

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Environmental Hearing Board

(2) Agency Number: 106

Identification Number: 106-10

IRRC Number: 3008

(3) PA Code Cite: Title 25, Chapter 1021

(4) Short Title: Environmental Hearing Board Rules of Practice and Procedure

(5) Agency Contacts (List Telephone Number and Email Address):

Contact: Maryanne Wesdock, (412) 565-5245, mwesdaok@pa.gov

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation
 Final Regulation
 Final Omitted Regulation

- Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed regulations amend the Environmental Hearing Board's Rules of Practice and Procedure and may be summarized as follows:

1021.2, 1021.32 – 1021.37, 1021.39, 1021.51, 1021.201 – Revisions to the rules on filing, service and related rules which would require filing and service by electronic means, except where the Environmental Hearing Board determines it would be an unreasonable burden.

1021.31 – Clarifies that electronically filed documents are covered by the rule on signage.

1021.94 and 1021.94a – The proposed amendment to these regulations addresses the question of whether responses in support of a dispositive motion may contain additional facts and legal bases than those set forth in the original motion. The proposed amendment would prohibit this practice. An alternate proposal would allow this practice but provide a different timeframe for filing such a response, as well as a reply to the response. The Environmental Hearing Board will take into consideration comments received on this proposed amendment in determining how best to address the issue.

1021.103 – The proposed amendment would incorporate Pa.R.C.P. into the Environmental Hearing Board's rule on subpoenas.

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1021.122 – A minor clarification to the rule on burden of proof and proceeding to avoid potential confusion over use of the term “private party” when, in fact, the rule simply intended to refer to “another party.”

1021.2, 1021.171-174, 1021.181 – The proposed amendments would eliminate all rules pertaining to the Costs Act since the Act has expired.

(8) State the statutory authority for the regulation. Include specific statutory citation.

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

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

1021.2, 1021.31 – 1021.37, 1021.39, 1021.51, 1021.201 – Rules requiring the electronic filing and service of documents will allow the Environmental Hearing Board to operate more efficiently. Additionally, electronic filing will allow the public to easily access documents on the Environmental Hearing Board’s electronic docket on its website. Electronic service ensures that all parties to an action receive filings in a timely manner.

1021.94 and 1021.94a – Amendments to the Environmental Hearing Board’s rules on dispositive motions will clarify what types of responses may be filed to a dispositive motion. In proposing revisions to the dispositive motion rules, the Board is also asking for feedback from practitioners who practice before the Board.

1021.103 – This amendment makes the Environmental Hearing Board’s rule on subpoenas consistent with the Pa.R.C.P.

1021.122 – This amendment to the Environmental Hearing Board’s rule on burden of proof and proceeding was necessary to clarify any potential confusion over use of the term “private party” when, in fact, the language should simply read “another party.”

1021.2, 1021.171-174, 1021.181 – The deletion of rules pertaining to the Costs Act was necessitated by the expiration of the Costs Act.

(11) 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 regulations.

No.

(12) How does this regulation compare with those of the other states? How will this affect

Pennsylvania's ability to compete with other states?

The Environmental Hearing Board has not done a study of the rules of practice and procedure of comparable administrative tribunals in other states but does not believe that the amendments could in any way put Pennsylvania at a competitive disadvantage. In fact, the electronic filing amendments will make appeals before the Pennsylvania Environmental Hearing Board more efficient for parties, including the regulated community. We have been advised by a private practitioner in Allegheny County who has practiced in at least 20 other states that the Pennsylvania Environmental Hearing Board is "the most efficient and proficient environmental law tribunal" he had ever encountered.

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

We do not believe that the proposed regulations will affect the regulations of any other state agencies. Where the regulations affect other regulations of the Environmental Hearing Board, those regulations have been so revised and are contained in this set of proposed rulemaking.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The proposed regulations are based on the recommendations of the Environmental Hearing Board Rules Committee, a nine member advisory committee established by Section 5(a) of the Environmental Hearing Board Act, 35 P.S. § 7515(a). The Committee is comprised of attorneys from both the public and private sectors appointed by the Governor, the majority and minority leadership of the House and Senate, the Secretary of the Department of Environmental Protection and the Citizens Advisory Council.

Public participation in the Rules Committee meetings is encouraged and the meetings receive sunshine notice according to law.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Anyone who is a litigant before the Environmental Hearing Board will be affected by the proposed regulations. This includes the Department of Environmental Protection, the regulated community and citizens groups, and any member of the public who appeals an action of the Department of Environmental Protection. Any Commonwealth agency who appeals or joins in an action taken by the Department of Environmental Protection will also be affected by the regulations.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Any person who litigates an appeal before the Environmental Hearing Board will be required to comply with the regulations. This includes the entities listed in the response to question #15.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The proposed regulations will benefit all litigants who appear before the Environmental Hearing Board because the regulations will clarify existing rules of practice and procedure and will also make the filing of documents with the Board more efficient. The electronic filing regulations in particular will benefit the Commonwealth because these regulations will greatly reduce the amount of paperwork generated by the Board and by parties appearing before the Board. We do not perceive any financial, economic or social impact of the regulations on the entities listed in question 17.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The electronic filing regulations will greatly reduce the amount of paper generated by and to the Environmental Hearing Board and will make the use of our limited administrative staff (only 2 secretaries for the entire statewide agency) more efficient. There are no adverse effects of the regulations.

(19) 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. Explain how the dollar estimates were derived.

Although we cannot estimate the exact dollar amount, the proposed electronic filing regulations will greatly reduce the amount of paperwork required to be filed by the regulated community who are parties to an action before the Environmental Hearing Board and will also greatly reduce their cost of mailings and delivery.

The other proposed regulations will have no economic impact on the regulated community other than to possibly reduce the need for litigation over uncertainties in the rules.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Although we cannot estimate the exact dollar amount, the proposed electronic filing regulations will greatly reduce the amount of paperwork required to be filed by any local governments who are a party to an action before the Environmental Hearing Board and will also greatly reduce their cost of mailings and delivery.

The other proposed regulations will have no economic impact on local governments other than to possibly reduce the need for litigation over uncertainties in the rules.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Although we cannot estimate the exact dollar amount, the proposed electronic filing regulations will greatly reduce the amount of paperwork generated by the Environmental Hearing Board and will also greatly reduce the agency's cost of mailings. The electronic filing regulations will also greatly reduce the amount of paperwork generated by the Department of Environmental Protection and any other state agencies who are parties to an action before the Board and will reduce the cost of mailings and deliveries.

