

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

2015 DEC -9 AM 11:19

RECEIVED
IRRC

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

(1) Agency – Environmental Hearing Board

(2) Agency Number: 106

Identification Number: 106-12

IRRC Number: 3126

(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):

Primary Contact: John Dixon, (717) 787-7115, johdixon@pa.gov

Secondary 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:

1021.13, 1021.32, 1021.39 – revisions to the rules of electronic filing registration, docketing, and the addition of a computation of time rule to determine when filing deadlines occur.

1021.33, 1021.34 – revisions to service rules to clarify service by the Board and clarify that the Board will only serve copies by mail to parties who have been excused from electronic filing.

1021.5d, 1021.5f, 1021.21, 1021.52, 1021.141 – revisions to requirements for a Notice of Appeal, representation, appeals of consent adjudications, and a typographical correction to timeliness of appeal rules.

1021.103- revision adds Notices to Attend and Notices to Produce as subject to the rules on subpoenas in this section.

1021.151, 1021.153, 1021.201 – revision explains procedures for interlocutory appeals and composition of the certified record on appeal to Commonwealth Court.

(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.

Numerous amendments in this rules package revise and clarify existing electronic filing rules. Since the Board has implemented mandatory electronic filing for most parties, the Board has reduced the administrative burden posed by mail and improved record keeping. Several revisions to the rules make slight substantive and stylistic changes to clarify electronic filing rules and ensure that the electronic filing rules are consistent with other Board rules regarding timing of filing, service by parties, and requirements for Notices of Appeal. These revisions will bolster the efficiency of the electronic filing system and help practitioners and pro se appellants initiate appeals before the Board.

The Board has added a rule for amendment of interlocutory orders which sets forth the format and time period for filing a request for certification of interlocutory orders to create consistency with the Rules of Appellate Procedure. This rule will give practitioners a clear set of guidelines when filing a request for certification of interlocutory orders for appeal.

Other amendments to the rules clarify the general appeals process before the Board such as service, when an appeal is initiated, and the timeliness of filings. Through a new computation of time rule, the Board has clarified confusion amongst practitioners as to when filings are due if a deadline falls on a Saturday, Sunday, or legal holiday. The Board has also dovetailed the Pennsylvania Rules of Civil Procedure by ensuring that Notices to Produce and Notices to Attend fall within the Board's rules on subpoenas. In addition, a proposed amendment on the composition of certified records on appeal to the Commonwealth Court corresponds with the appellate rules for filing petitions for review with the Commonwealth Court.

(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.

(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 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.

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

Clarifications to the Board's electronic filing regulations will make the electronic filing system more efficient and user-friendly for practitioners. Amendments that add clarification to the initial appeal process before the board will help practitioners avoid procedural mistakes when initiating appeals, serving parties, and filing documents via the Board's electronic filing system. Changes to the Board's filing and service rules could reduce the need for litigation over uncertainties in the rules. 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 proposed regulations will have no economic impact on the regulated community.

(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 proposed regulations will have no 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 proposed regulations will have no economic impact on state government other than to reduce potential 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.

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

Program	FY -3	FY -2	FY -1	Current FY
Not applicable				

(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.

A proposed amendment to service rules protects parties who may not have a fax machine or other pertinent technology by allowing other methods for service of appeals. An amendment to the Board's rules on Representation also notifies appellants that an appeal can be instituted by the filing of a notice of appeal or complaint depending on the statute at issue.

(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.

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.

RECEIVED
IRRC

2015 DF: -9 AM 11: 19

**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: Amy M. Elliott
(Deputy Attorney General)

NOV 30 2015

(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. 106-12

Date of Adoption: July 8, 2015

By: Thomas W. Renwand

Title: Thomas W. Renwand, Acting Chairman and Chief Judge

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

By: [Signature]
(Deputy General Counsel)

NOV 10 2015

(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 July 8, 2015.

