

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p> <p>(1) Agency Environmental Hearing Board</p> <p>(2) Agency Number: 106 Identification Number: 106-13</p> <p>(3) PA Code Cite: 25 Pa. Code Chapter 1021</p> <p>(4) Short Title: Environmental Hearing Board Rules of Practice and Procedure</p> <p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Maryanne Wesdock, 412-565-5245, mwesdock@pa.gov Secondary Contact: Eric Delio, 717-783-4740, edelio@pa.gov</p> <p>(6) Type of Rulemaking (check applicable box): <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation </p> <p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less) The Environmental Hearing Board (Board) seeks to revise 25 Pa. Code Chapter 1021 (relating to practice and procedures) by revising existing rules. The rule revisions have the following objectives: (1) To provide the regulated community, the Department of Environmental Protection (Department) and anyone who wishes to challenge an action of the Department 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. The revisions address the following topics: representation by an out of state attorney on a motion <i>pro hac vice</i>; format of documents filed electronically; calculation of time for purposes of service; signature on a notice of appeal by an appellant not represented by an attorney; procedure for requesting leave to file an appeal <i>nunc pro tunc</i> and for responding to a request for <i>nunc pro tunc</i> relief; providing a table of contents in post-hearing briefs and summary judgment briefs over 30 pages; clarification of what information should be included in a mediator's report; and correction of an incorrect citation. </p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION RECEIVED</p> <p>APR 25 2022</p> <p>Independent Regulatory Review Commission</p> <p>IRRC Number: 3301</p>
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(8) State the statutory authority for the regulation. Include specific statutory citation.

The Board is authorized by subsection 5 (c) of the Environmental Hearing Board Act, 35 P.S. § 7515(c), to promulgate rules and regulations relating to practice and procedure. This subsection states, "Regulations under this subsection shall be promulgated by the board upon a majority affirmative vote on the recommended regulations."

(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.

The revisions were recommended by the Board's Rules Committee which consists of nine experienced environmental practitioners who appear before the Board. The members of the Rules Committee are appointed by the Governor (2 appointments), the Secretary of the Department of Environmental Protection (2 appointments), the Majority Leader of the Pennsylvania Senate (1 appointment), the Minority Leader of the Senate (1 appointment), the Pennsylvania Speaker of the House (1 appointment), the Minority Leader of the House (1 appointment), and the Department of Environmental Protection Citizens Advisory Council (1 appointment). The revisions were recommended in order to clarify the Board's rules and to improve practice before the Board. The final-form amendments will benefit all litigants who appear before the Board, including private practitioners, Commonwealth attorneys, and *pro se* appellants, by clarifying existing Board rules of practice.

There are no quantifiable "benefits." The rules are procedural, not substantive. The "benefit" of revising the Board's rules is to ensure that the rules are clear, helpful and understandable to all parties who practice before the Board. For example, one rule that is being revised is Section 1021.53a which states that the Board may grant leave for the filing of an appeal *nunc pro tunc*. The proposed revisions to the rule explain the procedure for seeking leave to appeal *nunc pro tunc* and for responding to the petition to appeal *nunc pro tunc*.

There is no set number of litigants who appear before the Board. However, 1,246 attorneys are registered to file electronically with the Board and all of those attorneys will benefit from having rules of procedure that are clear and understandable. Since electronic filing is mandatory in most instances, the number of attorneys registered for electronic filing provides an accurate estimate of the number of persons who will benefit from a comprehensive set of rules of practice and procedure before the Board.

The Board's rules are comparable to the Pennsylvania Rules of Civil Procedure. Just as there is no certain way to determine how many attorneys will "benefit" from the Pa. Rules of Civil Procedure, there is no certain way to determine how many attorneys will "benefit" from the Board's Rules of Practice and Procedure. However, there is certainty in saying that any attorney or *pro se* litigant who appears before the Board will benefit from having a set of procedural rules that explain and clarify the procedure to be followed throughout the proceeding.

(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 and the Rules Committee have looked to the Pennsylvania Rules of Civil Procedure, General Rules of Practice and Procedure, and local rules of various courts of common pleas for guidance in drafting its rules. Examining the procedural rules of other Pennsylvania courts has been helpful in crafting procedural rules dealing with Pennsylvania practice. Where rules exist in other states, they are not relevant to Pennsylvania practice and may not be comparable. The Rules Committee has found that the Pennsylvania Rules of Civil Procedure provide the best guidance. In some cases, local rules of county common pleas courts have provided a helpful model. For example, in developing the *nunc pro tunc* rule at 25 Pa. Code section 1021.53a, the Rules Committee relied heavily on the Chester County Court of Common Pleas local rule on *nunc pro tunc* procedure because it provided a comprehensive and detailed procedure for filing and responding to a petition *nunc pro tunc*.