The Environmental Hearing Board spent approximately \$14,041 in FY 2011-12 to upgrade its electronic filing system so as to accommodate mandatory electronic filing. An additional \$25,545 will be spent in FY 2012-13 to complete the upgrades. No additional expenses are anticipated.

The other proposed regulations will have no economic impact on state government other than to possibly reduce the need for litigation over uncertainties in the rules.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

N/A – No legal, accounting or consulting procedures, reporting or recordkeeping is required.

(23) 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. **The exact amount of savings cannot be measured as explained in the responses to questions 19, 20 and 21.**

	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	Not measurable	Not measurable	Not measurable	Not measurable	Not measurable	Not measurable
COSTS:						
Regulated Community						
Local Government						
State Government	Board will spend \$25,545 to upgrade its electronic filing system.					
Total Costs	\$25,545	None	None	None	None	None
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	None	None	None	None	None	None

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Environmental Hearing Board	\$1,662,421.81	\$1,313,785.99	\$1,357,067.41	Current FY's budget is \$1,977,100.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Not applicable.

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

The proposed electronic filing amendments allow the EHB to excuse persons from the mandatory electronic filing requirement where it would impose an unreasonable burden on the filer.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

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.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The concept of conducting a regulatory flexibility analysis 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.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

(29) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: 30 days from publication in Pa. Bulletin.

B. The date or dates on which public meetings or hearings will be held: All Environmental Hearing Board Rules Committee meetings to discuss the proposed rules were open to the public, as well as the meeting of the Environmental Hearing Board Judges to vote on the rules. Additionally, the proposed rules will be presented to environmental practitioners for discussion and input at the Pennsylvania Bar Association Environmental and Energy Law Section meeting in Harrisburg on November 15, 2012. The proposed rules will also be circulated on the Environmental and Energy Law Section's listserv.

C. The expected date of promulgation of the proposed regulation as a final-form regulation: Upon completion of the regulatory review process – approximately 9 months.

D. The expected effective date of the final-form regulation: Upon publication as a final form regulation in the Pa. Bulletin. Approximately 9 months to one year.

E. The date by which compliance with the final-form regulation will be required: 30 days from publication as a final form regulation in the Pa. Bulletin.

F. The date by which required permits, licenses or other approvals must be obtained: Not applicable.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The regulations will continue to be evaluated by the Environmental Hearing Board Rules Committee at its meetings held every other month. Additionally, the Environmental Hearing Board receives feedback on its regulations at events held by the Pennsylvania Bar Association Environmental and Energy Law Section and county bar association environmental law sections.

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

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

By: *Angela M. Elliott*
(Deputy Attorney General)

APR 16 2013

(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. 106-10

Date of Adoption: November 2, 2012

By: *Thomas W. Renwand*

Title: Thomas W. Renwand, Chairman and Chief Judge

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

By: *Shawn E. Smith*
(Deputy General Counsel)
SHAWN E. SMITH

MAR 25 2013

(Date of Approval)

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

PROPOSED RULEMAKING

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

PREAMBLE

The Environmental Hearing Board (Board) 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 Board.
- (2) To improve the rules of practice and procedure before the Board.
- (3) To institute additional and modified rules of practice and procedure before the Board to require electronic filing and service in nearly all matters before the Board.

This proposed rulemaking was adopted by the Board at its meeting on November 8, 2012.

A. Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Maryanne Wesdock, Senior Counsel, Environmental Hearing Board, Suite 310, 301 Fifth Avenue, Pittsburgh, PA 15222, (412) 565-5245, mwesdock@pa.gov.

C. Statutory Authority

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

D. Background and Purpose

The proposed revisions are modifications to provisions of the rules to improve practice and procedure before the Board. These proposed revisions are based on the recommendations

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of the Environmental Hearing Board Rules Committee, a nine member advisory committee created by section 5 of the act to make recommendations to the Board on its rules of practice and procedure. The Board may promulgate proposed regulations based in whole or in part on the recommendations of the Rules Committee.

The Board has established an electronic filing system allowing parties appearing before the Board to file nearly any document in a proceeding on an electronic docket. This system, after being utilized on a case-by-case basis is now being proposed as the primary docketing system for the Environmental Hearing Board. In addition to some omnibus rule amendments, the proposed amendments described below will allow the Board to require nearly all parties to file nearly all documents in matters before the Board electronically in a manner that will allow the Board's proceedings to be more efficient, open to the public and accessible to parties appearing before the Board.

E. Summary of Proposed Regulations

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

Where the recommendations of the 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 three categories: 1) adoption of new rules; 2) substantive amendments to existing rules; and 3) correction of typographical errors.

1. *Definitions* (1021.2)

The proposed amendments to the Definitions section remove the definition of the *Costs Act*; this definition is no longer necessary because the proposed amendments also remove the sections which refer to the *Costs Act*, a statute that is no longer in effect. All other amendments to the Definitions section are necessary amendments and additions to definitions to support the adoption of a comprehensive set of rules to adopt mandatory participation in the Board's electronic filing system in most appeals.

2. *Signing* (1021.31)

The amendments proposed to Signing (1021.31) clarify that every document filed by a party is covered by the Board's rule on signing and removes any possible distinction that paper documents are to be treated differently.

3. *Filing* (1021.32)

The amendments proposed to Filing (1021.32) are the result of the Board's adoption of a comprehensive electronic filing system. Rule revisions as proposed amend the obligations of parties practicing before the Board, to move Board practice to near-universal electronic filing participation. As such, revisions to 1021.32 provide for electronic filing by parties regardless of whether they are licensed attorneys, describe when a party may be able to file by conventional means (in paper) or by facsimile, and revise procedures for filing conducted through the Board's electronic filing website.

4. *Privacy Issues* (1021.32a)

The additions proposed by this new section create an obligation for filing parties to redact or refrain from including certain personal or private information in filings before the Board under most circumstances.

5. *Service by the Board* (1021.33)

The amendments to this section propose alterations to the Board's internal procedure to reflect the comprehensive electronic filing system, and decrease duplicated efforts.

6. *Service by a Party* (1021.34)

This section proposes to amend the obligations of parties serving documents in a matter before the Board to reflect the comprehensive electronic filing system.

7. *Date of Service* (1021.35)

This section proposes to amend the calculation of effective dates of service for conventionally and electronically filed documents.

8. *Certificate of Service* (1021.36)

This section proposes to amend the requirement to file a certificate of service to coordinate with the Board's comprehensive electronic filing system.

