requesting the use of the Board's website for electronic filing containing such information as the Board may require.

TIME

[§ 1021.11. (Reserved)]

§ [1021.15] 1021.11. Effective dates of Board adjudications and preliminary orders.

* * * * *

[§ 1021.12. (Reserved)]

§ [1021.17] 1021.12. Extensions of time.

* * * * *

[§ 1021.13. (Reserved)]

[§ 1021.14. (Reserved)]

[§ 1021.16. (Reserved)]

REPRESENTATION BEFORE THE BOARD

[§ 1021.21. (Reserved)]

§ [1021.22] 1021.21. Representation.

*** * * * ***

§ [1021.23] 1021.22. Notice of appearance.

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§ 1021.23. Withdrawal of Appearance.

(a) An attorney's appearance for a party may be withdrawn without leave of the Board if another attorney has entered or simultaneously enters an appearance for the party and the change of attorneys does not delay any stage of the litigation.

(b) In ruling on a motion for withdrawal of appearance under other circumstances, the Board will consider the following factors: the reasons why withdrawal is requested; any prejudice withdrawal may cause to the litigants; delay in resolution of the case which would result from withdrawal; and the effect of withdrawal on the efficient administration of justice.

(c) In the event withdrawal of counsel will result in an unrepresented party before the Board, counsel seeking to withdraw shall provide the Board with a single contact person for future service in all proceedings.

§ 1021.24. Referral to pro bono counsel.

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§ [1021.117] 1021.25. Amicus curiae.

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[Subchapter B.] DOCUMENTARY FILINGS

FILING AND SERVICE OF DOCUMENTS

§ [1021.30] 1021.31. Filing.

* * * * *

(c) Documents may be filed by personal delivery, by mail or by facsimile. Legal documents, as defined in § 1021.2 may be filed electronically in accordance with these rules. When a document is filed by facsimile, the original shall be deposited in the mail on the same day. If a document exceeds ten pages, the facsimile shall consist of the first five pages and last five pages of the document and the certificate of service. [A filing received after the close of the business day at 4:30 pm Eastern Time shall be deemed to be filed on the following business day.]

(d) Legal documents may be filed with the Board electronically through the Board's website by a filing attorney unless provided otherwise by Board order. A legal document filed electronically shall be deemed the equivalent of the original document subject to the following conditions:

- (1) The electronic filing of a legal document constitutes a certification by the filing attorney that the original hard copy was properly signed and, where applicable, verified.
- (2) An executed hard copy of the legal document, with any required verifications, shall be maintained by the filing attorney and produced at the request of the Board or any other party within 14 days of the request.

(e) In filing legal documents electronically, a filing attorney shall be responsible for:

- (1) An objective description of the legal document consistent with the title placed on the legal document as required by the Board's website,
- (2) Any delay, disruption, interruption of the electronic signals and readability of the legal document, and
- (3) Any risk that a legal document may not be properly or timely filed with the Board.

(f) Hard copy of any electronically filed legal document which exceeds 50 pages in length must also be filed with the Board in accordance with subparagraphs (a) and (c) of this rule and 25 Pa. Code § 1021.35 relating to the required number of copies. All exhibits to legal documents may be filed and served either electronically or by hard copy in accordance with these rules

relating to filing and service. If these requirements are met by hard copy of exhibits, they must be sent to the Board by mail or express delivery and, in the case of requests for expedited disposition, service shall mean actual receipt by the opposing party as required by section 1021.32 (b).

(g) Documents filed by United States mail, hand, or other delivery services after the close of the business day at 4:30 p.m. Eastern Time shall be deemed to be filed on the following business day. Documents filed electronically, including by facsimile, shall be deemed filed on the day received by the Board.

§ [1021.31] 1021.32. Service by the Board.

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§ [1021.32] 1021.33. Service by a party.

