

<h2 style="margin: 0;">Regulatory Analysis Form</h2> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0; font-size: small;">(All Comments submitted on this regulation will appear on IRRC's website)</p>	<p style="margin: 0;">INDEPENDENT REGULATORY REVIEW COMMISSION</p> <h1 style="margin: 0;">RECEIVED</h1> <p style="margin: 10px 0 0 0;">FEB 15 2024</p> <p style="margin: 0;">Independent Regulatory Review Commission IRRC Number: 3377</p>
<p>(1) Agency Environmental Hearing Board</p>	
<p>(2) Agency Number: 106 Identification Number: 14</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):</p> <p style="margin-left: 20px;"> <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation </p>	<p style="margin-left: 20px;"> <input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General </p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The Environmental Hearing Board (Board) proposes to amend 25 Pa. Code Chapter 1021 (relating to practice and procedure) by revising existing rules and adding a new procedural rule.</p> <p>The proposed amendments will 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 and will improve the rules of practice and procedure before the Board.</p> <p>The proposed amendments address the following topics: definitions; format for citing Board decisions; clarifying who must receive notice when a notice of appeal is filed; supersedeas hearings; intervention; procedural motions; reopening the record following a supersedeas hearing or merits hearing; circumstances affecting the grant or denial of a supersedeas; applications for recovering costs and fees; and correction of a typographical error.</p>	
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>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</p>	

recommended regulations.”

Additionally, with regard to the proposed revisions to sections 1021.181-1021.191, dealing with recovery of costs and attorney fees, certain statutes authorize the Board to award attorney fees and costs, including but not limited to section 307(b) of the Clean Streams Law, 35 P.S. § 691.307(b); and the Costs for Mining Proceedings Law, 27 Pa.C.S. § 7708.

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

No.

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

§ 1021.2. Definitions:

The definitions of “Department [of Environmental Protection,]” “permittee” and “third-party appeal” have been revised to better define those terms.

§ 1021.5. Citations to Board decisions:

A new procedural rule has been added at § 1021.5 to explain the proper format for citing Environmental Hearing Board (Board) decisions. Often, attorneys will cite to Lexis or Westlaw for Board decisions. The problem with this approach is that opposing parties may not have a subscription to Lexis or Westlaw. The Board’s preferred manner of citation is to the Environmental Hearing Board Reporter (volumes of the Board’s Adjudications and Opinions) which can be found online on the Board’s website or in hard copy at Board offices and the State Law Library.

§ 1021.51. Commencement, form and content [of notice of appeal]:

The genesis of the revisions to § 1021.51 (Commencement, form and content [of notice of appeal]) is the Commonwealth Court decision in *Department of Environmental Protection v. Schneiderwind*, 867 A.2d 724 (Pa. Cmwlth. 2005), in which the Court reversed a decision of the Board and held that persons who may be adversely affected by the Board’s adjudication of an appeal must be given the opportunity to participate in the appeal. Following the *Schneiderwind* decision, various revisions have been recommended and made to § 1021.51 to address the Court’s ruling in *Schneiderwind*. In 2022, the Board asked the Rules Committee to revisit those changes to the rules and to determine whether further clarification was needed. The Rules Committee determined that some of the terminology was confusing and recommended replacing “recipient of the action” with “potentially adversely affected person.” The Rules Committee also recommended clarifying who may be a potentially adversely affected person. The Board agreed with the recommendations of the Rules Committee. The revisions replace “recipient of the action” with “potentially adversely affected person;” define who is a “potentially adversely affected person;” and clarify which potentially adversely affected persons are automatically a party to the action, which potentially adversely affected persons may intervene as of right by filing an entry of appearance, and which potentially adversely affected persons may seek leave to intervene by filing a

petition to intervene pursuant to § 1021.81.

§ 1021.61. General (Supersedeas):

This rule has been revised to clarify that the procedure for reopening the record after a supersedeas hearing is governed by § 1021.133 (Reopening of record).

§ 1021.63. Circumstances affecting grant or denial.

Section 1021.63(a)(3) has been revised to clarify that, in evaluating a petition for supersedeas, the Board must consider the likelihood of harm to the public and all parties in the case, not simply to the permittee in a third-party appeal.

§ 1021.81. Intervention:

A comment has been added to the rule on intervention to recognize that certain “potentially adversely affected persons” as set forth in the revisions to § 1021.51 (Commencement, form and content) may intervene by simply filing an entry of appearance without the need to file a petition to intervene.