9. *E-mail address* (1021.36a)

This addition proposes a new section that requires all users of the Board's electronic filing system to keep and maintain an up-to-date e-mail address with the Board's electronic filing provider.

10. *Number of copies* (1021.37)

This section proposes to remove the obligation of parties to submit duplicate copies of documents filed with the Board under most circumstances.

11. *Docket* (1021.39)

The amendments to this section are proposed to more clearly explain the Board's electronic filing system and the docket that is maintained on it by the Board's electronic filing provider.

12. *Commencement, form and content* (1021.51)

This section proposes to amend the Board's rules for beginning a matter before the Board by providing for electronic filing of notices of appeal through the Board's electronic filing system and other amendments.

13. *Dispositive motions other than summary judgment motions* (1021.94)

This section proposes two amendments. The first places the same obligation on parties against whom a dispositive motion is filed as is currently contained in 1021.94a (summary judgment motions). The second amends the Board's rules for parties seeking to express support of another party's dispositive motion. Two options were proposed for the second amendment: One option, which is contained in the attached Annex A, would prohibit responses in *support* of a dispositive motion from containing any legal and factual bases not contained in the original motion. The alternative option would be to allow responses in support of a dispositive motion to include legal and factual bases not contained in the original motion, but would provide a different time period for the filing of such responses in order to allow the opposing party ample time to address both the dispositive motion and the response in support of the dispositive motion.

14. *Summary judgment motions* (1021.94a)

This section proposes to amend the Board's summary judgment rule as it applies to parties seeking to express support of another party's motion for summary judgment.

15. *Subpoenas* (1021.103)

The amendment proposed to this section incorporates additional Pennsylvania rules of civil procedure into the Board's rules for subpoenas.

16. *Burden of proceeding and burden of proof* (1021.122)

The amendments proposed to this section make a minor amendment to clarify the burden of proof in third-party appeals.

17. *Attorney Fees and Costs Authorized by the Costs Act* (1021.171-174)

Sections 1021.171 – 1021.174 are proposed for removal to reflect the fact that no party is eligible to recover its costs through the Costs Act because that statute is no longer in effect.

18. *Attorney Fees and Costs Authorized by Statute other than the costs act (1021.181)*

This proposed amendment would remove all reference to the Costs Act from this section.

19. *Composition of the certified record on appeal to Commonwealth Court (1021.201)*

The proposed amendment to this section clarifies that the Board will include a printed copy of electronically filed documents in records certified for the Commonwealth Court.

The Board concurred with each of the recommendations set forth above.

F. Benefits, Costs, Compliance and Paperwork

Benefits

Mandatory electronic filing for most parties before the Board will provide a measurable benefit to the Commonwealth, the public and parties appearing before the Board. By migrating nearly all aspects of Board practice to the Board's electronic filing program, the Board will experience a reduction in the administrative burden posed by service by mail, paper record keeping, and consumption of paper and other supplies. Parties appearing before the Board will enjoy greater access to docket materials, and a reduction in the administrative burden posed by service by mail. Members of the public will benefit from more extensive public access to the Board's open dockets allowing anyone with internet access to view nearly all documents filed during the course of the Board's appeal process.

Costs

The proposed electronic filing amendments will have a favorable economic impact on the Commonwealth and private parties in that it will greatly reduce the amount of paper used by the EHB, other Commonwealth agencies appearing before the EHB, and the private bar filing documents with the EHB. The remaining proposed amendments will either have no measurable fiscal impact on the Commonwealth, political subdivision or the private sector or may have a favorable economic impact in that they may eliminate potential litigation over existing uncertainties in EHB procedures, authority and requirements. Further, the expansion of the Board's electronic filing system may relieve some burdens on the Commonwealth under the Right to Know Law where information contained in the Board's dockets are directly accessible to the public.

Compliance

The proposed amendments will have a minimal impact on compliance costs for parties participating in matters before the Board. Under most circumstances the ability to conduct nearly all aspects of appeal procedure electronically through the Board's electronic filing system will result in a reduction of the administrative burden for parties who will no longer have to provide the Board with paper records or conduct service by mail. Parties who face an

undue burden by the proposed amendments will be able to seek relief from the Board from the electronic filing requirements.

Paperwork

The proposed revisions may require only minor changes to the Board's standard orders.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Board to determine whether the regulations effectively fulfill the goals for which they were intended.

I. 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 Environmental Hearing Board voted to adopt the proposed rules at a public meeting held on November 8, 2012 at the Board's Harrisburg office, Hearing Room 2, Second Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 26, 2013, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

K. Public Comment Regarding Proposed Revisions

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed revisions to Senior Counsel Maryanne Wesdock at mwesdock@pa.gov or at the following address: Maryanne Wesdock, Environmental Hearing Board, 2nd Floor, Rachel Carson State Office Building, P.O. Box 8457, Harrisburg, PA 17105-8457 within 30 days of the date of publication in the Pennsylvania Bulletin.

THOMAS W. RENWAND
Chairman and Chief Judge

Annex A
TITLE 25. ENVIRONMENTAL PROTECTION
PART IX. ENVIRONMENTAL HEARING BOARD
CHAPTER 1021. PRACTICE AND PROCEDURE

DOCUMENTARY FILINGS
FILING AND SERVICE OF DOCUMENTS

§ 1021.2. Definitions.

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

Business day— Any day that is not a Saturday, Sunday, or a legal holiday. ("Legal holiday" means any day designated as a holiday by the President or Congress of the United States or by the Commonwealth.")

[***Costs Act***—The act of December 13, 1982 (P. L. 1127, No. 257) (71 P. S. § § 2031—2035), known as the Commonwealth Agency Adjudicatory Expenses Award.]

Conventional filing—Presenting documents to the Board by hand, mail, or other personal delivery services, for purposes of filing.

Electronic filing—The electronic transmission of documents to the Board through the electronic filing provider for purposes of filing. [The electronic transmission of legal documents by means of a computer or device, other than by facsimile transmission. Legal documents may be electronically transmitted in the format of Word Perfect for Windows or Microsoft Word for Windows or other format as the Board may permit.]

Electronic filing provider—The entity providing electronic filing and electronic service of documents via the internet in Board proceedings.

Electronic service—The electronic transmission of documents through the electronic filing provider to a party, attorney, or representative under these rules.

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Facsimile filing—The transmission of documents to the Board, for purposes of filing, using a machine that can send and receive a facsimile transmission, either as a stand-alone device or as part of a computer system.

