

## **PART IX. ENVIRONMENTAL HEARING BOARD**

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### **CHAPTER 1021. PRACTICE AND PROCEDURE**

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### Authority

The provisions of this Chapter 1021 issued under the Environmental Hearing Board Act (35 P. S. §§ 7511—7516), unless otherwise noted.

### Source

The provisions of this Chapter 1021 adopted September 8, 1995, effective September 9, 1995, 25 Pa.B. 3823, unless otherwise noted.

(*Editor's Note:* Chapter 1021 was amended and renumbered at 32 Pa.B. 3085 (June 29, 2002). See 32 Pa.B. 3390 (July 13, 2002) for a cross-reference of renumbered sections.)

### Notes of Decisions

#### *Board Quorum*

Although only two Environmental Hearing Board members were present at the time of the decision despite the requirement of section 3(b) of the Environmental Hearing Board Act (35 P. S. § 7513(b)), that “the board shall consist of five members,” neither the enabling statute nor any regulation enacted thereunder sets forth a minimum number of members required for the Board to act. The two eligible members were, in fact, present and participated in the decision and because of the vacancies, under the common law rule, a majority vote of that number was valid; thus, here, two votes constituted a majority. *Tessitor v. Department of Environmental Resources*, 682 A.2d 434 (Pa. Cmwlth. 1996); appeal denied 693 A.2d 591 (Pa. 1997).

### Cross References

This chapter cited in 25 Pa. Code § 1.5 (relating to procedures); 25 Pa. Code § 77.242 (relating to procedures for seeking release of bond); 25 Pa. Code § 77.253 (relating to procedures); 25 Pa. Code § 86.171 (relating to procedures for seeking release of bond); and 25 Pa. Code § 287.2 (relating to scope).

## PRELIMINARY PROVISIONS

### GENERAL

#### § 1021.1. Scope of chapter.

- (a) This chapter governs practice and procedure before the Board.
- (b) This chapter is not applicable to a proceeding to the extent that the applicable statute governing or authorizing the proceeding sets forth inconsistent practice or procedure.
- (c) Except when inconsistent with this chapter, 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) is applicable insofar as it relates to adjudicatory proceedings. When the term “agency” is used in 1 Pa. Code Part II, “Board” is to be understood; when the term “participant” is used in 1 Pa. Code Part II, “party” is to be understood.
- (d) Subsections (a)—(c) supplement 1 Pa. Code § 31.1 (relating to scope of part).

**§ 1021.2. Definitions.**

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

*Act*—The Environmental Hearing Board Act (35 P. S. §§ 7511—7516).

*Action*—An order, decree, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of a person including, but not limited to, a permit, license, approval or certification.

*Board*—The Environmental Hearing Board, consisting of its chairperson and four members, all of whom are administrative law judges appointed by the Governor to hear appeals from actions of the Department.

*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 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.

*Electronic filing*—The electronic transmission of documents to the Board through the electronic filing provider for purposes of filing.

*Electronic filing provider*—The entity providing electronic filing and electronic service of documents by means of the Internet in Board proceedings.

*Electronic service*—The electronic transmission of documents through the electronic filing provider to a party, attorney or representative under this chapter.

*Facsimile filing*—The transmission of documents to the Board, for purposes of filing, using a machine that can send and receive a facsimile transmission either as a stand-alone device or as part of a computer system.

*Facsimile transmission*—The transmission of a source document between locations by encoding the document into electronic signals, transmitting the signals over the telephone system and reconstructing the electronic signals to print a duplicate of the document at the receiving destination.

*Hearing examiner*—A person other than a Board member designated by the Board to preside at hearings or conferences.

*Intervenor*—A person who has been permitted to intervene by the Board, as provided by § 1021.81 (relating to intervention).

*Legal holiday*—A day designated as a holiday by the President or Congress of the United States or by the Commonwealth.

*Pa.R.A.P.*—Pennsylvania Rules of Appellate Procedure, 42 Pa.C.S.; 210 Pa. Code.

*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.

*Person*—An individual, partnership, association, corporation, political subdivision, municipal authority or other entity.

*Pleading*—A complaint filed under § 1021.71, § 1021.72 or § 1021.73 (relating to complaints filed by the Department; complaints filed by other persons; and transferred matters) or answer filed under § 1021.74 (relating to answers to complaints). Documents filed in appeals, including the notice of appeal, are not pleadings.