A. Effective Date

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

B. Contact Persons

For further information, contact John Dixon, Assistant Counsel, Environmental Hearing Board, 400 Market Street, Second Floor, Harrisburg, PA 17101, (717) 787-7115, johndixon@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 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 is now the primary docketing system for the Environmental Hearing Board. Some of the proposed amendments described below clarify rules pertaining to electronic filing and service by the Board.

The Board currently does not have a rule that sets forth the format and time period for filing a request for certification of interlocutory orders for appeal pursuant to 42 Pa.C.S. § 702(b). The proposed amendments for interlocutory orders will create consistency with the Rules of Appellate Procedure. The amendment will provide a clear set of guidelines for practitioners filing a request for certification of interlocutory orders for appeal.

The Board also does not have a rule on computation of time for purposes of determining the deadline for filing a document or responding to a motion. Newly proposed rule 1021.13 fills that gap.

Other proposed amendments in this rules package contain substantive or stylistic revisions to make the Board rules clearer and more concise.

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. *Computation of Time* (1021.13)

The proposed addition of a Computation of Time section explains that when a filing deadline falls on a Saturday, Sunday or legal holiday, the filing is not due until the next business day. The addition of this rule corresponds with the General Rules of Administrative Practice and Procedure at 1 Pa. Code § 31.12.

2. *Representation* (1021.21)

The proposed amendment to the Representation section corrects an omission in the prior rule and recognizes that an appeal can be instituted by the filing of a notice of appeal or complaint

depending on the statute at issue. A proposed comment to this section notifies out of state counsel that they are not subject to the IOLTA fee when counsel appears pro hac vice in a Board proceeding.

3. *Filing* (1021.32)

The proposed amendment clarifies rules pertaining to electronic filing registration to conform to the registration form that is provided on the Board's electronic filing site. With the adoption of electronic filing, requirements in the rules mandating that electronically filed documents must indicate in the caption that it was in fact electronically filed were removed from the rules. Such a caption is no longer necessary considering the adoption of electronic filing.

4. *Service by the Board* (1021.33)

The proposed amendment does not include a substantive change to the Board rules. The rule was reworded to make it clearer and more concise.

5. *Service by a Party* (1021.34)

With the adoption of mandatory electronic filing and electronic service, the proposed amendment explains that the Board will only serve copies of orders by mail to parties who have been excused from electronic filing. All other parties will be served electronically.

6. *Docket* (1021.39)

The proposed amendments clarify the Board's electronic filing rules. The amendment clarifies when the date and time of the filing will appear by the electronic filing provider. The Board's electronic docket does not contain the time of filing, yet the transmission notice that is received by all electronic filers does in fact contain the date and time of filing. It was recommended that the requirement that the docket will register the time of the filings be removed. It was also recommended that because the transmission notice that is received by electronic filers does contain the date and time of filing, the language should be amended to make clear that the electronic filing provider will transmit a notice to registered users that includes the date and time of filing.

7. *Appeals* (1021.51d)

The proposed amendment explains what the Appellant must attach with its Notice of Appeal. The reasoning behind this amendment is to provide clarification of what is being appealed.

8. *Appeals* (1021.51f)

The proposed amendment clarifies that the rule applies to notices of appeal. Because a party to a case might not have a fax machine or fax number readily available, the amendment allows other methods of service for appeals.

9. *Timeliness of Appeal* (1021.52)

The proposed amendment corrects a typographical error in 1021.52(b).

10. *Subpoenas* (1021.103)

The proposed amendment incorporates additional Pennsylvania Rules of Civil Procedure into the Board's rules for subpoenas. The amendment to this section proposes to add Notices of Attend and Notices to Produce to the title to indicate that said Notices are subject to the rules to this section. It was recommended that this section not only include subpoenas but also Notices to Attend and Notices to Produce because the Pennsylvania Rules of Civil Procedure cited in 1021.103 address not only subpoenas but also Notices to Attend and Notices to Produce.