Facsimile transmission—The transmission of a source document between locations by encoding the document into electronic signals, transmitting the signals over the telephone system, and reconstructing the electronic signals to print a duplicate of document at the receiving destination.

[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]user—A[n attorney admitted to practice in this Commonwealth, or other counsel permitted by Board order to represent a party for purposes of a particular proceeding,] individual who has [filed] submitted a[n electronic filing]registration statement [with] to the Board and to whom the Board has issued a password authorizing electronic filing and electronic service[through the Board's website].

Registration statement—A completed application to [statement made on professional or organizational letterhead requesting the use of the Board's] use the electronic filing provider for [website for] electronic filing and electronic service in Board proceedings.

§ 1021.31. Signing.

(a) Every [notice of appeal, motion, legal document or other paper]document directed to the Board, and every discovery request or response of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name, or if a party is not represented by an attorney, shall be signed by the party. Each [paper]document shall state the signer's mailing address, e-mail address, and telephone number.

§ 1021.32. Filing.

(a) The following documents shall be conventionally filed or facsimile filed:

(1) A complaint that is original process naming a defendant or defendants.

(2) A motion to be excused from the Board's mandatory electronic filing requirement.

(b) An original notice of appeal may be filed electronically, conventionally, or by facsimile.

(c) *Electronic filing.*

(1) Unless the Board orders otherwise in a particular proceeding, all documents except those listed at subsections (a) and (b) shall be electronically filed. Persons must file a motion under § 1021.92 (relating to procedural motions) to be excused from the mandatory electronic filing requirement. The Board shall excuse persons from the mandatory electronic filing requirement, with respect to all filings or just with respect to specific filings, if the Board determines that the requirement would impose an unreasonable burden on the potential filer.

(2) Documents filed electronically shall not also be filed by other means, unless the Board orders otherwise or the document to be filed includes an original bond or check. When electronically filing documents including an original bond or check, a copy of the document, including a copy of the original bond or check, shall be electronically filed, and the original, including the original bond or check, shall be deposited in the mail, addressed to the Board's headquarters at the address provided in subsection (e)(1).

(3) Electronic filing can be performed only by registered users. Individuals who are not already registered users can become registered users by submitting a registration statement to the Board and receiving a password authorizing electronic filing and service. The registration statement shall be on a form prepared by the Board and will include, among other things, the user's name and mailing address, e-mail address, attorney identification number (if the registered user is an attorney), a request for authorization to participate in electronic filing and electronic service, and consent to accept electronic service of documents permitted to be electronically filed.

(4) Once registration is complete, a registered user may not withdraw from the electronic filing and electronic service system except with leave from the Board.

(5) Filers are responsible for providing an objective description of documents electronically filed. The description shall include:

(i) The party or parties filing/serving the document.

(ii) The title of the document (e.g., Appellant ABC Corporation's Motion for Summary Judgment, Appellant Smith's Motion to Compel Permittee XYZ, Inc. to Produce Documents).

(6) When a document has been filed electronically, the official record is the electronic document filed with the Board, and the filer is bound by the document as filed.

(7) The registered user's log-in and password required to file documents using the electronic filing provider serve as the registered user's signature on all electronic documents filed with the Board. They serve as a signature for purposes of § 1021.31 (regarding signing) and any other purpose for which a signature is required in connection with proceedings before the Board.

(8) If an electronically filed document does not bear the actual signature of the registered user, the name of the registered user under whose login and password the document is submitted must be preceded by "s/" and typed in the space in the document's signature block where the signature would otherwise appear.(e.g., "s/ Jane Doe").

(9) No registered user or other person may knowingly permit or cause a registered user's password to be used by anyone other than an authorized agent of the registered user.

(10) A document that is electronically filed and requires an original signature other than that of the registered user must be maintained by counsel, or—if the party is not represented—by the party itself, until one year after all periods for appeals expire. Such documents shall be maintained by the filer and produced at the request of the Board or any other party within 14 days of the request.

(11) Each document filed electronically must indicate in the caption that it has been electronically filed.

(12) Documents may be electronically filed in WordPerfect format, Microsoft Word format, PDF format, or other formats as the Board may permit. The electronic filing provider will automatically convert any uploaded documents not already in PDF format to PDF format. A document may exceed page limitation rules if the additional pages result solely from the electronic conversion by the electronic filing provider.

(13) To the extent practicable, electronically filed documents shall be formatted in accordance with subsection (e)(4).

(14) An electronic filing complete before midnight Eastern time shall be considered to be filed on that date, so long as it is accepted by the Board. Upon completion of the filing, the electronic filing provider shall issue a transaction receipt that includes the date and time the document was received. The transaction receipt shall serve as proof of filing. In the event that the Board rejects the submitted documents following review, the documents shall not become part of the official Board record and the filer will receive notification of

the rejection. Filers may be required to re-file the documents to meet the necessary filing requirements.

(15) Except in the case of notices of appeal, if electronic filing or service does not occur or is made untimely because of a technical issue, the party or parties affected may seek appropriate relief from the Board.

(16) A registered user shall submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Board. Excerpted information must be clearly and prominently identified as such. Registered users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document, and shall, upon request, provide responding parties with the complete document. Responding parties may timely file the complete document or additional excerpts that they believe are directly germane.

(d) *Facsimile filing.*

(1) Documents permitted under subsections (a), (b), (c)(1), and (c)(2) to be filed by facsimile shall be transmitted to the Board's facsimile line: (717) 783-4738.

(2) The date of facsimile filing shall be the date the document is received by the Board.

(3) For documents more than 10 pages long, the facsimile filed shall consist of the certificate of service and the first five pages and last five pages of each document except exhibits. Exhibits shall be omitted from the filing transmitted to the Board's facsimile line.

(4) On the same day a document is transmitted to the Board's facsimile line, the original (including exhibits) shall be deposited in the mail, addressed to the Board's headquarters at the address provided in subsection (e)(1). When facsimile filing a document including an original bond or check, a copy of the bond or check shall be included with the document transmitted by facsimile, and the original bond or check shall be included with the original of the document deposited in the mail.

(5) Documents shall be formatted in accordance with subsection (e)(4).

(e) *Conventional filing.*

(1) [(a)] Documents permitted to be conventionally filed with the Board under subsections (a), (b), (c)(1), and (c)(2) shall be filed at [its] the Board's headquarters—2nd Floor, Rachel Carson State Office Building, 400 Market Street, Post Office Box 8457, Harrisburg, Pennsylvania 17105-8457.

