

Comments of the Independent Regulatory Review Commission



Environmental Hearing Board Regulation #106-14 (IRRC #3377)

Practice and Procedures

August 16, 2023

We submit for your consideration the following comments on the proposed rulemaking published in the June 17, 2023 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (Act) (71 P.S. § 745.5b). Section 5.1(a) of the Act (71 P.S. § 745.5a(a)) directs the Environmental Hearing Board (Board) to respond to all comments received from us or any other source.

Section 1021.51. Commencement, form and content. – Implementation procedures; Clarity.

Subsection (f)

Subsection (f)(1)(iv) and (2)(vi)(C), regarding electronic and conventional filing, respectively, provide for an appellant to serve a copy of a notice of appeal on any potentially adversely affected person in accordance with the Pennsylvania Rules of Civil Procedure or a document evidencing the action by the Department of Environmental Protection. The general citation to the Pennsylvania Rules of Civil Procedure is vague and does not provide clear guidance to an appellant. We ask the Board to clarify these provisions by citing specific Pennsylvania Rules of Civil Procedure regarding service.

Subsection (j)

Subsection (j) outlines the procedures to intervene in an appeal. Interested persons identified under subsection (h)(4) who wish to intervene are required to file under Section 1021.81 “unless otherwise specified in the order of the Board.” The comment to Section 1021.81 states that subsection (j) allows persons to intervene “by simply filing an entry of appearance.” However, this subsection only provides this method of filing for persons identified under subsection (h)(2) and (3). We have two questions regarding implementation. First, is an interested person identified by the Board under subsection (h)(4) required to file a petition to intervene or an entry of appearance? Second, what intervention procedure is typically included in the previously-referenced order? We ask the Board to respond to these questions in the Preamble to the final-form regulation. Further, we ask the Board to consider clarifying this subsection so that it is consistent with the comment to Section 1021.81.