11. *Termination of Proceedings* (1021.141)

The proposed amendment makes a stylistic change to explain that any appeal from a consent adjudication shall be with the Commonwealth Court. A revision to the comment of this section clarifies that the Board makes the determination of a dismissal with or without prejudice on a case-by-case basis.

12. *Reconsideration of Interlocutory Orders* (1021.151)

The proposed amendment changes the word "motion" to "petition" to clarify that the rule deals with petitions for reconsideration.

13. *Reconsideration of Final Orders* (1021.152)

The proposed amendment changes the word "motion" to "petition" to clarify that the rule deals with petitions for reconsideration.

14. *Amendment of Interlocutory Orders* (1021.153)

The proposed amendment adds a section to explain the procedure for filing an application for interlocutory appeal.

15. *Composition of the Certified Record on Appeal to Commonwealth Court* (1021.201)

The proposed amendment was created to correspond to the appellate rules on filing petitions for review with the Commonwealth Court. The amendment eliminates the 20 day timeframe for filing a petition for review with the Commonwealth Court because the Pennsylvania Rules of Appellate Procedure provide a 40 day timeframe.

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

F. Benefits, Costs, Compliance and Paperwork

Benefits

Since mandatory electronic filing for most parties before the Board has been implemented, there has been a measurable benefit to the Commonwealth, the public and parties appearing before the Board. The Board has experienced a reduction in the administrative burden posed by service by mail, paper record keeping, and consumption of paper and other supplies. Several amendments in this rules package revise and clarify existing electronic filing rules. The revisions clarify electronic filing rules relating to filing, service, registration, docketing and appeals. With these amendments in place, parties appearing before the Board will have a better understanding of how to navigate through the Board's electronic filing system and enjoy greater access to docket materials.

The Board currently does not have a rule for amendment of interlocutory orders. A rule that sets forth the format and time period for filing a request for certification of interlocutory orders for appeal pursuant to 42 Pa.C.S. § 702(b) will create consistency with the Rules of Appellate Procedure. This rule will give practitioners a clear set of guidelines when filing a request for certification of interlocutory orders for appeal.

Other amendments to the rules add clarity to the initial appeal process before the Board, termination of proceedings and timeliness of appeals. The new rule on computation of time will help the Board and practitioners determine the deadlines for filing a document or responding to a motion, particularly when deadlines fall on a Saturday, Sunday or legal holiday.

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.

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 July 8, 2015 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 December 9, 2015, 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 Assistant counsel John R. Dixon at johndixon@pa.gov or at the following address: John R. Dixon, 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**

REPRESENTATION BEFORE THE BOARD

§ 1021.21. Representation.

(a) Parties, except individuals appearing on their own behalf, shall be represented by an attorney in **good standing** at all stages of the proceedings subsequent to the filing of the notice of appeal or **complaint**.

(b) Corporations shall be represented by an attorney of record admitted to practice before the Supreme Court of Pennsylvania. Corporations may also be represented by an attorney in good standing and admitted to practice before the highest court of another state on a motion *pro hac vice* filed by the Pennsylvania attorney of record.

[(c) Groups of individuals acting in concert, whether formally or informally, shall be represented by an attorney admitted to practice law before the Supreme Court of Pennsylvania or by an attorney in good standing admitted to practice before the highest court of another state who has made a motion to appear specially in the case and agrees therein to abide by the Rules of the Board and the Rules of Professional Conduct.]

[(d)] (c) Individuals may appear in person on their own behalf; however, they are encouraged to appear through counsel and may be required to appear through counsel [under subsection (c)] if the Board determines [they are acting in concert with or as a representative of a group of individuals] **that they are not merely appearing on their own behalf**.

[(e)] (d) Subsections (a)—[(d) c] supersede 1 Pa. Code § § 31.21—31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

Comment: Payment of the Interest on Lawyers Trust Account (IOLTA) fee under 204 Pa. Code § 81.505(a) is not required as a condition to *pro hac vice* admission in a proceeding before the Board.