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(c) [Subsections (a) and (b) supersede 1 Pa. Code § 33.32 (relating to service by a participant).] Service of legal documents may be made electronically on a registered attorney by any other registered attorney. The filing of a registration statement constitutes a certification that the registered attorney will accept electronic service of any legal document from any other registered attorney. A registered attorney may withdraw his registration statement for purposes of a specific case if he chooses not to receive electronic service in that case by filing an amendment to the filing party's registration statement.

[(c)](d) Subsections (a) [and (b)] – (c) supersede 1 Pa. Code § 33.32 (relating to service by a participant).

§ [1021.33] 1021.34. Date of service.

(a) The date of service shall be the date the document served is mailed, [or] delivered in person or transmitted electronically. When service of the document, or hard copy of exhibits to a legal document filed electronically, is by mail, 3 days shall be added to the time required by this chapter for responding to the document.

* * * * *

§ [1021.34] 1021.35. Certificate of service.

* * * * *

§ [1021.35] 1021.36. Number of copies.

(a) Except in the case of electronically filed documents, including exhibits, and [u]nless otherwise ordered by the Board, the following number of copies shall be filed with the Board:

(1) [Dispositive motions and post-hearing briefs—three copies.] One original and two copies of:

- (i) notices of appeal;
- (ii) complaints;
- (iii) answers;
- (iv) post-hearing briefs; and
- (v) dispositive motions and related memoranda, responses and replies.

(2) [Prehearing memoranda, petitions for supersedeas and all motions, other than motions for stays, extensions and continuances of procedural deadlines—two copies.] One original and one copy of:

- (i) petitions for supersedeas and any related responses;
- (ii) pre-hearing memoranda; and
- (iii) non-dispositive motions and petitions (other than motions for stays, extensions and continuances of procedural deadlines), and related memoranda, responses and replies.

(3) [Other documents—one copy.] One original of other documents.

(b) One copy of [briefs and other] all documents submitted to the Board shall be served on the other parties to the proceeding.

§ [1021.36] 1021.37. Publication of notice.

* * * * *

[DOCKET]

§ [1021.41] 1021.38. Docket.

(a) The Board will maintain a docket of proceedings and a proceeding as initiated shall be assigned an appropriate designation. The Board will maintain the docket on its website available to all members of the public and will accept filings of legal documents by electronic transmission from registered attorneys.

(b) [The Board will maintain a complete official file on proceedings.] The docket will register the date of all filings as well as the time of the filing if the filing is made electronically. When a document is filed electronically, the Board

will transmit electronically a status message to all registered attorneys in the proceeding when the document is filed.

[(b)] (c) The Board will maintain a complete official file on all proceedings consisting of both electronic and hard copy filings. The official copy of an electronically filed document or Board order shall be that appearing on the Board's website.

[(c)] (d) The [docket and the] electronic docket will be available on the Board's website and the hard copy portion of the official file shall be available for inspection and copying by the public during the office hours of the Board insofar as consistent with the proper discharge of the duties of the Board.

[d] (e) Subsections (a)—[(c)] (d) supersede 1 Pa. Code § 33.51 (relating to docket).

[Subchapter C.] FORMAL PROCEEDINGS

APPEALS

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§ [1021.161]1021.54. Prepayment of penalties.

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§ [1021.162]1021.55. Hearing on inability to prepay penalty.

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[§ 1021.61. (Reserved)]

SUPERSEDEAS

§ [1021.76]1021.61. General.

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§ [1021.77]1021.62. Contents of petition for supersedeas.

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§ [1021.78]1021.63. Circumstances affecting grant or denial.

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§ [1021.79]1021.64. Temporary supersedeas.