§ 1021.92. Procedural motions:

This rule has been revised to require that a proposed order accompany all procedural motions, not simply requests for extension or continuance.

§ 1021.94a. Summary judgment motions:

This rule has been revised to correct a typographical error.

§ 1021.133. Reopening of record:

The current rule deals only with reopening the record following a hearing on the merits. It was recognized that the record may need to be reopened following a hearing on a supersedeas petition. Therefore, both § 1021.61 (General) and § 1021.133 have been revised to allow for the reopening of the record following a hearing on a supersedeas petition before a ruling on the petition has been made.

§ 1021.181. Scope (Attorney fees and costs)

§ 1021.182. Application for costs and fees

§ 1021.183. Response to application

§ 1021.184. Disposition of application

§ 1021.191. Application for counsel fees under more than one statute:

The Environmental Hearing Board asked its Procedural Rules Committee (Rules Committee) to review the Board’s existing rules on attorney fees and costs and to make a recommendation on whether the rules should be amended to provide further detail and clarification. The Board reported that it had received applications for attorney fees and costs that were inconsistent and varied in content. For example, some applications were accompanied by a brief; others were not. Some applications provided a great amount of detail as to how the requested fees and costs were calculated, whereas other applications provided only general information. Responses to applications also varied. Some were accompanied by a brief, even when the initial application contained no brief. Additionally, parties were

unclear on the procedure after an application for attorney fees and costs was filed. In some cases, parties expected to conduct discovery and/or hold an evidentiary hearing. In other cases, parties simply expected the Board to make a decision based on the parties' filings.

After a great deal of review, the Rules Committee recommended that the rules on attorney fees and costs be amended to provide greater detail and clarification. The Rules Committee agreed that the rules provided little in the way of detail for parties filing an application for fees and costs and for parties responding to such an application. The Rules Committee 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 on applying for attorney fees and costs and to improve practice before the Board. The proposed 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.

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.

There is no set number of litigants who appear before the Board. However, over 1,200 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 clear and detailed rules of practice and procedure.

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 and federal rules have provided a helpful model.

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 rule revisions in this final rulemaking serve to clarify practice before the Environmental Hearing Board.

The rule revisions discussed herein 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.)

The 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 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>. The minutes are extremely detailed and contain extensive information for the environmental bar that practices before the Board, as well as the public. Discussion of the amendments to sections 1021.181-1021.191, the rules on attorney fees and costs, took place at Rules Committee meetings from January 16, 2020 to November 12, 2020. Discussion of the amendments to section 1021.51, dealing with the commencement, form and content of a notice of appeal, took place at Rules Committee meetings from March 11, 2021 to May 12, 2022. Discussions regarding the remaining amendments also took place between March 11, 2021 to May 12, 2022. Discussion of amendments to the proposed rules following receipt of IRRC’s comments took place at a public meeting of the Rules Committee on September 14, 2023 and a public meeting of the Board on October 24, 2023.

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, 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 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 the previous five years, the following number of appeals were filed with the Board: In 2022, 106 appeals. In 2021, 127 appeals. In 2020, 115 appeals. In 2019, 161 appeals. In 2018, 128 appeals. In 2023, as of October 25, 2023, 85 appeals have been filed. 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.

Over 1,200 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.

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 only be relevant in individual cases. For example, the rules on attorney fees and costs will only be relevant in cases where one or more parties file an application seeking attorney fees and cost. Generally, the Board receives less than five applications for attorney fees and costs each year. Therefore, these revisions 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. Rather, the amendments should make practice before the Board clearer and less costly by avoiding the need for litigation over the

interpretation of the Board's rules.

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

Clarifications to the Board's rules on attorney fees and costs will make the process more efficient and user-friendly for practitioners. Practitioners will not file needless paperwork (such as briefs that may not be required). Practitioners will also ensure that their applications receive consideration on the merits by containing all necessary information. There are no adverse effects of the proposed 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.

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 measurabl e	Not measurabl e	Not measurabl e	Not measurabl e	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	Not applicable	Not applicable	Not applicable	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 regulations 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 and subject to sunshine notice. The meetings were held on January 16, 2020; March 12, 2020; May 14, 2020; September 10, 2020; and November 12, 2020; March 11, 2021; May 13, 2021; July 8, 2021; September 9, 2021; November 10, 2021; January 13, 2022; March 23, 2022; and May 12, 2022. The Rules Committee also held a public meeting on September 14, 2023 to discuss IRRC's comments to the proposed rules. The Board voted on the final rules at a public meeting held on October 24, 2023.