(2) [(b)] The date of conventional filing shall be the date the document is received by the Board.

[(c) Documents may be filed by personal delivery, by mail or by facsimile. Legal documents, as defined in § 1021.2 (related to definitions), may be filed electronically in accordance with this chapter. 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.]

[(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 the following:]

[(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.]

[(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 shall also be filed with the Board in accordance with subsections (a) and (c) and § 1021.37 (relating to the number of copies). Exhibits to legal documents may be filed and served either electronically or by hard copy in accordance with the sections in this chapter 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 § 1021.34(c) (relating to service by a party).]

[(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.]

(3) Only hard copies may be conventionally filed, unless the filer has secured prior approval from the Board to conventionally file documents in other formats (such as on compact disks, DVDs, or other digital storage media).

(4) [(h)]With the exception of exhibits, [D]documents filed with the Board[, other than exhibits,] must be typewritten on letter-size paper (approximately 8 to 8 1/2 inches by 10 1/2 to 11 inches) and pages after the first must be numbered. With the exception of exhibits, notices of appeal, and complaints, documents filed[Legal documents, as defined in § 1021.2,] must be double spaced, except that footnotes must be single spaced and quotations in excess of a few lines must be single spaced and indented. Photocopied documents will be accepted as typewritten, provided that all copies are legible.

(f) Failure to comply with[this] subsections (c)(5), (c)(11), (d)(5), or (e)(4) will not result in dismissal of a filing, but the Board may request that the party [to]resubmit the document in proper form.

§ 1021.32a. Privacy issues

Persons filing documents shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from documents filed with the Board, including exhibits, unless filed under seal or otherwise ordered by the Board:

- (1) Social security numbers.**
- (2) Financial account numbers.**
- (3) Dates of birth.**
- (4) Names of minor children.**

§ 1021.33. Service by the Board.

(a) Orders, notices and other documents [originating with] entered or issued by the Board shall be served upon the person designated in the notice of appearance, or if no notice of appearance has been entered, upon the person upon whom the notice of appeal or complaint was served[by mail or in person].

(b) The Board shall serve documents it enters or issues upon registered users participating in the proceeding through the electronic filing provider, subject to the provisions of these rules. The Board shall serve persons other than registered users by mail or in person.

(c) An order filed electronically without the original signature of an administrative law judge shall have the same force and effect as if the judge had affixed a signature to a paper copy of the order.

(d) Subsections (a)-(c) supersede[s] 1 Pa. Code § 33.31 (relating to service by the agency).

§ 1021.34. Service by a party.

(a) **Notices of appeal must be served as provided in § 1021.51(g), and complaints filed by the Department must be served as provided in § 1021.71(b).**

(b) Copies of each document filed with the Board shall be served upon every party to the proceeding on or before the day that the document is filed with the Board. Service upon a party represented by an attorney in the matter before the Board shall be made by serving the attorney.

[(b)c] Electronic service of documents to other registered users through the electronic filing provider shall be considered as valid and effective service and shall have the same legal effect as serving an original paper document. Registered users who receive documents by electronic service shall access the documents using the electronic filing provider. [When a document is filed with the Board by overnight delivery, facsimile or personal service, it shall be delivered to the opposing parties on the same day or by overnight delivery.]

(d) **Documents filed electronically shall be served by hand, mail, other personal delivery, or facsimile upon any parties not represented by registered users or, for parties representing themselves, upon any parties who are not registered users.**

(e) **Subpoenas, and documents that must be conventionally filed with the Board under § 1021.32(b), shall be served by hand, mail, or other personal delivery. Documents that must be conventionally or facsimile filed with the Board under § 1021.32(a), shall be served by hand, mail, other personal delivery, or facsimile.**

[(e)f] If a party will not receive electronic service[I] in a matter[s] involving a request[s] for expedited disposition, service shall be made upon that party within [the ensuing] 24 hours [of the time] of filing the document with the Board. For purposes of this subsection, service means actual receipt by the [opposing] party served.

(g) **If a person filing electronically becomes aware that the notice of electronic filing was not successfully transmitted to a registered user, or that the notice transmitted to the registered user is defective, the filer shall serve the electronically filed document upon the registered user by hand, mail, other personal delivery, or facsimile immediately upon notification of the deficiency.**

[(d) Service of legal documents may be made electronically on a registered attorney by any other registered attorney.](h) The filing of a registration statement constitutes a certification that the registered [attorney]user will accept electronic service of documents permitted to be electronically filed.[any legal document from any other registered attorney. A registration statement includes the attorney's name and address, e-mail address, attorney identification number, and a request to register to file and accept service electronically. 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.]

(i) Subsections (a)—(~~d~~~~h~~) supersede 1 Pa. Code § 33.32 (relating to service by a participant).

§ 1021.35. Date of service.

(a) **For electronic service, the date of service of a document shall be the date that the electronic filing provider transmits the notice of electronic filing. For other types of service, [T]the date of service shall be the date the document served is mailed, delivered in person, or transmitted [electronically] to the party's facsimile line.**

(b) **For the sole purpose of computing the deadlines under this chapter for responding to documents:**

(1) **Documents served by electronic service shall be deemed served, for purposes of responding, when notice of the electronic filing is transmitted to registered users in the proceeding, provided the transmission is complete before 4:30 p.m. U.S. Eastern Time on a business day. Otherwise, documents served by electronic service shall be deemed served the next business day.**

(2) **Documents served by facsimile shall be deemed served, for purposes of responding, when transmission of the facsimile is complete, provided the transmission is complete before 4:30 p.m. U.S. Eastern Time on a business day. Otherwise, documents served by facsimile shall be deemed served the next business day.**

(3) **Documents served by mail shall be deemed served 3 days after the date of actual service.**

[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.] (~~b~~~~c~~) Subsections (a)-(b) supersede[s] 1 Pa. Code § 33.34 (relating to date of service).

§ 1021.36. Certificate of service.

(a) Each document **[which is required to be]** filed with the Board shall include a certificate of service which shall certify the date and manner of service and the name and **mailing** address of the person served, **except as provided in subsection (b).**

(b) **For electronic service, it shall be sufficient for the certificate to state that the document was filed using the electronic filing provider and to identify the registered users in the proceedings.**

([b]c) Subsections (a)-(b) supersede[s] 1 Pa. Code § 33.35 (relating to proof of service).

§ 1021.36a. E-mail addresses.