* * * * *

[§ 1021.64. (Reserved)]

[§ 1021.65. (Reserved)]

[§ 1021.66. (Reserved)]

SPECIAL ACTIONS

§ [1021.56]1021.71. **Complaints filed by the Department.**

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§ [1021.57]1021.72. **Answers to complaints filed by the Department.**

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§ [1021.58]1021.73. **Procedure after an answer is filed.**

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CONSOLIDATION, INTERVENTION, AND SUBSTITUTION OF PARTIES

§ [1021.62]1021.81. **Intervention.**

* * * * *

§ [1021.80]1021.82. **Consolidation.**

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§ [1021.54]1021.83. **Substitution of parties.**

* * * * *

[§ 1021.91. (Reserved)]

MOTIONS

§ [1021.70]1021.91. **General.**

* * * * *

(b) **Motions and responses shall be in writing, [and be] signed by a party or its attorney and shall be accompanied by a proposed order.**

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§ [1021.71]1021.92. Procedural motions.

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(e) Requests for extensions or continuances, whether in letter or motion form, shall [contain a specific date for the extension or continuance] be accompanied by a proposed order.

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[§ 1021.93. (Reserved)]

§ [1021.72]1021.93. Discovery motions.

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§ [1021.73]1021.94. Dispositive motions.

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[§ 1021.95. (Reserved)]

§ [1021.74]1021.95. Miscellaneous motions.

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[§ 1021.97. (Reserved)]

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

§ [1021.81]1021.101. Prehearing procedure.

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§ [1021.111]1021.102. Discovery.

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(e) Subsections (a)—(d) [supplement] supersede 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

§ [1021.114]1021.103. Subpoenas.

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§ [1021.82]1021.104. Prehearing memorandum.

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§ [1021.83]1021.105. Prehearing conferences.

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§ [1021.84]1021.106. Voluntary mediation.

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§ [1021.99]1021.107. Authority delegated to hearing examiners.

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HEARINGS

§ [1021.85]1021.111. Initiation of hearings.

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§ [1021.94]1021.112. Waiver of hearings.

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§ [1021.87]1021.113. Continuance of hearings.

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§ [1021.96]1021.114. Venue of hearings.

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§ [1021.98]1021.115. View of premises.

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§ [1021.86]1021.116. Conduct of hearings.

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§ [1021.89]1021.117. Presentation by the parties.

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§ [1021.104]1021.118. Transcript.

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EVIDENCE

§ [1021.88]1021.121. Motions in limine.

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§ [1021.101]1021.122. Burden of proceeding and burden of proof.

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§ [1021.107]1021.123. Evidence.

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§ [1021.108]1021.124. Written testimony.

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§ [1021.109]1021.125. Official notice of facts.

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§ [1021.90]1021.126. Limiting number of witnesses and additional evidence.

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POST-HEARING PROCEDURES

§ [1021.116]1021.131. Posthearing briefs.

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§ [1021.92]1021.132. Oral argument after hearing.

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§ [1021.122] 1021.133. Reopening of record prior to adjudication.

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§ [1021.118]1021.134. Adjudications.

TERMINATION OF PROCEEDINGS

§ [1021.120]1021.141. Termination of proceedings.

RECONSIDERATION

§ [1021.123]1021.151. Reconsideration of interlocutory orders.

(a) A petition for reconsideration of an interlocutory order or ruling shall be filed within 10 days of the order or ruling. The petition must demonstrate that extraordinary circumstances justify consideration of the matter by the Board. A party may file a memorandum of law at the time the motion or response is filed.

§ [1021.124]1021.152. Reconsideration of final orders.

(a) A petition for reconsideration of a final order shall be filed within 10 days of the date of the final order. A party may file a memorandum of law at the time the motion or response is filed. Reconsideration is within the discretion of the Board and will be granted only for compelling and persuasive reasons. These reasons may include the following:

SANCTIONS

§ [1021.125]1021.161. Sanctions.

ATTORNEY FEES AND COSTS AUTHORIZED BY THE COSTS ACT

§ [1021.131]1021.171. Scope.

§ [1021.132]1021.172. Application for fees and expenses.

§ [1021.133]1021.173. Response to application.

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§ [1021.134]1021.174. Disposition of application.

