

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: 106-11

IRRC Number: 3073

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(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, mwesdock@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:

1021.94(c) – The rules on dispositive motions have been revised to allow the filing of responses containing additional facts or legal theories than those stated in the original motion, and to establish a different timeframe for filing responses in support and opposition to a motion.

(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.

Amendments to the Environmental Hearing Board's rules on dispositive motions clarify what types of responses may be filed to a dispositive motion.

(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. 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 revisions will affect the regulations of any other state agencies.

(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 revisions to the Environmental Hearing Board’s 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. 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.

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.

The 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.

The 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.

The 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						
Total Costs	None	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	None	None	None	None

(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.

Not applicable.

(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: N/A

B. The date or dates on which public meetings or hearings will be held:

All Environmental

Hearing Board Rules Committee meetings to discuss the 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 held annually in Harrisburg. 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:

N/A

D. The expected effective date of the final-form regulation: omitted regulation in the Pa. Bulletin.

Upon publication as a final

E. The date by which compliance with the final-form regulation will be required:

Upon publication in the

Pa. Bulletin.

F. The date by which required permits, licenses or other approvals must be obtained:

N/A

(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.

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

Do not write in this space

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

By: _____
(Deputy Attorney General)

(Date of Approval)

Check if applicable
Copy not approved.
Objections attached.

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

Environmental Hearing Board
(Agency)

Document/Fiscal Note No. 106-11

Date of Adoption: December 17, 2013

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: [Signature]
(Exec. Deputy General Counsel)

SEP 08 2014
(Date of Approval)

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

**ENVIRONMENTAL HEARING BOARD
RULES OF PRACTICE AND PROCEDURE
FINAL RULEMAKING 106-11**

PREAMBLE

The Environmental Hearing Board (Board) by this final-omitted rulemaking order amends Sections 1021.94(c) of Title 25 of the *Pennsylvania Code* as set forth at Annex A. The amendments modify the rules of practice and procedure before the Board by implementing improvements in practice and procedure.

The Board approved the regulations at its meeting on December 17, 2013.

Effective Date

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

Contact Person

For further information, contact Maryanne Wesdock, Senior Counsel, Environmental Hearing Board at: mwesdaock@pa.gov, (412) 565-5245, or Suite 310 Piatt Place, 301 Fifth Avenue, Pittsburgh, PA 15222. If information concerning this notice is required in an alternative form, please contact Vincent Gustitus, Secretary to the Board, at vgustitus@pa.gov or (717) 787-1638. TDD users may telephone the Board through the AT&T Pennsylvania relay center at 1-800-654-5984.

Statutory Authority

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

Submission as Final-Omitted Rulemaking

These amendments are being submitted as final-omitted rulemaking pursuant to Section 1204(3) of the Commonwealth Documents Law, 45 Pa. C.S.A. § 1204(3). An earlier version of the amendments was published as proposed rulemaking at 43 Pa.B. 2591 (May 11, 2013). Comments on the proposed rulemaking were submitted by the Independent Regulatory Review Commission (IRRC), the Department of Environmental Protection (Department) and Citizens for Pennsylvania's Future (PennFuture)

The comments and the Board's responses were discussed at a public meeting/conference call of the Board's Rules Committee held on July 25, 2013. In response to comments received during the official public comment period on the

proposed rulemaking, a draft final rulemaking was prepared that incorporated many of the comments. The Board's rules at 25 Pa. Code §§ 1021.94 (dispositive motions) were revised in order to address the comments submitted by all three parties. However, the final version of § 1021.94(c), as revised, was inadvertently omitted from the text of the rules submitted to IRRC and to the legislative committees. Therefore, those revisions were not approved by IRRC and did not appear in the final rulemaking published at 44 Pa.B. 5328 (May 9, 2014). This final-omitted rulemaking corrects that error.

The revision to §§ 1021.94(c) allows parties to file responses in support of a dispositive motion containing new facts or legal theories and provides an additional time period for the opposing party to respond to the new facts and legal theories raised in the supporting response.

Sunset Date

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

Regulatory Review

This final-omitted regulation was submitted to IRRC, the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee on October 3, 2014. On the same date the regulation was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Because no action was taken by the Committees, the amendments to the regulation are deemed approved pursuant to Section 5.1(j.2) of the Regulatory Review Act. IRRC met on ____, 2014 and approved the regulation pursuant to Section 5.1(e) of the Regulatory Review Act.

Findings of the Board

The Board finds that this regulation is necessary and appropriate for administration of the Environmental Hearing Board Act.

Order

- (1) The regulations of the Board are amended as set forth in Annex A.
- (2) The Chairman of the Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel as to legality and form as required by law.

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

Thomas W. Renwand
Chairman and Chief Judge

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IX. ENVIRONMENTAL HEARING BOARD

CHAPTER 1021. PRACTICE AND [PROCEDURES] PROCEDURE

MOTIONS

§ 1021.94. Dispositive motions other than summary judgment motions.

* * * * *

[(b)] (c) A response to a dispositive motion **[may]** shall be filed within 30 days of service of the motion **[and], or, if a supporting party files a memorandum of law alone, within 30 days of service of that memorandum of law. The response to a dispositive motion** shall be accompanied by a supporting memorandum of law or brief.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

October 3, 2014

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

Robert Mulle
Chief Deputy Attorney General
Office of Attorney General
15th Floor Strawberry Square
Harrisburg, PA 17120

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

RE: Final Omitted Revisions to Environmental Hearing Board Rules of Practice and Procedure,
25 Pa. Code Chapter 1021 (Final Omitted Rulemaking 106-11)

Dear Sir or Madam:

In accordance with the provisions of the Regulatory Review Act, the Environmental Hearing Board is transmitting a copy of final omitted revisions to its rules of practice and procedure at 25 Pa. Code Chapter 1021 (Final Omitted Rulemaking 106-11) for review. This replaces rules package 106-11 that was delivered to you on September 12, 2014 and was withdrawn this on October 2, 2014 due to an error.

Sincerely,

A handwritten signature in black ink, appearing to read "Maryanne Wesdock". The signature is fluid and cursive, with a long horizontal stroke at the end.

Maryanne Wesdock
Senior Assistant Counsel
ENVIRONMENTAL HEARING BOARD
mwesdock@pa.gov
(412) 565-5245

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

I.D. NUMBER: 106-11
 SUBJECT: RULES OF PRACTICE AND PROCEDURE
 AGENCY: ENVIRONMENTAL HEARING BOARD

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X 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

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY</i>
10-3-14	<u>Dean M. Cuyler</u>	MAJORITY CHAIR <u>HONORABLE RON MILLER</u>
10-3-14	<u>Terri K. Kol</u>	MINORITY CHAIR
		<i>SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY</i>
10-3-14	<u>Linda Fiorilla</u>	MAJORITY CHAIR <u>HONORABLE GENE YAW</u>
10/3/14	<u>Yvonne D. Doud</u>	MINORITY CHAIR
10/3/14	<u>K. Cooper</u>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
	<u>Julie Hox</u>	<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>