C. The expected date of delivery of the final-form regulation:	Fall 2023 or Winter 2024
D. The expected effective date of the final-form regulation: final form regulation in the Pa. Bulletin.	Upon publication as a
E. The expected date by which compliance with the final-form regulation will be required: form regulation in the Pa. Bulletin.	Upon publication as a final
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.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

RECEIVED

FEB 15 2024

Independent Regulatory
Review Commission

DO NOT WRITE IN THIS SPACE

<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 <input type="checkbox"/> 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. 106-14</p> <p>DATE OF ADOPTION: <u>October 24, 2023</u></p> <p>BY: <u><i>Steve C. Zed</i></u></p> <p>TITLE: Chief Judge and Chairperson (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u><i>Adrian Black</i></u></p> <p><u>February 2, 2024</u> 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>
--	--	---

NOTICE OF PROPOSED REGULATION
COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD
25 PA CODE CHAPTER 1021
PRACTICE AND PROCEDURE

TITLE 25 – ENVIRONMENTAL PROTECTION

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]

Practice and Procedure

The Environmental Hearing Board (Board) 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 October 24, 2023.

A. Effective Date

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

B. 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 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.

C. 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. Under subsection 5(c), regulations “shall be promulgated by the Board upon a majority affirmative vote on the recommended regulations.” 35 P.S. § 7515(c).

Additionally, with regard to the revisions to 25 Pa. Code §§ 1021.181-1021.191, dealing with recovery of costs and attorney fees, certain statutes authorize the Board to award attorney fees and costs, including but not limited to section 307(b) of the Clean Streams Law, 35 P.S. § 691.307(b); and the Costs for Mining Proceedings Law, 27 Pa.C.S. § 7708.

D. Background and Purpose

The purpose of the revisions is to improve practice and procedure before the Board. The revisions are based on the recommendations of the Environmental Hearing Board Rules Committee, a nine-member advisory committee created by section 5 of the Environmental Hearing Board Act to make recommendations to the Board on its rules of practice and procedure. 35 P.S. § 7515(a) and (c).

E. Comments and Revisions to Proposed Rulemaking

The proposed rulemaking was published in the *Pennsylvania Bulletin*, at 53 Pa.B. 3193 (June 17, 2023), with a 30-day public comment period. Two comments were submitted by the Independent Regulatory Review Commission (IRRC). The comments and the Board's response were discussed at a public meeting of the Board's Rules Committee held by videoconference on September 14, 2023. In response to the comments received on the proposed rulemaking, the final rulemaking was prepared. A summary of the comments and Board's response is set forth below:

25 Pa. Code §§ 1021.51(f)(1)(iv) and 1021.51(f)(2)(vi)(C) (Commencement, form and content) – Service of a notice of appeal on potentially adversely affected persons

IRRC noted that both subsection (f)(1)(iv) and (2)(vi)(C) include a general citation to the Pennsylvania Rules of Civil Procedure that is vague and does not provide clear guidance to an appellant. IRRC asked the Board to clarify these provisions. In response, the Board has deleted the proposed reference to "Pennsylvania Rules of Civil Procedure" in subsections 1021.51(f)(1)(iv) and (2)(vi)(C) and has replaced it with language allowing service of a notice of appeal "at any office or usual place of business of any potentially adversely affected persons."

This change is necessary because, in some instances, appellants would have difficulty determining what constitutes a person's "chief place of business" as currently required. The amendment on final-form achieves the ultimate goal of expanding the locations at which service can be made to potentially adversely affected persons.