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**ATTORNEY FEES AND COSTS AUTHORIZED BY
STATUTE OTHER THAN THE COSTS ACT**

§ [1021.141]1021.181. Scope.

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§ [1021.142]1021.182. Application for costs and fees.

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§ [1021.143]1021.183. Response to application.

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§ [1021.144]1021.184. Disposition of application.

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**ATTORNEY FEES AND COSTS UNDER MORE
THAN ONE STATUTE**

§ [1021.151]1021.191. Application for counsel fees under more than one statute.

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APPELLATE MATTERS

**§ [1021.171]1021.201. Composition of the Certified Record on Appeal to
Commonwealth Court.**

(a) Unless the parties file a stipulation with the Board providing otherwise, within 20 days of the filing of the petition for review, the Board shall certify the record in accordance with [Pa.R.C.P.] Pa.R.A.P. 1951 (relating to record below in proceedings on petition for review) and the record shall consist of:

*** * * * ***

**CROSS REFERENCE OF
CURRENT SECTION NUMBERS
TO PROPOSED SECTION NUMBERS**

Current Section Number	Proposed Section Number
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1021.2.	1021.2
1021.3.	1021.3
1021.4.	1021.4
1021.11.	...
1021.12.	...
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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

2ND FLOOR - RACHEL CARSON STATE OFFICE BUILDING
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REVIEW COMMISSION

October 25, 2001

Mary S. Wyatte, Esquire
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

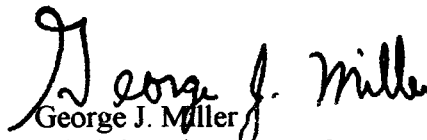
Re: **Environmental Hearing Board**
ID No. 106-6

Dear Mary:

Here is the Environmental Hearing Board's proposed regulation for review by your Commission. The proposed regulation includes, among other things, proposed procedural rules with respect to electronic filing and service of legal documents with the Board. As I promised you some time ago, I am enclosing with this regulation two documents which are descriptive of the Board's pilot project for electronic filing and service. These documents are posted on the Board's website as guidance for counsel in the Board's pilot project for filing and service of documents electronically.

Please let me know if you want us to give you further descriptive information with respect to the results of the pilot project and the proposed regulation.

Sincerely,


George J. Miller
Administrative Law Judge
Chairman

Enclosure



**The
Pennsylvania
Environmental Hearing Board**

Electronic Filing and Service Pilot Project

MENU

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The Board is inaugurating a pilot project to test the efficacy of a program to permit counsel to file legal documents with the Board through the Board's website and to serve those counsel through the website who agree to accept electronic service. Each administrative law judge will recruit two cases on their docket where counsel are willing to test the system by both filing and accepting service electronically. This system was demonstrated at the Environmental Law Forum in March and was well accepted by the audience. That audience suggested certain changes in the system to improve its security, and those suggestions have been adopted.

The Board's Procedural Rules Committee is considering amendments to its rules of procedure to give permanent status to this method of filing and service.

Selected cases have been identified for participation in the first phase of the Pilot Program. Current participants in the EHB Efilng Pilot Program can go directly to the [EHB Efilng Site](#).

You can have an overview of the system through the following documents.

[Instructions for Use](#)

[Temporary Guidance](#)

[Registration Form](#)

**ENVIRONMENTAL HEARING BOARD
INSTRUCTIONS FOR
ELECTRONIC FILING AND SERVICE OF LEGAL DOCUMENTS
THROUGH THE BOARD'S WEB SITE**

This memorandum describes how those who desire to file and serve legal papers through the Board's web site (www.ehb.verilaw.com) will be able to do so under the Board's pilot project. Users of the e-filing system must also read the EHB's E-filing Guidance, available at www.ehb.verilaw.com/efiling.icl.

