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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 20, 2002

Honorable George J. Miller, Chairman  
Environmental Hearing Board  
Rachel Carson State Office Building  
400 Market Street, 2nd Floor  
Harrisburg, PA 17101

Re: Regulation #106-7 (IRRC #2264)  
Environmental Hearing Board  
Practice and Procedure

Dear Chairman Miller:

Enclosed are the Commission's Comments which list objections and suggestions for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval; however, they specify the regulatory criteria which have not been met.

The Comments will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director

wbg

Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources and Energy Committee  
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee  
Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee  
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee

# **Comments of the Independent Regulatory Review Commission**

**on**

## **Environmental Hearing Board Regulation No. 106-7**

### **Practice and Procedure**

**June 20, 2002**

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Environmental Hearing Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. General. – Clarity.**

Section 1021.71, relating to complaints filed by the Department, Section 1021.72, relating to complaints filed by other persons and Section 1021.73, relating to transferred matters, include the phrase “Service of the complaint or petition shall be by personal service or by any form of mail requiring a receipt....” The Board should clarify the phrase “any form of mail,” what qualifies as “receipt” and what types of delivery services, aside from the United States Postal Service, would be acceptable for delivery of service.

#### **2. Section 1021.31. Signing. – Clarity.**

##### *Subsection (c)*

This subsection states, “The Board may impose an appropriate sanction for a bad faith violation of Subsection (b).” What sanctions does the Board consider “appropriate”? For clarity, the Board should include a cross-reference or citation that outlines the Board’s sanctions.

#### **3. Section 1021.73. Transferred matters. – Clarity.**

##### *Subsection (b)*

This subsection provides that a party who initiates a transferred action shall file a complaint “Within the time period directed to do so by the Board.” This phrase is vague. What are the minimum and maximum amounts of time the Board will allow a party to file a complaint?

#### **4. Section 1021.94. Dispositive motions. – Clarity.**

##### *Service*

Subsection (c) includes the requirements for dispositive motions, including signatories, format and service. However, there are no instructions as to how service should be made. For clarity, the Board should include a cross-reference to Section 1021.34, relating to certificate of service. If there are special requirements for service in this section similar to those contained in Section 1021.72(b), relating to complaints filed by other persons or 1021.73(c), relating to transferred matters, the Board should include those requirements.

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# INDEPENDENT REGULATORY REVIEW COMMISSION

**To:** William T. Phillipy  
**Agency:** Environmental Hearing Board  
**Phone:** 7-3483  
**Fax:** 3-4738

**From:** Kristine M. Shomper  
**Administrative Officer**  
**Company:** Independent Regulatory Review  
**Commission**  
**Phone:** (717) 783-5419 or (717) 783-5417  
**Fax:** (717) 783-2664

**Date:** June 20, 2002  
**# of Pages:** 3

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the Environmental Hearing Board's regulation #106-7 (IRRC #2264). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: K.L. Yeager Date: 6/20/02