*Registered user*—An individual who has submitted a registration statement to the Board and to whom the Board has issued a password authorizing electronic filing and electronic service.

*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.

(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.

#### Authority

The provisions of this § 1021.2 amended under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

#### Source

The provisions of this § 1021.2 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial pages (345884) to (345885).

#### Notes of Decisions

##### Action

Petitioner appealed suspension of review of permit application by Environmental Hearing Board to construct a waste transfer station due to conflict between proposed facility and township zoning laws; Department’s decision to suspend technical review of permit was not an appealable decision since it

did not result in any action being taken against a party and did not affect any property rights, privileges or liabilities. *HJC, LLC v. Department of Environmental Protection*, 949 A.2d 350, 353 (Pa. Cmwlth. 2008)

Where compliance orders previously issued are withdrawn, there is no “action” from which to appeal; therefore, the appeal is moot and dismissal of the appeal is appropriate. *Horsehead Resource Development Co. v. Department of Environmental Protection*, 780 A.2d 856 (Pa. Cmwlth. 2001); appeal denied 796 A.2d 987 (Pa. 2002).

### § 1021.3. Amendments to rules.

(a) The Board retains continuing jurisdiction under section 5 of the act (35 P. S. § 7515) to adopt the amendments and additions to this chapter as may be appropriate.

(b) The Board is authorized to establish forms as may be required to implement the act.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.6 (relating to amendments to rules).

### § 1021.4. Construction and application of rules.

The rules in this chapter shall be liberally construed to secure the just, speedy and inexpensive determination of every appeal or proceeding in which they are applicable. The Board at every stage of an appeal or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

#### Source

The provisions of this § 1021.4 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683. Immediately preceding text appears at serial page (247059).

#### Cross References

This section cited in 25 Pa. Code § 1021.82 (relating to consolidation).

## TIME

### § 1021.11. Effective dates of Board adjudications and preliminary orders.

(a) Adjudications and orders of the Board will be effective as of the date of entry.

(b) Subsection (a) supersedes 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

#### Source

The provisions of this § 1021.11 reserved September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274914).



**§ 1021.12. Extensions of time.**

(a) The time fixed or the period of time prescribed for the filing of a document required or permitted to be filed under this chapter, other than the notice of appeal, may be extended by the Board for good cause upon motion.

(b) The motion in subsection (a) shall conform to the provisions in § 1021.92 (relating to procedural motions).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.15 (relating to extensions of time).

**Source**

The provisions of this § 1021.12 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.13. Computation of time.**

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

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

**Authority**

The provisions of this § 1021.13 issued under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.13 adopted October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205.

**§ 1021.15. [Reserved].****Source**

The provisions of this § 1021.15 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274914).

**§ 1021.17. [Reserved].****Source**

The provisions of this § 1021.17 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274914) and (270919).

**REPRESENTATION BEFORE BOARD****§ 1021.21. Representation.**

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

(b) Corporations shall be represented by an attorney of record.

(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.

(c.1) 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 an attorney in this Commonwealth.

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

**Comment**

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

**Authority**

The provisions of this § 1021.21 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.21 reserved September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial page (388218).

**Cross References**

This section cited in 25 Pa. Code § 1021.51 (relating to commencement, form and content).

**§ 1021.22. Notice of appearance.**

(a) Entries of appearance shall be filed with the Board and served upon the other parties to the proceedings.

(b) Subsection (a) supplements 1 Pa. Code §§ 31.22 and 31.25 (relating to appearance by attorney; and form of notice of appearance).

**Source**

The provisions of this § 1021.22 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4693; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (270919) to (270920).

**Cross References**

This section cited in 25 Pa. Code § 1021.51 (relating to commencement, form and content).

**§ 1021.23. Withdrawal of appearance.**

(a) An attorney's appearance for a party may be withdrawn without leave of the Board if another attorney has entered or simultaneously enters an appearance for the party and the change of attorneys does not delay any stage of the litigation.

(b) In ruling on a motion for withdrawal of appearance under other circumstances, the Board will consider the following factors: the reasons why withdrawal is requested; any prejudice withdrawal may cause to the litigants; delay in resolution of the case which would result from withdrawal; and the effect of withdrawal on the efficient administration of justice.

(c) In the event withdrawal of counsel will result in an unrepresented party before the Board, counsel seeking to withdraw shall provide the Board with a single contact person for future service in all proceedings.