Registered counsel will be permitted to file legal papers other than the notice of appeal through the Board's web site. Registration may be accomplished only by sending a registration letter to the Board on the attorney's professional or organizational letterhead. The registration statement must supply information as to the attorney's Pennsylvania identification number, E-mail address and preferred password. The qualifications of all attorneys will be checked promptly with the Administrative Office of Pennsylvania Courts. If the registration is approved, a password will be issued to the attorney who may then file documents electronically. You can review the form of the registration letter at www.ehb.Verilaw.com/efiling.icl. Subsequent changes in address or password may be made only by a letter amendment to the attorney's registration statement requesting the issuance of a new password or address change. The security of the system depends in part on the attorney's protecting the password from disclosure to unauthorized persons and secondarily by E-mail to the attorney whenever a filing is made a case in which he or she is counsel.

To a large extent, using the system is self-explanatory. Lawyers who log on with their user name and password should have no problem following the online instructions that guide them through the process of electronically filing a document. These instructions are provided as a supplement to those online instructions, but for most filers a review of this document should not be a necessary step.

To file a document, the attorney must first select a docket number for filing from a drop down list on the screen. The list includes only active cases in which the attorney is currently counsel of record. The screen that the filer next sees gives a choice of two links. The first is for a response document. The other is for a new document or issue such as a motion. On this screen, the existing docket for the case can be seen. Once the appropriate link is selected, a new screen appears that contains instructions on how to describe the document to be filed and requires the selection of a document type. A drop-down menu will aid in selecting the document type. This screen will permit the filer to select the document to be filed from the filer's hard disk by use of the "Browse" button. Once the file is selected, the filer may well use the Browse button to assure that the document he has selected is in fact the document to be filed. When satisfied, the filer clicks on the "Upload" button to file the document.

The click on the "Upload" button results in the submission of the document to the Board. Board personnel will then review the document at their earliest convenience (usually the same day that the file is submitted). If the Board accepts the document for filing, the Board will send a notification message by EMail to all counsel of record who are registered users of the system. This email will notify counsel of the filing of an electronic document in their case, and will contain a clickable link to the document itself. Additionally, the Board's acceptance of a document will generate an acceptance message to the attorney that filed the document. This acceptance message will list the attorneys who have been served through the web site (i.e. those attorneys in the case who are registered users of the e filing system) and those who the filer must serve by traditional hard copy (i.e. those attorneys in the case who are not registered users of the e filing system). Service on registered users is complete when this acceptance message is sent. The document is deemed filed at the time the filer submitted it, not the time when the Board accepts it. If the Board rejects the document, the document will not be filed and the filer will receive email notification of the rejection.

Users have three ways to submit any exhibits that the document might have. First, users can scan the exhibits into PDF format and upload the PDF document to the system. Scanning into PDF requires Adobe Acrobat software, which costs approximately \$200.00, and scanner. A scanner of the minimum quality we recommend costs approximately \$300.00. For additional help on scanning, users can call the Verilaw Technologies Helpdesk at 610-296-9117. Second, users can fax the exhibits. The system will automatically convert the faxed exhibits to PDF and associate them with the appropriate electronically filed document. Finally, users can choose to file and serve exhibits via traditional, non-electronic means.

In addition, users can also go to the web site to retrieve a list of all documents that have been filed in all cases in which they are counsel of record using standard search criteria which, among other things, could limit the search to recently filed documents.

Format of Filing And Docket View

Filings must be made through any version of WordPerfect for Windows or Microsoft Word for Windows. The filed documents will be converted on the Board's docket to PDF format so that there will be no variation in the document as it is filed and served from the text of the document filed whether the filer of the document uses WordPerfect or Microsoft Word. Of course, any user of the system and members of the public can view and print the document as filed in PDF format.

In newly filed cases in the pilot project, the docket may be viewed in a "threaded fashion." This means that the docket may be viewed, at the option of the viewer, so that for example, documents that are responsive to a motion appear visually on the docket as indented under the motion. This will facilitate a compact view of precisely where the briefing on the motion stands.