DOCUMENTARY FILINGS
FILING AND SERVICE OF DOCUMENTS

§ 1021.13. Computation of Time.

(a) Except as otherwise provided by law, in computing a period of time prescribed or allowed by the rules of the Board or another provision of law, time shall be computed to exclude the first day of the action, event or filing. Time shall be computed to include the last day unless it falls on a Saturday, Sunday or legal holiday in which event the day shall be omitted from the computation and the period shall run until the end of the next business day. Intervening Saturdays, Sundays and legal holidays shall be included in the computation.

(b) Subsection (a) supersedes 1 pa code sect 31.12 (relating to computation of time).

§ 1021.32. Filing.

(c) Electronic filing

- (1) Documents except those listed in subsections (a) and (b) shall be electronically filed unless the Board orders otherwise in a particular proceeding. Persons wishing to be excused from the mandatory filing requirements shall file a motion under § 1021.92 (relating to procedural motions). The Board will excuse persons from the mandatory electronic filing requirement, with respect to all filings or 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 may 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. 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 registered users can become registered users by submitting a registration statement to the Board and receiving [a password authorizing] authorization for electronic filing and service from the electronic filing provider. The registration statement [must be on] consists of an electronic form prepared by the Board and [include the user's] accessed on its electronic filing website. The prospective registered user must provide a name [and], mailing address, e-mail address, telephone number, and 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].

* * * * *

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

(12) [(13)] To the extent practicable, electronically file documents must be formatted in accordance with subsection (e)(4)

(13) [(14)]: An electronic filing completed before midnight Eastern Time will be considered to be filed on that date. Upon completion of the filing, the electronic filing provider will issue a transaction receipt that includes the date and time the document was received. The transaction receipt serves as proof of filing. [Filers may be required to file an amended version of documents to meet the necessary filing requirements.]

(14) [(15)] Except in the case of notices of appeal, which are governed by § 1021.53a (relating to nunc pro tunc appeals), if electronic filing or service does not occur or is made untimely because of a technical issue, the party affected may seek appropriate relief from the Board.

(15) [(16)] A registered user shall submit as exhibits or attachments only 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. A registered user who files excerpts of documents as exhibits or attachments under this paragraph does so without prejudice to his right to timely file additional excerpts or the complete document and shall, upon request, provide responding parties with the complete document. A responding party may timely file the complete document or additional excerpts that it believes are directly germane.

§ 1021.33. Service by the Board

- (a) [Orders, notices and other documents entered or issued by the Board will 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] **The Board will serve the orders, notices and other documents it issues upon counsel designated on the docket. For any parties not represented by counsel, the Board will serve the person who filed the complaint or notice of appeal, or the person upon whom the notice of appeal or complaint was served.**
- (b) The Board will serve documents it enters or issues upon registered users participating in the proceeding through the electronic filing provider, subject to the provisions in this chapter. The Board

will serve persons [other than registered users] who have been excused from electronic filing under § 1021.32 (c)(1) by mail or in person.

§ 1021.34. Service by a party

(c) Documents filed electronically shall be served by hand, mail, other personal delivery or facsimile upon parties [not represented by registered users, or for parties representing themselves, upon parties who are not registered users] who have been excused from electronic filing under § 1021.32(c)(1).

§ 1021.39. Docket

(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 electronic filing provider will transmit a notice of the electronic filing to all registered users in the proceeding, which includes the date and time of the filing.

FORMAL PROCEEDINGS

APPEALS

§ 1021.51. Appeals

(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.] **The notice of appeal 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.**

(d) If the appellant has received written notification of an action of the Department, [a copy of the action must be attached to the notice of appeal] **the appellant shall attach a copy of that notification and any documents received with the notification to the notice of appeal. If the documents include a permit, the appellant only needs to attach the first page of the permit.**

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

(3) Facsimile filing.

(iii) For original notices of appeal more than ten pages long, the facsimile filed must consist of the certificate of service and the first five pages and last five pages of [each document] **the notice of appeal 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.