*Comment:* This rule permits the automatic withdrawal and concurrent entry of appearance of substitute counsel under ordinary circumstances. Leave of the Board must be obtained where withdrawal would have an adverse effect on the interests of the client. Rule 1.16(b) of the Rules of Professional Conduct sets forth the bases for withdrawal for good cause; however, Rule 1.16(c) provides, "When ordered to do so by a tribunal, the lawyer shall continue representation notwithstanding good cause for terminating the representation."

**Source**

The provisions of this § 1021.23 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (270920).

**§ 1021.24. Referral to pro bono counsel.**

(a) The Secretary to the Board is authorized to refer persons who appear before the Board on a pro se basis, and who claim not to be able to afford a lawyer, to one of the following:

(1) The pro bono committee of the Pennsylvania Bar Association's Environmental and Energy Law Section.

(2) A county bar association lawyer referral service.

(b) The financial standard for determining a person's inability to afford a lawyer will be the standard adopted by the appropriate bar association at the time of referral.

**Source**

The provisions of this § 1021.24 adopted January 19, 2001, effective January 20, 2001, 30 Pa.B. 428.

**§ 1021.25. Amicus curiae.**

(a) Anyone interested in legal issues involved in a matter pending before the Board may request leave to file an amicus curiae brief or memorandum of law, in regard to those legal issues. The amicus curiae shall state in its request the legal issues to be addressed in the brief and shall serve a copy of the request on all parties.

(b) If the Board grants a request, the amicus curiae shall file the brief within the time prescribed by the Board and shall serve a copy on all parties. Any party may file a response to a brief amicus curiae which is adverse to its interests.

(c) The amicus curiae may present oral argument only as the Board may direct.

**Source**

The provisions of this 1021.25 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.30. [Reserved].****Source**

The provisions of this § 1021.30 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274621) to (274622).

**DOCUMENTARY FILINGS****FILING AND SERVICE OF DOCUMENTS****§ 1021.31. Signing.**

(a) Every document directed to the Board and every discovery request or response of a party represented by an attorney 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. Each document must state the signer's mailing address, e-mail address and telephone number.

(b) The signature to a document described in subsection (a) constitutes a certification that the person signing, or otherwise presenting it to the Board, has read it, that to the best of his knowledge or information and belief there is good ground to support it, and that it is submitted in good faith and not for any improper purpose such as to harass, cause unnecessary delay or needless increase in the cost of litigation. There is good ground to support the document if the signer or presenter has a reasonable belief that existing law supports the document or that there is a good faith argument for the extension, modification or reversal of existing law.

(c) The Board may impose an appropriate sanction in accordance with § 1021.161 (relating to sanctions) for a bad faith violation of subsection (b).

**Authority**

The provisions of this § 1021.31 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.31 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial page (345889).

**Cross References**

This section cited in 25 Pa. Code § 1021.32 (relating to filing).

**§ 1021.32. Filing.**

(a) *General filing requirements.* The following documents shall be conventionally filed or facsimile filed:

(1) A complaint that is original process naming a defendant or defendants.

(2) A motion to be excused from the Board's mandatory electronic filing requirement.

(3) An entry of appearance filed under § 1021.51(j) (relating to commencement, form and content).

(4) A document filed on behalf of a person who is not a party to the proceeding at the time of the filing.

(b) *Filing of notice of appeal.* An original notice of appeal may be filed electronically, conventionally or by facsimile.

(c) *Electronic filing.*

(1) Documents except those listed in subsections (a) and (b) shall be electronically filed unless the Board orders otherwise in a particular proceeding. Persons wishing to be excused from the mandatory filing requirements shall file a motion under § 1021.92 (relating to procedural motions). The Board will excuse persons from the mandatory electronic filing requirement, with respect to all filings or with respect to specific filings, if the Board determines that the requirement would impose an unreasonable burden on the potential filer.

(2) Documents filed electronically may not also be filed by other means unless the Board orders otherwise or the document to be filed includes an original bond or check. When electronically filing documents including an original bond or check, a copy of the document, including a copy of the original bond or check, shall be electronically filed. The original, including the original bond or check, shall be deposited in the mail, addressed to the Board's headquarters at the address provided in subsection (e)(1).