All registered users must maintain an active e-mail address to receive electronic notice and electronic service from the electronic filing provider. Each registered user has a duty to promptly update his or her e-mail account information with the electronic filing provider whenever there is a change in e-mail address.

§ 1021.37. Number of copies.

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

(1) One original and two copies of each of the following:

(i) Notices of appeal.

(ii) Complaints.

(iii) Answers.

(iv) Posthearing briefs.

(v) Dispositive motions and related memoranda, responses and replies.

(2) One original and one copy of each of the following:

(i) Petitions for supersedeas and any related responses.

(ii) Prehearing memoranda.

(iii) Nondispositive motions and petitions (other than motions for stays, extensions and continuances of procedural deadlines), and related memoranda, responses and replies.

(3) One original of other documents.]When a document is electronically filed, the filer need electronically file only one copy of the document.

(b) For conventional filings, and for hard copies mailed to the Board in association with a facsimile filing, one original must be filed, unless the Board orders otherwise.

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

§ 1021.39. 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 **electronic filing[s]** of **[legal]documents [by electronic transmission]** from registered **users[attorneys]** **subject to the provisions of these rules.**

(b) 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]electronic filing provider** will transmit **[electronically a status message]a notice of the electronic filing** to all registered **[attorneys]users** in the proceeding**[when the document is filed].**

(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.

(d) 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.

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

FORMAL PROCEEDINGS

APPEALS

1021.51. Commencement, form and content.

(a) An appeal from an action of the Department shall commence with the filing of a **[written]** notice of appeal with the Board.

(b) The caption of a**[n] notice of** appeal must be in the following form:

ENVIRONMENTAL HEARING BOARD
2nd Floor, Rachel Carson State Office Building
400 Market Street, Post Office Box 8457
Harrisburg, Pennsylvania 17105-8457

JOHN DOE, Appellant
234 Main Street, Smithtown,
Jones County, Pennsylvania 15555

(Telephone (123) 456-7890)

[v. Docket No.

**Commonwealth of Pennsylvania
Department of**

, Appellee]

(c) The **notice of appeal** must set forth the name, **mailing address**, **e-mail address**, and telephone number of the appellant. **If the appellant is represented by an attorney, the notice of appeal shall be signed by at least one attorney of record in the attorney's individual name.**

(d) If the appellant has received written notification of an action of the Department, a copy of the action shall be attached to the **notice of appeal**.

(e) The **notice of appeal** must set forth in separate numbered paragraphs the specific objections to the action of the Department. The objections may be factual or legal.

(f) An original notice of appeal shall be filed electronically, conventionally, or by facsimile.

(1) Electronic filing

(i) If a bond or check is required to secure payment of a penalty, a copy of the bond or check shall be included with the electronic filing, and the notice of appeal and attachments—including the original bond or check—shall also be deposited in the mail, addressed to the Board's headquarters at the address provided in subsection (f)(2)(i).

(ii) An electronic filing complete before midnight Eastern time shall be considered to be filed on that date, so long as it is accepted by the Board.

(iii) To the extent practical, the notice of appeal shall be formatted in accordance with subsection (f)(2)(v). Failure to comply with this requirement will not result in dismissal of the notice of the filing, but the Board may request that the appellant resubmit the notice of appeal in proper form.

(iv) The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve by facsimile or overnight mail a copy on each of the following:

(A) The office of the Department issuing the notice of Departmental action.

(B) The Office of Chief Counsel of the Department or agency taking the action appealed.

(C) In a third party appeal, the recipient of the action. The service shall be made at the address set forth in the document evidencing the action by the Department or at the chief place of business in this Commonwealth of the recipient.

(2) *Conventional filing*

(i) An original notice of appeal that is conventionally filed shall be filed at the Board's headquarters—2nd Floor, Rachel Carson State Office Building, 400 Market Street, Post Office Box 8457, Harrisburg, Pennsylvania 17105-8457.

(ii) The date of conventional filing shall be the date the original notice of appeal is received by the Board.

(iii) Only one copy of the notice of appeal and any attachments must be conventionally filed, unless the Board orders otherwise.

(iv) Only hard copies of original notices of appeal shall be conventionally filed, unless the filer has secured prior approval from the Board to conventionally file the original notice of appeal in another format (such as on compact disks, DVDs, or other digital storage media).

(v) The notice of appeal must be typewritten on letter-size paper (approximately 8 to 8 1/2 inches by 10 1/2 to 11 inches) and pages after the first must be numbered. Photocopies will be accepted as typewritten, provided that all copies are legible. Failure to comply with these requirements will not result in dismissal of a filing, but the Board may request that the appellant resubmit the notice of appeal in proper form.

(vi) The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve a copy on the individuals and entities listed in (f)(1)(iv)(A)-(C) in the same manner in which the notice of appeal is filed with the Board.

(3) *Facsimile filing*

(i) Original notices of appeal filed by facsimile shall be transmitted to the Board's facsimile line: (717) 783-4738. If a bond or check is required to secure payment of a penalty, a copy of the bond or check shall be included with the facsimile filing, and the notice of appeal and attachments—including the original bond or check—shall also be deposited in the mail, addressed to the Board's headquarters at the address provided in subsection (f)(2)(i).

(ii) The date of facsimile filing shall be the date the original notice of appeal is received by the Board.

(iii) For original notices of appeal more than 10 pages long, the facsimile filed shall consist of the certificate of service and the first five pages and last five pages of each document except exhibits. Except for copies of checks and bonds required to secure payment of a penalty, exhibits shall be omitted from the filing transmitted to the Board's facsimile line.

(iv) On the same day an original notice of appeal is transmitted to the Board's facsimile line, the original (including exhibits) shall be deposited in the mail, addressed to the Board's headquarters at the address provided in subsection (f)(2)(i).

(v) The notice of appeal shall be formatted in accordance with subsection (f)(2)(v). Failure to comply with this requirement will not result in dismissal of the notice of the filing, but the Board may request that the appellant resubmit the notice of appeal in proper form.

([f]g) When the appeal is from an assessment of a civil penalty for which the statute requires an appellant to prepay the penalty or post a bond, the appellant shall follow the procedures in § 1021.54a (relating to prepayment of penalties). In addition to those in this section.

(i) The service upon the recipient of a permit, license, approval, certification or order, as required under subsection (h)(1), shall subject the recipient to the jurisdiction of the Board, and the recipient shall be added as a party to the third-party appeal without the necessity of filing a petition for leave to intervene under § 1021.81 (relating to intervention). The recipient of a permit, license, approval **[or]**, certification **or order** who is added to an appeal under this section shall still comply with § § 1021.21 and 1021.22 (relating to representation; and notice of appearance.)