In striking the proposed language and replacing on final-form, the Board's Rules Committee reviewed Pennsylvania Rules of Civil Procedure (Pa. R.C.P.) 402 (Manner of Service), 403 (Service by Mail) and 440 (Service of Legal Papers Other than Original Process) and concluded that none of the rules specifically addressed what was contemplated by the proposed amendment to subsections 1021.51(f)(1)(iv) and (2)(vi)(C). For example, Pa. R.C.P. 402 provides for service by hand delivery or the filing of a specific form in lieu of hand delivery, whereas the Board allows service by mail. Pa. R.C.P. 403 allows service by mail but requires a receipt signed by the defendant or his authorized agent. In contrast, the Board does not require a signature for delivery of a notice of appeal by mail. Nor is the recipient of the notice of appeal a defendant. Finally, Pa. R.C.P. 440 addresses service of legal papers other than original process, whereas section 1021.51(f) addresses service of original process. After a great deal of discussion, the Rules Committee recommended deleting the reference to "Pennsylvania Rules of Civil Procedure" in subsections 1021.51(f)(1)(iv) and (2)(vi)(C) and, instead,

allowing service of a notice of appeal “at any office or usual place of business of any potentially adversely affected persons.”

25 Pa. Code § 1021.51(j) (Commencement, form and content) – Intervention in an appeal

IRRC asked whether an interested person identified under subsection (h)(4) is required to file a petition to intervene or whether the person may simply file an entry of appearance. In response, the Board amended the language in subsection (j) to make clear how an interested person identified under subsection (h)(4) may intervene. Namely, an interested person under (h)(4) must file a petition to intervene unless the Board specifies otherwise.

IRRC also asked what intervention procedure is typically included in the order referenced in subsection (h)(4). While the Board does not retain specific data on this subject, the Board anticipates that most persons under (h)(4) will be allowed to intervene by filing an entry of appearance; however, the Board would like to preserve the right to require a petition to intervene where further information is needed.

Finally, IRRC asked the Board to consider clarifying section 1021.51(j) so that it is consistent with the proposed comment to section 1021.81 (Intervention), which provides:

Section 1021.51(j) (relating to commencement, form and content) allows certain potentially adversely affected persons, as that term is defined in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

The Board believes that the final-form language is now consistent with the comment to section 1021.81, because section 1021.51 now allows certain potentially adversely affected persons, as that term is identified in section 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

Miscellaneous changes and corrections

§ 1021.5(b)

The Board made one stylistic change in section 1021.5(b) to avoid confusion among practitioners. Specifically, in the example provided by the Board to show the proper citation, the Board replaced the year “2022” with a generalized reference to “{Date and Year}.”

This generalized reference is necessary because subsection (b) of the proposed rule sets forth the format for citing to a slip opinion. Prior to publication, the Board’s decisions are available as slip opinions by means of an Opinion Search on the Board’s

website. The docket number and date of issuance are listed in the caption of each decision and, therefore, this information is easily available to anyone citing the decision.

The Board's Opinions and Adjudications (decisions) are published in reporters each year, and so the opinions and adjudications for 2022 have since been published. The reporters are available in hard copy and on the Board's website.

The Board believes the language set forth above provides more clarification to practitioners than the use of an actual date and year in the example.

"Fees and Costs" language

Finally, this final rulemaking corrects sections 1021.181-1021.184 (Attorney fees and costs authorized by statute) and section 1021.191 (attorney fees and costs under more than one statute) and the undesignated center headings that appear before those sections to replace the phrase "costs and fees" with "fees and costs." The language was inadvertently changed to "costs and fees" in the proposed rulemaking and has been corrected to "fees and costs" in the final rulemaking.

F. 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.

G. 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*, 53 Pa.B. 3193 (June 17, 2023), 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.

In preparing the final form regulations, the Board has considered all comments received from IRRC. 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 February 15, 2024. 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.

H. 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) A public comment period was provided as required by law, and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 53 Pa.B. 3193.
- (4) These regulations are necessary and appropriate for administration of the Environmental Hearing Board Act.

I. Order:

- (1) The regulations of the Board are amended by Annex A.
- (2) The Chairperson of the Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel for review and approval as to legality and form, as required by law.
- (3) The Chairperson 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 Chairperson of the Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau as required by law.
- (5) This final-form regulation shall take effect upon publication in the *Pennsylvania Bulletin*.

Steven C. Beckman
Chief Judge and Chairperson

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART IX. ENVIRONMENTAL HEARING BOARD
CHAPTER 1021. PRACTICE AND PROCEDURE
PRELIMINARY PROVISIONS

GENERAL

§ 1021.2. Definitions.

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

* * * * *

Business day—A day that is not a Saturday, Sunday or a legal holiday.

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

Department—The Department of Environmental Protection or other [boards, commissions or agencies] governmental entities whose decisions are appealable to the Board.