These revisions to the Board's rules will in no way place Pennsylvania at a competitive disadvantage with other states. The Board is the statutorily-created body for hearing appeals of actions of the Pennsylvania Department of Environmental Protection. The Board's jurisdiction is set forth in Section 7514 of the Environmental Hearing Board Act, 35 P.S. §§ 7511-7516, at § 7514, which states that the Board has the power and duty to hold hearings and issue adjudications on orders, permits, licenses or decisions of the Department of Environmental Protection (DEP). Most of the statutes enforced and administered by the DEP provide that the proper forum to hear appeals of DEP actions is the Environmental Hearing Board. The final-form rule revisions contained in this rules package serve to clarify practice before the Environmental Hearing Board.

It is important to keep in mind that these are procedural rules, i.e. rules of court, such as when to file a document, the format for filing a document electronically, the procedure for asking the Board to consider a late-filed appeal. They place no additional burden on regulated industry or require any specific action on the part of the regulated community. Amendments to the Board's rules are enacted for the purpose of simplifying and clarifying the process of appearing before the Board. The rules generally come about as the result of someone identifying an area of the rules that needs clarification, including the Board judges or attorneys, a member of the Rules Committee, a member of the Pennsylvania environmental bar, or a member of the public.

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

The regulations do not 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 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.)

These final-form rule revisions are based on the recommendations of the Environmental Hearing Board Rules Committee (Rules Committee), a nine-member advisory committee established by Section 5(a) of the Environmental Hearing Board Act, 35 P.S. § 7515(a). The Rules 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. The minutes of the Rules Committee meetings are found on the Board's website at <https://ehb.courtapps.com/public/rulesCommitteeMinutes.php>. They are electronically available beginning with the January 13, 2000 meeting and continue to the present. The minutes are extremely detailed and contain extensive information for the environmental bar that practices before the Board, as well as the public.

The Rules Committee makes great efforts to communicate with and solicit input from the regulated community and the environmental bar. At the annual Pennsylvania Bar Institute Environmental Law

Forum, both the Judges of the Environmental Hearing Board and the Chairman of the Rules Committee discuss proposed regulations and solicit input from attendees, who consist of members of the Pennsylvania environmental bar and who represent all facets of parties who appear before the Board, individual appellants, citizen groups, businesses and the Department of Environmental Protection. The Board Judges and Rules Committee Chairman also present programs at various county bar associations where input on proposed rules is solicited. Additionally, input is solicited from the environmental bar by means of the Pennsylvania Bar Association Environmental and Energy Law Section (EELS), which holds monthly council meetings and biannual Section meetings, operates a listserv and publishes a quarterly newsletter. The Board's liaison to the Rules Committee participates in all of the EELS activities and events, and the Board Judges and Rules Committee Chairman and members are frequent participants. EELS members are notified of upcoming Rules Committee meetings.

(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?

It is difficult to quantify the number of persons, businesses, small businesses and organizations that will be affected. Anyone who is a litigant before the Environmental Hearing Board will be affected by the 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 that appeals or joins in an action taken by the Department of Environmental Protection will also be affected by the regulations.

In 2020, 115 appeals were filed with the Board. In 2019, 161 appeals were filed with the Board. In each appeal there is at least one appellant and the Department of Environmental Protection, which is always a party. In many cases, there is also a third party, who is the holder of a permit that is being challenged. In some cases, there may be intervenors.

All of these persons are affected by any revision to the Rules of Practice and Procedure, just as any litigant who appears before a Pennsylvania Court of Common Pleas is affected by revisions to the Pennsylvania Rules of Civil Procedure.

Nearly 1,300 attorneys are registered for electronic filing with the Board. Since electronic filing is mandatory in most instances, this provides a good estimate of the number of attorneys who will be affected by revisions to the Board's rules of procedure.

(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.

Same as answer to question 15. All parties listed in the response to question 15 will be required to comply with the Environmental Hearing Board's Rules of Practice and Procedure.