(j) Other recipients of an action under subsection (h)(2), (3) or (4), may intervene as of course in the appeal by filing an entry of appearance within 30 days of service of the notice of appeal in accordance with § § 1021.21 and 1021.22, without the necessity of filing a petition for leave to intervene under § 1021.81.

(k) The original notice of appeal shall include a certificate of service which shall certify the date and manner of service, and the name and mailing address of the person served. [The appellant shall provide satisfactory proof that service has been made as required by this section.]

(l) Subsections (a)—(k) supersede 1 Pa. Code § § 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

SPECIAL ACTIONS

§ 1021.74a. Verification of pleadings

Pleadings authorized under §§ 1021.71-1021.74 shall be verified in accordance with Pa.R.C.P. 1024.

MOTIONS

§ 1021.94. Dispositive motions other than summary judgment motions.

(b) A response **in opposition** to a dispositive motion **[may]shall** be filed within 30 days of service of the motion and shall be accompanied by a supporting memorandum of law or brief.

(c) **A notification to the Board that a party joins in a dispositive motion shall be filed within 15 days of service of the motion. Non-moving parties shall not raise any additional legal or factual bases in support of the dispositive motion except as permitted by order of the Board.**

[(c)d] A reply to a response to a dispositive motion may be filed within 15 days of the date of service of the response, and may be accompanied by a supporting memorandum of law or brief. Reply briefs or memoranda of law shall be as concise as possible and may not exceed 25 pages. Longer briefs or memoranda of law may be permitted at the discretion of the **[presiding administrative law judge]Board**.

[(d)e] An affidavit or other document relied upon in support of a dispositive motion or response, that is not already a part of the record, shall be filed at the same time as the motion or response or it will not be considered by the Board in ruling thereon.

(f) When a dispositive motion is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of the adverse party's pleading or its notice of appeal, but the adverse party's response must set forth specific issues of fact or law showing there is a genuine issue for hearing. If the adverse party fails to adequately respond, the dispositive motion may be granted against the adverse party.

[(e)g] Subsection (a) supersedes 1 Pa. Code § 35.177 (relating to the scope and content of motions). Subsection (b) supersedes 1 Pa. Code § 35.179 (relating to objecting to motions).

Comment

The responses to a dispositive motion should be limited to the legal and factual bases contained in the motion; a party wishing to raise other grounds for granting a dispositive motion should file a separate motion before the dispositive motion deadline, or seek leave from the Board to file a dispositive motion after the dispositive motion deadline.

§ 1021.94a. Summary judgment motions.

(f) *Other parties supporting a motion for summary judgment.* A notification to the Board that a party joins in a motion for summary judgment may be filed within 15 days of service of the motion. Non-moving parties shall not raise any additional legal or factual bases in support of the motion for summary judgment except as permitted by order of the Board.

(g) *Opposition to motion for summary judgment.* Within 30 days of [the date of] service of the motion, a party opposing the motion shall file the following:

(1) A response to the motion for summary judgment which includes a concise statement, not to exceed two pages in length, as to why the motion should not be granted.

(2) A response to the statement of undisputed material facts either admitting or denying or disputing each of the facts in the movant's statement. Any response must include citation to the portion of the record contravening a material fact. The citation must identify the document and specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on demonstrating existence of a genuine issue as to the fact disputed. An opposing party may also include in the responding statement additional facts the party contends are material and as to which there exists a genuine issue. Each fact shall be stated in separately numbered paragraphs and contain citations to the motion record. The response to the statement of undisputed material facts may not exceed five pages in length unless leave of the Board is granted.

(3) A brief containing the legal argument in opposition to the motion.

(h) *Length of brief in support of and in opposition to summary judgment.* Unless leave of the Board is granted, the brief in support of or in opposition to the motion may not exceed 30 pages.

(i) *Evidentiary materials.* Affidavits, deposition transcripts or other documents relied upon in support of a motion for summary judgment or response must accompany the motion or response and be separately bound and labeled as exhibits. Affidavits must conform to Pa.R.C.P. 76 and 1035.4 (relating to definitions; and affidavits).

(j) *Proposed order.* The motion shall be accompanied by a proposed order.

(k) *Reply brief.* A reply brief may be filed by the movant within 15 days of the date of service of the response. It may not exceed 15 pages unless leave of the Board is granted. Additional briefing may be permitted at the discretion of the [presiding administrative law judge]Board.

(l) *Summary judgment.* When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading or its notice of appeal, but the adverse party's response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing there is a genuine issue for hearing. If the adverse party does not so respond, summary judgment may be entered against the adverse party. Summary judgment may be entered against a party who fails to respond to a summary judgment motion.

(m) *Judgment rendered.* The judgment sought shall be rendered forthwith if the motion record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Comment

The statement of material facts should be limited to those facts which are material to disposition of the summary judgment motion and should not include lengthy recitations of undisputed background facts or legal context. **The responses to a motion for summary judgment should ordinarily be limited to the legal and factual bases contained in the motion; a party wishing to raise other grounds for summary judgment should file a separate motion before the dispositive motion deadline, or seek leave from the Board to file a motion for summary judgment after the dispositive motion deadline.**

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

§ 1021.103. Subpoenas.

(a) Except as otherwise provided in this chapter or by order of the Board, requests for subpoenas and subpoenas shall be governed by Pa.R.C.P. 234.1—234.4, 234.6—234.9, and 4009.21-4009.27. When the term “court” is used in Pa.R.C.P. “Board” is to be understood; when the terms “Prothonotary” or “clerk of court” are used in Pa.R.C.P. “Secretary to the Board” is to be understood.

EVIDENCE

§ 1021.122. Burden of proceeding and burden of proof.

(c) A party appealing an action of the Department shall have the burden of proof in the following cases:

(4) When a party appeals or objects to a settlement of a matter between the Department and [a private]another private party.

[ATTORNEY FEES AND COSTS AUTHORIZED BY THE COSTS ACT]

[§ 1021.171. Scope.

This section and §§ 1021.172—1021.174 (relating to application for fees and expenses; response to application; and disposition of application) apply to applications for an award of fees and expenses under the Costs Act.]

[§ 1021.172. Application for fees and expenses.