Dispositive motion—A motion that seeks to resolve the issues in an appeal without the need for hearing or further hearing. The term includes a motion to quash appeal, a motion to dismiss, a motion for summary judgment, and a motion for partial summary judgment, but not a motion in limine.

* * * * *

Pa.R.C.P.—Pennsylvania Rules of Civil Procedure, 42 Pa.C.S.; 231 Pa. Code.

Party—An appellant, appellee, plaintiff, defendant, permittee or intervenor.

Permittee—The recipient of a permit, license, approval or certification [in a third-party appeal] issued by the Department.

* * * * *

Registration statement—A completed application to use the electronic filing provider for electronic filing and electronic service in Board proceedings.

Supersedeas—A suspension of the effect of an action of the Department pending proceedings before the Board.

Third-party appeal—The appeal of an action by a person **[who is not the recipient of the action] to whom the action is not directed or issued.**

(b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions) except for “pleading” which supersedes the definition of “pleading” in 1 Pa. Code § 31.3.

(Editor’s Note: Section 1021.5 is proposed to be added and is printed in regular type to enhance readability.)

§ 1021.5. Citations to Board decisions.

(a) Citations to Board decisions in briefs, legal memoranda and other documents filed with the Board shall contain the names of the parties, and the year and page number of the Environmental Hearing Board Reporter (Opinion and Adjudication volumes) located on the Board’s web site. The citation shall be provided using the following format: *Name of Appellant v. DEP, 2021 EHB 43*. Pinpoint citations shall be preceded with a comma and a space, in the following format: *Name of Appellant v. DEP, 2021 EHB 43, 45*.

(b) If the Environmental Hearing Board Reporter has not been published for a particular year, the citation shall be to the slip opinion which can be found on the Board’s web site. The citation shall include the names of the parties, the docket number, the type of decision being issued (that is, Adjudication or Opinion) and the date of issuance, using the following format: *Name of Appellant v. DEP, EHB Docket No. ~~2022-000-R~~ _____ (Opinion and Order on Motion to Dismiss issued ~~January 1, 2022~~ {DATE AND YEAR})*.

Comment: Additional citations to legal research databases such as LexisNexis and Westlaw are permissible.

FORMAL PROCEEDINGS

APPEALS

§ 1021.51. Commencement, form and content.

* * * * *

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

(1) *Electronic filing.*

* * * * *

(iv) ~~[In a third-party appeal, the]~~ The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve ~~by facsimile or overnight mail~~ a copy on ~~[the recipient of the action]~~ any potentially adversely affected persons as identified in subsection (h)(1)—(3). The service shall be made at the address in the document evidencing the action by the Department or ~~[at the chief place of business in this Commonwealth of the recipient]~~ in accordance with the Pennsylvania Rules of Civil Procedure **AT ANY OFFICE OR USUAL PLACE OF BUSINESS OF ANY POTENTIALLY ADVERSELY AFFECTED PERSONS.**

* * * * *

(2) Conventional filing.

* * * * *

(vi) The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve a copy on each of the following in the same manner in which the notice of appeal is filed with the Board:

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

(B) The Office of Chief Counsel of the Department.

(C) ~~[In a third-party appeal, the recipient of the action.]~~ A potentially adversely affected person as identified in subsection (h)(1)—(3). The service shall be made at the address in the document evidencing the action by the Department or ~~[at the chief place of business in this Commonwealth of the recipient]~~ in accordance with the Pennsylvania Rules of Civil Procedure **AT ANY OFFICE OR USUAL PLACE OF BUSINESS OF ANY POTENTIALLY ADVERSELY AFFECTED PERSONS.**

* * * * *

(h) For purposes of this section, ~~[“recipient of the action”]~~ a “potentially adversely affected person” includes the following:

(1) The recipient of a permit, license, approval, certification or order.

(2) **[Any] In appeals involving a decision under section 5 or 7 of the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.5 or 750.7), any affected municipality, its municipal authority [and], the proponent of the [decision] request, when applicable, [in appeals involving a decision under section 5 or 7 of the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.5 and 750.7)] and any municipality or municipal authority whose official plan may be affected by the decision or a decision of the Board in the appeal.**

(3) A mining company, well operator, or owner or operator of a storage tank in appeals involving a claim of subsidence damage, water loss or contamination.

(4) Other interested **[parties] persons** as ordered by the Board.