As explained in the response to question 15, this number cannot be quantified, but can only be based on the number of appeals filed with the Board each year and the number of attorneys who are registered for electronic filing. That said, it must be emphasized that these rules, like many of the Board's rules, may not be relevant in individual cases. One example is the *nunc pro tunc* rule (25 Pa. Code § 1021.53a) that the Board is seeking to revise in this rules package. Based on research by a Rules Committee member, from 2010 to 2017 the Board ruled on 21 petitions to appeal *nunc pro tunc*. On May 27, 2020, the Board issued another Opinion ruling on a petition to appeal *nunc pro tunc*, which now brings the total to 22. For those cases where a petition to appeal *nunc pro tunc* is necessary, the revisions to Section 1021.53a will be extremely helpful to the attorneys involved in those cases. However, the revisions to Section 1021.53a will not affect the vast majority of cases filed with the Board.

Again, it should be emphasized that the revisions pertain to procedural rules; they do not cover substantive areas of law.

(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 amendments will have no measurable financial, economic or social impact on individuals, small businesses, businesses, labor communities or other public and private organizations. Nevertheless, these straightforward and common-sense rules should make practice before the Board clearer and subsequently less costly. For example, with the revision to 25 Pa. Code § 1021.53a, parties will know what they need to set forth in a petition to appeal *nunc pro tunc* and how to fashion a response to such a petition. Additionally, the simple addition of a table of contents to post hearing briefs and lengthy summary judgment motions, pursuant to the revisions to 25 Pa. Code §§ 1021.94a and 1021.131, will greatly benefit not only the parties and their counsel, but also the Board.

(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. Changes to the Board's filing and service rules, *nunc pro tunc* rule and termination rule could reduce the need for litigation over uncertainties in the rules. There are no adverse effects of the proposed regulation.

(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.

There will be no costs or savings to 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.

There will be no costs or savings to local governments.

(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.

There will be no costs or savings to state government.

(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.

(22a) Are forms required for implementation of the regulation?

No forms are required.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

(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.

	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
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.

The proposed regulation will not have an adverse impact on small businesses.

(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.

None.

(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.

There were no alternative regulatory provisions considered and rejected.

(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 performance 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 proposed regulation will not have an adverse impact on small businesses. Furthermore, 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.

Data was not the basis for this regulation.

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

A. The length of the public comment period: 30 days

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

All Environmental

Hearing Board Rules Committee meetings to discuss the proposed rules were open to the public. The meetings were held on the following dates: September 10, 2015; November 5, 2015; January 6, 2016; March 10, 2016; September 15, 2016; November 10, 2016; March 9, 2017; May 11, 2017; September 14, 2017; November 9, 2017; January 25, 2018; March 8, 2018; May 24, 2018; September 18, 2018; November 16, 2018; January 29, 2019; March 14, 2019; September 19, 2019. Additionally, the meetings of the Environmental Hearing Board Judges to vote on the proposed and final rules, held on December 4, 2019 and August 3, 2021, respectively, were open to the public.

C. The expected date of delivery of the final-form regulation: Upon completion of review by the Office of General Counsel.

D. The expected effective date of the final-form regulation: Upon publication as a final form regulation in the Pa. Bulletin.

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

F. The expected 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**
(Pursuant to Commonwealth Documents Law)

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APR 25 2022

**Independent Regulatory
Review Commission**

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>DATE OF APPROVAL _____</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by</p> <p><u>Environmental Hearing Board</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 108-13</p> <p>DATE OF ADOPTION August 3, 2021</p> <p>BY: <u>s/Thomas W. Renwand</u></p> <p>TITLE <u>Chairman and Chief Judge</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies</p> <p>BY: _____ </p> <p>October 28, 2021</p> <p>DATE OF APPROVAL _____</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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NOTICE OF FINAL REGULATION**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD****25 Pa. Code, Chapter 1021****RULES OF PRACTICE AND PROCEDURE**

**ENVIRONMENTAL HEARING BOARD
RULES OF PRACTICE AND PROCEDURE
FINAL RULEMAKING 106-13**

PREAMBLE

The Environmental Hearing Board (Board) by this order amends 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 final regulations at its meeting on August 3, 2021.

Effective Date

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

Contact Person

For further information, contact Maryanne Wesdock, Senior Counsel, Environmental Hearing Board at: mwesdock@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 Christine Walker, Secretary to the Board, at christiwal@pa.gov or (814) 871-2573. TDD users may telephone the Board through the AT&T Pennsylvania relay center at 1-800-654-5984.

Statutory Authority

The Board has the authority under section 5(c) of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. §§ 7511-7516, at § 7515(c), to adopt regulations pertaining to practice and procedure before the Board.