(3) Electronic filing can be performed only by registered users. Individuals who are not registered users can become registered users by submitting a registration statement to the Board and receiving authorization for electronic filing and service from the electronic filing provider. The registration statement con-

sists of an electronic form prepared by the Board and accessed on its electronic filing web site. The prospective registered user shall provide a name, mailing address, e-mail address, telephone number and attorney identification number (if the registered user is an attorney).

(4) When registration is complete, a registered user may not withdraw from the electronic filing and electronic service system except with leave from the Board.

(5) Filers are responsible for providing an objective description of documents electronically filed. The description must include:

(i) The party filing or serving the document.

(ii) The title of the document (for example, Appellant ABC Corporation's Motion for Summary Judgment, Appellant Smith's Motion to Compel Permittee XYZ, Inc. to Produce Documents).

(6) When a document has been filed electronically, the official record is the electronic document filed with the Board and the filer is bound by the document as filed.

(7) The registered user's log-in and password required to file documents using the electronic filing provider serve as the registered user's signature on electronic documents filed with the Board. The log-in and password serve as a signature for purposes of § 1021.31 (relating to signing) and other purposes for which a signature is required in connection with proceedings before the Board.

(8) If an electronically filed document does not bear the actual signature of the registered user, the name of the registered user under whose log-in and password the document is submitted must be preceded by "s/" and typed in the space in the document's signature block where the signature would otherwise appear (for example, "s/ Jane Doe").

(9) No registered user or other person may knowingly permit or cause a registered user's password to be used by anyone other than an authorized agent of the registered user.

(10) A document that is electronically filed and requires an original signature other than that of the registered user shall be maintained by counsel or, if the party is not represented, by the party itself, for 1 year after periods for appeals expire. Documents shall be maintained by the filer and produced at the request of the Board or other party within 14 days of the request.

(11) Documents may be electronically filed in Microsoft Word format, PDF format or other formats as the Board may permit. The electronic filing provider automatically converts uploaded documents not already in PDF format to PDF format. A document may exceed page limitation rules if the additional pages result solely from the electronic conversion by the electronic filing provider.

(12) To the extent practicable, electronically filed documents must be formatted in accordance with subsection (e)(4).

(13) An electronic filing completed before midnight Eastern Time will be considered to be filed on that date. Upon completion of the filing, the electronic filing provider will issue a transaction receipt that includes the date and time the document was received. The transaction receipt serves as proof of filing.

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

(15) A registered user shall submit as exhibits or attachments only excerpts of the referenced documents that are directly germane to the matter under consideration by the Board. Excerpted information must be clearly and prominently identified as such. A registered user who files excerpts of documents as exhibits or attachments under this paragraph does so without prejudice to his right to timely file additional excerpts or the complete document and shall, upon request, provide responding parties with the complete document. A responding party may timely file the complete document or additional excerpts that it believes are directly germane.

(d) *Facsimile filing.*

(1) Documents permitted under subsections (a), (b) and (c)(1) and (2) to be filed by facsimile shall be transmitted to the Board's facsimile line at (717) 783-4738.

(2) The date of facsimile filing is the date the document is received by the Board.

(3) For documents more than ten pages long, the facsimile filed must consist of the certificate of service and the first five pages and last five pages of each document except exhibits. Exhibits shall be omitted from the filing transmitted to the Board's facsimile line.

(4) On the same day a document is transmitted to the Board's facsimile line, the original (including exhibits) shall be deposited in the mail, addressed to the Board's headquarters at the address provided in subsection (e)(1). When facsimile filing a document including an original bond or check, a copy of the bond or check must be included with the document transmitted by facsimile. The original bond or check must be included with the original of the document deposited in the mail.

(5) Documents must be formatted in accordance with subsection (e)(4).

(6) Except in the case of filing a notice of appeal, which is governed by § 1021.53a, if facsimile filing or service does not occur or is made untimely because of a technical issue, the party affected may seek appropriate relief from the Board.

(e) *Conventional filing.*

(1) Documents permitted to be conventionally filed with the Board under subsections (a), (b) and (c)(1) and (2) shall be filed at the Board's head-

quarters—2nd Floor, Rachel Carson State Office Building, 400 Market Street, Post Office Box 8457, Harrisburg, Pennsylvania 17105-8457.

(2) The date of conventional filing is the date the document is received by the Board.

(3) Only hard copies may be conventionally filed unless the filer has secured prior approval from the Board to conventionally file documents in other formats, such as CDs, DVDs or other digital storage media.