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

(j) ~~Other [recipients of an action] **Potentially adversely affected persons** under [subsection (h)(2), (3) or (4)] **subsection (h)(2) or (3)** may intervene as of **[course] right** in the appeal by filing an entry of appearance within 30 days of service of the notice of appeal in accordance with §§ 1021.21 and 1021.22, without the necessity of filing a petition for leave to intervene under § 1021.81. ~~**Intervention of persons identified under subsection (h)(4) shall be filed in accordance with § 1021.81 unless otherwise specified in the order of the Board under subsection (h)(4).**~~ **POTENTIALLY ADVERSELY AFFECTED PERSONS UNDER SUBSECTION (h)(4) MAY SEEK LEAVE TO INTERVENE BY FILING A PETITION TO INTERVENE PURSUANT TO § 1021.81 (RELATING TO INTERVENTION), OR MAY INTERVENE AS OF RIGHT BY FILING AN ENTRY OF APPEARANCE WHERE PERMITTED TO DO SO BY ORDER OF THE BOARD.**~~

Comment: If a **[recipient of an action] potentially adversely affected person** under subsection (h)(2), (3) or (4) elects not to intervene following service of notice of an appeal or notice by the Board that the **[recipient's] person's** rights may be affected by an appeal, the **[recipient's] person's** right to appeal from the Board's adjudication in the matter may be adversely affected. This comment is added in response to the Commonwealth Court's ruling in **[Schneiderwind v. DEP] DEP v. Schneiderwind**, 867 A.2d 724 (Pa. Cmwlth. 2005).

SUPERSEDEAS

§ 1021.61. General.

* * * * *

(d) At the discretion of the Board, if necessary to ensure prompt disposition, supersedeas hearings may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery [or of], cross-examination, **or reopening the record in accordance with § 1021.133 (relating to reopening of record prior to adjudication).**

* * * * *

§ 1021.63. Circumstances affecting grant or denial.

(a) The Board, in granting or denying a supersedeas, will be guided by relevant judicial precedent and the Board's own precedent. Among the factors to be considered:

- (1) Irreparable harm to the petitioner.
- (2) The likelihood of the petitioner prevailing on the merits.
- (3) The likelihood of injury to the public or other parties[, **such as the permittee in third party appeals] in the case.**

* * * * *

CONSOLIDATION, INTERVENTION AND SUBSTITUTION OF PARTIES

§ 1021.81. Intervention.

* * * * *

Comment: [A recipient of an action, as that term is defined in § 1021.51(h) (relating to commencement, form and content), may automatically intervene in an appeal by simply filing an entry of appearance under § 1021.51(j).] **Section 1021.51(i) (relating to commencement, form and content) allows certain potentially adversely affected persons, as that term is defined in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.**

MOTIONS

§ 1021.92. Procedural motions.

* * * * *

(e) [Requests for extensions or continuances] **Procedural requests**, whether in letter or motion, shall be accompanied by a proposed order.

* * * * *

§ 1021.94a. Summary judgment motions.

* * * * *

(g) *Opposition to motion for summary judgment.* Within 30 days of service of the motion or, if a supporting party files a memorandum of law alone, within 30 days of service of the memorandum of law, a party opposing the motion shall file the following:

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

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

* * * * *

POSTHEARING PROCEDURES

§ 1021.133. Reopening of record [prior to adjudication].

(a) After the conclusion of the hearing on the merits of the matter pending before the Board and before the Board issues an adjudication, or after the conclusion of a hearing on a supersedeas and before the Board issues an order granting or denying a supersedeas, the Board, upon its own motion or upon a petition filed by a party, may reopen the record as provided in this section.

* * * * *

**ATTORNEY ~~FEES AND COSTS~~ COSTS AND FEES AUTHORIZED BY
STATUTE**

§ 1021.182. Application for ~~eosts-and fees~~ AND COSTS.

(a) ~~[A request for costs and fees]~~ If statutorily authorized, a party may initiate a request for ~~eosts-and fees~~ AND COSTS by filing a fee application with the Board. The fee application shall conform to any requirements set forth in the statute under which ~~eosts-and fees~~ AND COSTS are being sought and shall also conform to any requirements set forth in §§ 1021.181, 1021.183, 1021.184 and 1021.191.

(b) ~~[A request for costs and fees shall be by verified application, setting]~~ A fee application shall be verified by the applicant, and shall set forth sufficient grounds to justify the award, including the following:

(1) A copy of the order of the Board in the proceedings in which the applicant seeks ~~eosts-and~~ attorney fees AND COSTS.