(a) An application for fees and expenses shall be verified and shall set forth sufficient grounds to justify the award. It shall also include the following:

(1) Identification of the final order under which the applicant claims to be a prevailing party.

(2) A statement of the basis upon which the applicant claims to be a prevailing party under the Costs Act.

(3) Specific information which is sufficient to demonstrate that the applicant meets the definition of “party” under the Costs Act.

(4) An itemized list of recoverable fees and expenses including hours worked, the rate charged, a reasonable description of the work performed during those hours, and the nature and reasonableness of the expenses.

(5) The basis for the allegation that the position of the Department was not substantially justified.

(b) An applicant shall file an application with the Board within 30 days of the date of the final order under which the applicant claims to have prevailed, and shall be docketed at the same number as that order. An applicant shall simultaneously serve upon counsel of record for the Department a copy of the application in the same manner that it is filed with the Board. Service by telefax shall satisfy the requirements of this rule, if an additional copy is mailed on the same day.

(c) An application may be denied sua sponte if it fails to provide all the information required by this section in sufficient detail to enable the Board to grant the relief requested.]

[§ 1021.173. Response to application.

(a) The Department or other interested party shall file its response within 15 days of the filing of an application. The response shall include the following:

(1) Raise any challenge to the sufficiency of the application.

(2) Demonstrate, if applicable, that the Department’s action was substantially justified.

(3) Identify special circumstances which would make the award unjust.

(b) If the response asserts that the action of the Department was substantially justified, it shall include the following:

(1) A statement of the Department's basis for its action.

(2) A summary of the testimony and exhibits either in evidence or offered into evidence in support of that basis.

(3) The legal justification for the action taken.

(c) When an applicant prevails and no record has been made before the Board, the Department may justify its action with affidavits.]

[§ 1021.174. Disposition of application.

(a) Each party shall file a brief simultaneously with the filing of its application or response.

(b) The Board will award fees and expenses based upon the application and response if it finds the following:

(1) The applicant is a prevailing party as defined in the Costs Act.

(2) The application presents sufficient justification for the award of fees and expenses.

(3) The action of the Department was not substantially justified, in that it had no reasonable basis in law or in fact.

(4) There are no special circumstances which would make the award unjust or unreasonable.

(c) The Board will not find the Department's action to be substantially justified, if the response fails to present a prima facie case in support of the Department's legal position.

(d) The Board may reduce the amount of an award of fees and expenses, or deny the award, to the extent that the applicant engaged in conduct during the course of the proceedings which unduly and unreasonably protracted the final resolution of the matter in controversy.]

ATTORNEY FEES AND COSTS AUTHORIZED BY STATUTE [OTHER THAN THE COSTS ACT]

§ 1021.181. Scope.

This subchapter applies to requests for costs and attorney fees when authorized by statute **[other than the Costs Act]**. When a statute provides procedures inconsistent with these procedures, the statutory procedures will be followed.

APPELLATE MATTERS

§ 1021.201. Composition of the certified record on appeal to Commonwealth Court.

(d) For **[In the event that a legal document was]**electronic**[ally filed]**filings, a paper copy of the electronic filing will be submitted to the Commonwealth Court as part of the certified record in accordance with this rule, notwithstanding the provisions of § 1021.39(c) (relating to docket) that the official copy of an electronically filed document shall be that appearing on the Board's website.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

April 26, 2013

Honorable Gene Yaw
Chair, Senate Committee on
Environmental Resources and Energy
Room 362 Main Capitol
Harrisburg, PA 17120-3023

Honorable John Yudichak
Minority Chair, Senate Committee on
Environmental Resources and Energy
Room 366 Main Capitol
Harrisburg, PA 17120-3014

Honorable Ron Miller
Chair, House Committee on
Environmental Resources and Energy
115 Ryan Office Building
Harrisburg, PA 17120-2093

Honorable Greg Vitali
Minority Chair, House Committee on
Environmental Resources and Energy
38B East Wing
Harrisburg, PA 17120-2166

Legislative Reference Bureau
Room 641 Main Capitol Building
Harrisburg, PA 17120

Independent Regulatory Review Commission ✓
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Proposed Revisions to Environmental Hearing Board Rules of Practice and Procedure, 25
Pa. Code Chapter 1021 (Proposed Rulemaking 106-10)

2013 APR 26 PM 12: 56

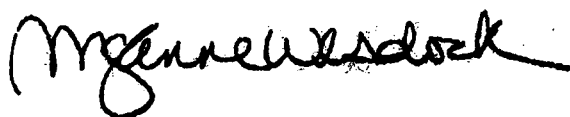
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IRRC

Page Two

Dear Sir or Madam:

In accordance with the provisions of the Regulatory Review Act, the Environmental Hearing Board is transmitting a copy of proposed revisions to its rules of practice and procedure at 25 Pa. Code Chapter 1021 (Proposed Rulemaking 106-10) for review.

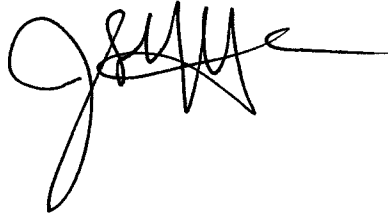
Sincerely,

A handwritten signature in black ink, appearing to read "Maryanne Wesdock". The signature is written in a cursive style with a large initial "M".

Maryanne Wesdock
Senior Assistant Counsel
ENVIRONMENTAL HEARING BOARD

I verify that all persons: signed
on April 26, 2013 & on this date ^{all proposed rule} ~~when~~
packages ^{have} delivered.

Jill S. Wolfe



4.26.13

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2013 APR 26 PM 12:55

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

I.D. NUMBER: 106-10
 SUBJECT: RULES OF PRACTICE AND PROCEDURE
 AGENCY: ENVIRONMENTAL HEARING BOARD

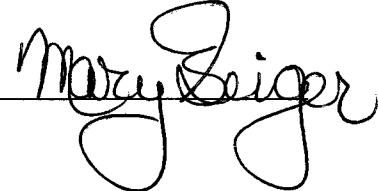
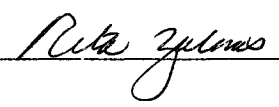
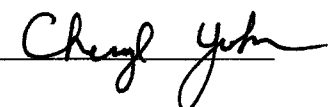

TYPE OF REGULATION

- 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

2013 APR 26 PM 12: 55

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
4/20/13		HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY MAJORITY CHAIRMAN _____
		SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY MAJORITY CHAIRMAN _____
4/24/13		INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

April 18, 2013