

Comments of the Independent Regulatory Review Commission



Environmental Hearing Board Regulation #106-10 (IRRC #3008)

Practice and Procedure

July 10, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the May 11, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Hearing Board (Board) to respond to all comments received from us or any other source.

1. Section 1021.32. Filing. – Implementation procedures; Reasonableness; Clarity.

This section addresses conventional, electronic and facsimile filing. We have three concerns. First, Subsection (c)(14) allows the Board to reject electronic filings. Under what grounds would the Board reject a document that was filed electronically? This should be explained in the final-form rulemaking.

Second, under Subsection (c)(15), if a party electronically files or serves a document and that filing or service is untimely because of a technical issue, the party can seek relief from the Board. However, such relief cannot be sought if there is a technical problem with a notice of appeal that was filed or served electronically. What is the reason for this difference?

Third, Subsection (d) pertains to facsimile filing. If a party experiences technical difficulty filing a document via facsimile, can that party seek appropriate relief from the Board? If so, we suggest that the Board add appropriate language to this subsection. If not, we ask the Board to explain the reason for excluding it from the rulemaking.

2. Section 1021.34. Service by a party. – Clarity.

Under Subsection (g), if an electronic filing was not successfully transmitted, the party sending the filing must “immediately upon notification of the deficiency” serve the document by other listed methods. The requirement of immediate notification lacks clarity. Has the Board considered including a specific time period, such as 24 hours, for correcting the deficiency and serving the document?

3. Section 1021.51. Commencement, form and content. – Clarity.

Subsection (f)(1)(iii) uses the terms “notice of appeal” and “notice of filing.” What is the difference between the terms? If there is no difference, we recommend that the term “notice of appeal” be used instead of “notice of filing.”

4. Section 1021.94. Dispositive motions other than summary judgment motions. - Implementation procedures; Reasonableness; Clarity.

Subsection (c) explains the procedures that must be followed for one party to join the dispositive motion of another party. We ask the Board to respond to the following questions as it develops the final-form rulemaking. First, what form, if any must a notification that a party is joining a dispositive motion take? Second, how did the Board determine that 15 days is a reasonable amount of time in which to file a notification? Third, under what circumstances would the Board permit, by way of an order, a party to raise additional issues in support of the dispositive motion? Finally, how does a party wishing to raise additional issues request such permission in the notification and must a separate pleading or motion be filed?

We have similar questions on Section 1021.94a, pertaining to summary judgment motions.