(2) A statement of the basis upon which the applicant claims to be entitled to ~~eosts-and~~ attorney fees AND COSTS, setting forth in numbered paragraphs the facts in support of the fee application and the amount of ~~eosts-and fees~~ AND COSTS requested. The statement must identify all legal issues upon which the applicant contends it prevailed and the degree to which the relief sought in the appeal was granted. The fee application may not be accompanied by a supporting memorandum of law unless otherwise ordered by the Board.

(3) An affidavit, or affidavits, signed by each of the applicant's lawyers and each consultant or expert witness whose ~~eosts-and fees~~ AND COSTS the applicant seeks to recover, setting forth in detail all reasonable ~~eosts-and fees~~ AND COSTS incurred for or in connection with ~~[the party's participation in the proceeding, including receipts or other evidence of such costs and fees]~~ issues in which the party prevailed.

(4) Where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area and the experience, reputation and ability of the individual or individuals performing the services.

(5) The name of ~~[the]~~ each party from whom ~~eosts-and fees~~ AND COSTS are sought.

(c) An applicant shall file **[an application] a fee application** with the Board within 30 days of the date of a final order of the Board. An applicant shall serve a copy of the **fee** application upon the other parties to the proceeding.

(d) The Board may deny **[an application] a fee application** sua sponte **or require an applicant to amend its fee application within a specified time frame** if **[it] the applicant** fails to provide all the information required by this section in sufficient detail to enable the Board to **[grant the relief requested] fully evaluate the request for relief.**

Comment: For the purpose of establishing the number of hours an attorney or consultant/expert witness worked under subsection (b)(4), the Board encourages the submission of records that avoid grouping multiple tasks into a single time entry.

§ 1021.183. Response to **fee** application.

A response to **[an application] a fee application** shall be filed within 30 days of service, **unless a longer period of time is ordered by the Board following a fees conference under § 1021.184(c) (relating to disposition of fee application).** **[A factual basis] The factual bases** for the response shall be **[verified] supported** by **[affidavit] affidavits signed by the parties from whom the fees AND COSTS are sought or others with relevant knowledge.** **A response to a fee application shall set forth in correspondingly numbered paragraphs all factual disputes and the reason the opposing party objects to the fee application. Material facts set forth in a fee application that are not denied may be deemed admitted for the purposes of deciding the fee application.**

§ 1021.184. Disposition of **fee** application.

(a) **[Each party may file a brief in accordance with a schedule established by the Board] [Reserved].**

(b) **[The Board may allow discovery and the taking of testimony in order to resolve any factual issues raised by the application and response] [Reserved].**

(c) Within 7 days of the Board's receipt of a fee application, the Board will hold a fees conference with all parties to the appeal to determine the process and deadlines for responses, briefing, discovery and evidentiary hearings, if any. Following the fees conference, the Board will issue a fees conference order establishing case management procedures for these and any other issues that the Board may address.

(d) The applicant has the burden of proving its entitlement to the recovery of costs and fees AND COSTS.

(e) The fee application process will be stayed if one of the parties files an appeal from the Board's final order in the underlying appeal.

ATTORNEY ~~{FEES AND COSTS}~~ ~~COSTS AND FEES~~ UNDER MORE THAN ONE
STATUTE

§ 1021.191. Application for [counsel] ~~costs-and~~ fees AND COSTS under more than one statute.

An applicant seeking to recover ~~costs-and~~ fees {and costs} under more than one statute shall file a single fee application which sets forth, in separate counts, the basis upon which ~~costs-and~~ fees {and costs} are claimed under each statute. **The fee application shall comport with the requirements at § 1021.182 (relating to application for ~~costs-and~~ fees AND COSTS).**



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

February 15, 2024

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

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

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

Honorable Martin T. Causer
Minority Chair, House Committee on
Environmental Resources & Energy
47 East Wing, Capitol
Harrisburg, PA 17120-2067

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

Re: Environmental Hearing Board Final Form Rulemaking 106-14

Greetings:

Pursuant to the Regulatory Review Act, please find enclosed a copy of Environmental Hearing Board (Board) Final Form Rulemaking 106-14 for your review. This rulemaking amends and clarifies the Board's Rules of Practice and Procedure at 25 Pa. Code Chapter 1021.

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
Environmental Hearing Board