Comments and Revisions to Proposed Rulemaking

The proposed rulemaking amendments were adopted by the Board at its meeting of December 4, 2019 and published in the *Pennsylvania Bulletin*, at 51 Pa.B. 2166 (April 17, 2021), with a 30-day public comment period. A comment was submitted by the Independent Regulatory Review Commission (IRRC). The comment and the Board's response were discussed at a public meeting of the Board's Rules Committee held by videoconference on July 8, 2021. In response to the comment received on the proposed rulemaking, a draft final rulemaking was prepared. A summary of the comment and Board's response is set forth below:

25 Pa. Code § 1021.32 (Filing)

IRRC questioned the Board's decision to add a comment to Section 1021.32 notifying attorneys and *pro se* appellants who register for electronic filing (efiling) that they may not efile until their registration has been approved by the Board. IRRC noted that in order for the provision to be binding and enforceable, it was required to be part of the regulation, not a comment. IRRC suggested that the Board consider adding the provision to the final-form regulation or explain why it was unnecessary to do so. In response, the Board explained that the comment was meant to be explanatory, not directive, and was intended to notify efiling registrants that if they register during non-business hours they will be unable to access the efiling system until the registration is accepted on the next business day. The Board agreed with IRRC that the comment, as drafted, appeared to provide a directive to registrants to abstain from efiling until their registration is accepted. Therefore, it redrafted the comment to clarify that the comment was simply intended to notify registrants that they will not be able to access the efiling system until their registration has been accepted; acceptance of the efiling registration is a ministerial function performed by staff during business hours.

Sunset Date

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

Regulatory Review

As required by Section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), the Board submitted copies of the proposed rulemaking, which was published in the *Pennsylvania Bulletin*, 51 Pa.B. 2166 (April 17, 2021), to IRRC and the Senate and House Environmental Resources and Energy Committees for review and comment. The Board also provided IRRC and the Committees with the Regulatory Analysis. Under Section 5(c) of the Regulatory Review Act, where applicable, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. No comments were received from the public regarding the proposed regulations.

In preparing the final form regulations, the Board has considered all comments received. No comments on the proposed regulations were received from either of the legislative committees or the public.

These final form regulations were submitted to the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee on _____. Because no action was taken by the Committees within 20 days after submission of the final form regulations, they are deemed approved. IRRC met on _____ and approved the regulations pursuant to Section 5.1(e) of the Regulatory Review Act.

Findings of the Board

The Board finds that

- (1) Public notice of the proposed rulemaking was given under Sections 201 and 202 of the Act of July 31, 1968, P.L. 769, No. 240, 45 P.S. §§ 1201 and 1202 and the regulations thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) These regulations are necessary and appropriate for administration of the Environmental Hearing Board Act.

Order

- (1) The regulations of the Board are amended by 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 PROCEDURE PRELIMINARY PROVISIONS REPRESENTATION BEFORE THE BOARD

§ 1021.21. Representation.

(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) 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 if the Board determines that they are not merely appearing on their own behalf.

(d) Parties may 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 a Pennsylvania attorney.

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

DOCUMENTARY FILINGS FILING AND SERVICE OF DOCUMENTS

§ 1021.32. Filing.

(c) *Electronic filing*

(11) 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.

Comment: Attorneys and *pro se* appellants who register for electronic filing ~~may not~~ WILL BE UNABLE TO file electronically until they receive a confirmation email advising them that they have been approved for electronic filing. If registration occurs during non-business hours, the confirmation will not occur until the next business day. Until such confirmation occurs, a registrant must file HAS THE OPTION OF FILING by means other than electronic filing to ensure timely filing.

§ 1021.34. Service by a party.

(a) Notices of appeal shall be served as provided in § 1021.51[(h)] (relating to commencement, form and content). Complaints filed by the Department will be served as provided in § 1021.71(b) (relating to complaints filed by the Department).

§ 1021.35. Date of service.

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

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

FORMAL PROCEEDINGS

APPEALS

§ 1021.51. Commencement, form and content.

(c) The notice of appeal must set forth the name, mailing address, e-mail address and telephone number of the appellant. 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] by the appellant(s).

§ 1021.53a. Nunc pro tunc appeals.

(a) The Board upon written request and for good cause shown may grant leave for the filing of an appeal nunc pro tunc; the standards applicable to what constitutes good cause shall be the common law standards applicable in analogous cases in courts of common pleas in this Commonwealth.

(b) A person seeking to appeal nunc pro tunc shall file a petition to appeal nunc pro tunc. If filed after a dispositive motion that seeks to dismiss an appeal as untimely, the filing of the petition stays the deadlines for filing a response or reply concerning the motion. The Board will issue deadlines for filing a response and reply if the Board grants the petition and the dispositive motion addresses issues in addition to untimeliness.