Registered Counsel

Use of electronic filing would be limited to those Pennsylvania lawyers, or other counsel permitted by Board order to represent a party for purposes of the case, who have registered for use through a Pennsylvania attorney. As indicated above, registration must be made by a letter addressed to the Board on the attorney's professional or organizational letterhead stationary. The letter must state the attorney's Pennsylvania Attorney Identification number, E-mail address, and preferred password. A statement that the party agrees to be bound by the Board's guidance for the pilot project and whether he is willing to accept service electronically is also required.

The Guidance for the Pilot Project

The conditions under which counsel may use electronic filing and service are set forth in a Guidance from the Board which will be accessible on the Board's web site. When counsel agree in any case to use electronic filing or service, the Board will issue an order containing the conditions of this program so there will be no doubt as to the rules for that particular case. Of course, as we learn more about how the system works in the real world, the conditions of this guidance are likely to change in detail.

September 12, 2000

**ENVIRONMENTAL HEARING BOARD
ELECTRONIC FILING AND SERVICE PILOT PROJECT
TEMPORARY GUIDANCE FOR ELECTRONIC FILING
OR SERVICE BY CONSENT**

The Board intends to inaugurate a pilot project for the use and testing of its recently established program to permit counsel to file and serve legal documents through use of the Board's web site. A guide to the use of the system will be published on the Board's web site at www.ehb.verilaw.com.

This guidance is for counsel who agree to use electronic filing in a particular case with the consent of all other counsel in the case during the course of this pilot project. Assuming the project demonstrates that electronic filing and service would be beneficial to the practicing bar as an elective means of filing and service, the Board will adopt necessary amendments to its rules of procedure in the Pennsylvania Code of Regulations.

1. The Board will maintain the docket on its web site available to all members of the public and will accept filings of legal documents by electronic transmission from registered users. Each registered user will be assigned a password for use of the system for filing and service. The docket system will register the time and date of any such filing and will provide a status message to the parties when the document is filed. The Board's official file will consist of both electronic and hard copy filings. The electronic file will be available on the Board's web site, and the hard copy file will be available to the public for inspection and copying during the Board's office hours to the extent consistent with the proper discharge of the Board's duties.
2. Use of electronic filing and service will be limited to those Pennsylvania lawyers, or other counsel permitted by Board order to represent a party for purposes of the case, who have registered for use. Registration may be made only by filing a letter registration statement on the attorney's professional or organizational letterhead with the Board. The form of such a registration statement is attached.
3. All legal documents other than the initial notice of appeal or complaint may be filed electronically. An electronic filing will be deemed the equivalent of the original document. If the document with electronic exhibits exceeds 25 pages in length, the party must also file the document in hard copy. In addition, a party may also elect to file any legal document by hard copy.
4. All attachments to an electronic filing, such as exhibits, may be filed by hard copy rather than by electronic means. However, the filing of any

such legal document or attachments by hard copy must be mailed to the Board on the same date as the electronic transmission of the related legal document. This program ultimately may permit faxing exhibits to the Board for entry in the electronic docket through an automated system.

5. Filings must be made through WordPerfect for Windows or Microsoft Word for Windows at or before the time they are due to be filed.
6. Retroactive electronic filing of documents will not be permitted. However, delay in the receipt of a timely transmission by the Board or other counsel will not be a basis for dismissal or other imposition of sanctions.
7. The electronic filing of a document by counsel constitutes a certification that the original hard copy was signed and, where applicable, verified.
8. A party who files any legal paper with the Board through the Board's web site shall be responsible for:
 - A. An objective description of the document filed consistent with the title placed on the document since this is the description that will appear on the Board's docket,
 - B. any delay, disruption, interruption of the electronic signals and readability of the document, and
 - C. any risk that a document filed by means of electronic filing may not be properly or timely filed with the Board.