* * * * *

(vi) The appellant shall, concurrent with or prior to the facsimile filing of a notice of appeal, serve a copy by facsimile on the individuals and entities listed in paragraph (2)(vi). **If a party's fax number is not available or operational, the notice of appeal shall be served to that party by overnight delivery.**

§ 1021.52. Timeliness of appeal

(b) The appellant shall, within 20 days of the mailing of a request from the Board, file missing information required by § 1021.51(c), (d) and [(i)] **(k)** (relating to commencement, form and content) or suffer dismissal of the appeal.

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

§ 1021.101. Prehearing procedure

(c) [After the Board resolves all dispositive motions, it will establish a hearing date for the remaining issues.] **The Board will establish a hearing date for the issues in the appeal.** The Board may also direct that the parties meet prior to the hearing to stipulate to uncontested facts, the qualifications of experts and the admissibility of exhibits.

(d) The parties shall file their prehearing memoranda at least 20 days before the scheduled hearing date. **The board may issue an order scheduling specific dates on which each party is to file its prehearing memorandum, deadlines for filing motions in limine, and a prehearing conference.**

§ 1021.103. Subpoenas, notices to attend and notices to produce

(a) Except as otherwise provided in this chapter or by order of the Board, requests for subpoenas , subpoenas, **notices to attend and notices to produce** shall be governed by Pa.R.C.P. 234.1— 234.4 [and], 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.

TERMINATION OF PROCEEDINGS

§ 1021.141. Termination of proceedings

- (c) Any appeal from a consent adjudication shall [lie to] be with the Commonwealth Court, and shall, when taken by an aggrieved person not a party to the action, be taken within 30 days of the date of the Board's action.

Comment: The prior rule at § 1021.120(b) authorizing dismissal with and without prejudice was deleted because the Board thought it more appropriate to determine this matter [by case law] on a case-by-case basis rather than by rule.

§ 1021.151. Reconsideration of interlocutory orders

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

§ 1021.152. Reconsideration of final orders

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

§ 1021.153. Amendment of interlocutory orders.

- (a) Requests to amend an interlocutory order to certify one or more issues for appeal in accordance with 42 Pa.C.S. § 702(b) shall be filed within 10 days of service of the order and shall take the form of a motion pursuant to 25 Pa. Code § 1021.91 (relating to motions).
- (b) Motions filed pursuant to subsection (a) shall be accompanied by a memorandum of law setting forth the reasons why the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter.
- (c) Responses to motions filed under this section shall be filed within 10 days of service of the motion and shall be consistent with § 1021.91 (relating to motions).
- (d) Unless the Board acts on the motion within 30 days of it being filed, the motion shall be deemed denied.
- (e) The filing of a motion under this section or the amendment of an interlocutory order containing the requested finding shall not stay a proceeding unless otherwise ordered by the Board or by Commonwealth Court.
- (f) Subsections (a) through (e) supersede 1 Pa. Code § 35.225 (relating to interlocutory orders).

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

- (a) Unless the parties file a stipulation with the Board or the Commonwealth Court requires [providing] otherwise, [within 20 days of the filing of the petition for review,] the Board shall certify the record in accordance with [Pa.R.A.P. 1951 (relating to record below in proceedings on petition for review)] the applicable rules of appellate procedure. [and t]The record shall consist of

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

I.D. NUMBER: 106-12
 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

2015 DEC -9 AM 11:19

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY</i>
12/9/15	<u>Shelly Warner</u>	MAJORITY CHAIR <u>John Mahu</u>
12/9/15	<u>Teri Koh</u>	MINORITY CHAIR <u>Rep. Vitali</u>
		<i>SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY</i>
12/9/15	<u>Patti Conroy</u>	MAJORITY CHAIR <u>Senator Gene Yaw</u>
12/9/15	<u>[Signature]</u>	MINORITY CHAIR
12/9/15	<u>K Cooper</u>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
	<u>C. Inant</u>	<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>