(c) The petition to appeal nunc pro tunc shall comply with the requirements set forth for "motions" at § 1021.91, and, in addition, shall include the following:

(1) The specific facts that the potential appellant would attempt to prove at hearing to show that nunc pro tunc relief is warranted.

(2) The specific facts that the potential appellant would attempt to prove showing that it acted promptly in seeking nunc pro tunc relief.

(3) Copies of all documents and a list of all witnesses that the potential appellant relies upon in support of the petition to appeal nunc pro tunc.

(4) Any legal authority and theories the potential appellant relies upon in seeking nunc pro tunc relief.

(5) A sworn affidavit of the person or persons having knowledge of the facts that the facts are verified as true and correct, or an unsworn written statement of such person or persons, that the facts are verified as true and correct subject to the penalties for Unsworn Falsification to Authorities, pursuant to 18 Pa.C.S.A. § 4904 of the Crimes Code.

(6) If the petition to appeal nunc pro tunc is not supported by an affidavit or verification as set forth in (5), above, an explanation of why the affidavit or verification was omitted.

(d) Responses to petitions to appeal nunc pro tunc shall comply with the requirements set forth for "responses" at § 1021.91. Unless otherwise ordered by the Board, the response shall be filed within 15 days of the date of service of the petition.

(e) A memorandum of law in support of the petition or response may be filed with the petition or response.

(f) The potential appellant may not file a reply unless the Board orders otherwise.

(g) The Board may schedule a hearing on whether nunc pro tunc relief is appropriate.

(h) If the petition to appeal nunc pro tunc is granted, the notice of appeal will be treated as though it were timely filed.

(i) If the petition to appeal nunc pro tunc is denied, the notice of appeal will be dismissed as untimely.

MOTIONS

§ 1021.94a. Summary judgment motions.

(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. **If the Board grants leave to file a brief in excess of 30 pages, the brief shall contain a table of contents.**

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

§ 1021.106. Voluntary mediation.

(d) At the end of the initial stay, the parties shall jointly file a report, prepared and signed by the mediator, [which sets forth the history of mediation activities conducted] **setting forth whether the mediation has been successful or has a likelihood of success if the mediation process continues to proceed.** The parties may request an additional stay if necessary to complete the mediation process.

POSTHEARING PROCEDURES

§ 1021.131. Posthearing briefs.

(a) The initial posthearing brief of each party shall contain **a table of contents**, proposed findings of fact (with references to the appropriate exhibit or page of the transcript), an argument with citation to supporting legal authority, and proposed conclusions of law.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

April 25, 2021

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

Honorable Daryl D. Metcalfe
Chair, House Committee on
Environmental Resources & Energy
144 Main Capitol
Harrisburg, PA 17120-2012

David Sumner
Executive Director
Independent Regulatory Review Commn.
333 Market Street, 14th Floor
Harrisburg, PA 17101

Honorable Carolyn T. Comitta
Minority Chair, Senate Committee on
Environmental Resources & Energy
Room 457 Main Capitol
Harrisburg, PA 17120-3019

Honorable Greg Vitali
Minority Chair, House Committee on
Environmental Resources & Energy
30 East Wing, Capitol
Harrisburg, PA 17120-2166

Legislative Reference Bureau
647 Main Capitol
Harrisburg, PA 17120-0033

Re: Environmental Hearing Board Final-Form Rulemaking 106-13

Dear Sir or Madam:

Pursuant to Section 5.1 of the Regulatory Review Act, please find enclosed a copy of Environmental Hearing Board (Board) Final-Form Rulemaking 106-13. This rulemaking amends and clarifies the Board's Rules of Practice and Procedure.

Should you have any questions please do not hesitate to contact me at
mwesdock@pa.gov or 412-565-5245.

Sincerely,

s/Maryanne Wesdock

Maryanne Wesdock
Senior Assistant Counsel
Environmental Hearing Board

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

I.D. NUMBER: 106-13

SUBJECT: RULES OF PRACTICE AND PROCEDURE

AGENCY: ENVIRONMENTAL HEARING BOARD

RECEIVED

TYPE OF REGULATION

Proposed Regulation

APR 25 2022

X Final Regulation

Independent Regulatory
Review Commission

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

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY

4/25/22 *Dan Noyd*

MAJORITY CHAIR Daryl D. Metcalfe

4/25/22 *[Signature]*

MINORITY CHAIR Greg Vitali

SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY

4/25/22 *Porraine E. O'Day*

MAJORITY CHAIR Gene Yaw

4/25/22 *B. [Signature]*

MINORITY CHAIR Carolyn T. Comitta

4/25/22 *K. Cooper*

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)