The Board will be liberal in excusing transmission failures and deficiencies, and all counsel must also be willing to cooperate in excusing transmission failures or deficiencies and supplying other counsel with hard copy of electronically filed documents in the event of a filing or service deficiency. However, intentional failure to file or serve on a timely basis will not be tolerated by the Board.

9. An executed hard copy of the filing, with verifications if required, shall be maintained by the filing party and produced on request of the Board or any other party within 14 days of the request.
10. A party who files a legal document electronically need not elect to accept service by electronic means. However, the filing of a registration statement or an amendment thereto which elects to accept service constitutes a certification that the filing party will accept service by E-Mail of all legal papers permitted to be filed in the proceeding by electronic means. This election may be changed only by filing an amendment to the attorney's registration statement with the Board.

11. The Board may require by order that all filings and service made after the entry of an order scheduling a hearing on the merits be made by hard copy.
12. Subpoenas and any bond or check required to be filed with an appeal of a penalty assessment may not be filed electronically.
13. Counsel shall take precautions to assure that their transmissions will not result in disruption to the system such as the transmission of computer viruses. Counsel shall undertake to advise the Board and all other counsel in the case of any risk of such a disruption.
14. During the Pilot Project, the Board's staff will review transmissions in those cases in which electronic filing has been agreed upon before posting on the web site as an extra security measure to determine whether there have been any improper filings to protect against incorrect or otherwise improper matter being placed on the public docket. The Board will release all proper filings for docketing and service and send a confirmation message to the parties within 24 working hours of filing. The filing will be accepted as of the filing date. Service of the filing on those willing to accept electronic service will be effective when the Board so releases the filing. In the unlikely event a filing is not accepted from qualified counsel, counsel will be notified of any such problems and will be given a reasonable amount of time to make any necessary curative filing.

May 15, 2000

ATTORNEY OR ORGANIZATION LETTERHEAD

Mr. William H. Phillipy^{IV}
Secretary to the Board
Environmental Hearing Board
2nd Floor, Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101

Re: Registration for Use of Electronic Filing System

Dear Mr. Phillipy:

I want to use the Board's electronic filing system for the filing of legal papers in accordance with the guidelines issued by the Board. Until further notice, my full name and address is as set forth in this letter on my or my firm's letterhead.

My Pennsylvania Attorney Identification Number is _____.

My e-mail address is _____.

My preferred password (you may identify your preference for one or more passwords in order of your preference) is _____.

I agree to accept service electronically in all cases except as I may designate by an amendment to this registration statement from time to time.

I agree to use the system under the terms and conditions of the Board's guidance for use of this system or the Board's rules on electronic filing when those rules are promulgated.

I understand that the Board will advise me, at the e-mail address I entered above, whether I have been approved to use the system.

Sincerely,

Tab 1



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

October 25, 2001

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

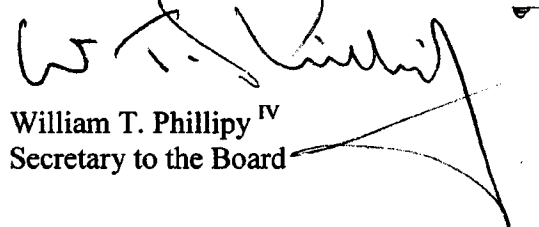
Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Madam and Gentlemen:

In accordance with the provisions of the Regulatory Review Act, the Environmental Hearing Board is transmitting a copy of the proposed 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--6
 SUBJECT: Practice & Procedure
 AGENCY: ENVIRONMENTAL HEARING BOARD

TYPE OF REGULATION

- X 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

RECEIVED
 2001 OCT 25 PM 3:19
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/25/01	<i>D. Newton</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10/25/01	<i>P. Russo</i>	
10-25-01	<i>Frank Costello</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10-25-01	<i>A. Rybarczyk</i>	
10/25/01	<i>Elena Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
10/25/01	<i>James Thorne</i>	LEGISLATIVE REFERENCE BUREAU