(4) With the exception of exhibits, documents filed with the Board must be typewritten on letter-size paper (approximately 8 to 8 1/2 inches by 10 1/2 to 11 inches) and pages after the first must be numbered. With the exception of exhibits, notices of appeal and complaints, documents filed must be double spaced, except that footnotes must be single spaced and quotations in excess of a few lines must be single spaced and indented. Photocopied documents will be accepted as typewritten, provided that all copies are legible.

(f) *Format of filing.* Failure to comply with subsection (c)(5), (d)(5) or (e)(4) will not result in dismissal of a filing, but the Board may request that the party resubmit the document in proper form.

#### Comment

Attorneys and pro se appellants who register for electronic filing will be unable to file electronically until they receive a confirmation e-mail 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 has the option of filing by means other than electronic filing to ensure timely filing.

#### Authority

The provisions of this § 1021.32 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

#### Source

The provisions of this § 1021.32 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial pages (388221) to (388224).

#### Cross References

This section cited in 25 Pa. Code § 1021.33 (relating to service by the Board); and 25 Pa. Code § 1021.34 (relating to service by a party).

### § 1021.32a. Privacy issues.

A person filing documents shall refrain from including, or shall redact when inclusion is necessary, the following personal identifiers from documents filed with the Board, including exhibits, unless filed under seal or otherwise ordered by the Board:

- (1) Social Security numbers.
- (2) Financial account numbers.
- (3) Dates of birth.
- (4) Names of minor children.



**Authority**

The provisions of this § 1021.32a issued under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

**Source**

The provisions of this § 1021.32a adopted August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328.

**§ 1021.33. Service by the Board.**

(a) The Board will serve the orders, notices and other documents it issues upon counsel designated on the docket. For any parties not represented by counsel, the Board will serve the person who filed the complaint or notice of appeal, or the person upon whom the notice of appeal or complaint was served.

(b) The Board will serve documents it enters or issues upon registered users participating in the proceeding through the electronic filing provider, subject to the provisions in this chapter. The Board will serve persons who have been excused from electronic filing under § 1021.32(c)(1) (relating to filing) by mail or in person.

(c) An order filed electronically without the original signature of an administrative law judge has the same force and effect as if the administrative law judge had affixed a signature to a paper copy of the order.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

**Authority**

The provisions of this § 1021.33 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.33 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial page (372801).

**§ 1021.34. Service by a party.**

(a) Notices of appeal shall be served as provided in § 1021.51 (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).

(b) Copies of each document filed with the Board shall be served upon every party to the proceeding on or before the day that the document is filed with the Board. Service upon a party represented by an attorney in the matter before the Board shall be made by serving the attorney.

(c) Electronic service of documents to other registered users through the electronic filing provider shall be considered valid and effective service and have the same legal effect as serving an original paper document. Registered users who receive documents by electronic service shall access the documents using the electronic filing provider.

(d) Documents filed electronically shall be served by hand, mail, other personal delivery or facsimile upon parties who have been excused from electronic filing under § 1021.32(c)(1) (relating to filing).

(e) Subpoenas and documents that must be conventionally filed with the Board under § 1021.32(b) shall be served by hand, mail or other personal delivery. Documents that are conventionally or facsimile filed with the Board under § 1021.32(a) shall be served by hand, mail, other personal delivery or facsimile.

(f) If a party does not receive electronic service in a matter involving a request for expedited disposition, service shall be made upon that party within 24 hours of filing the document with the Board. For purposes of this subsection, service means actual receipt by the party served.

(g) If a person filing electronically becomes aware that the notice of electronic filing was not successfully transmitted to a registered user, or that the notice transmitted to the registered user is defective, the filer shall serve the electronically filed document upon the registered user by hand, mail, other personal delivery or facsimile by 4:30 p.m. on the business day following notification of the deficiency. The filer may also effect service by e-mail, provided the registered user consents to service in that manner.

(h) The filing of a registration statement constitutes a certification that the registered user will accept electronic service of documents permitted to be electronically filed.

(i) Subsections (a)—(h) supersede 1 Pa. Code § 33.32 (relating to service by a participant).

#### Authority

The provisions of this § 1021.34 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

#### Source

The provisions of this § 1021.34 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial pages (388225) to (388227).

**Cross References**

This section cited in 25 Pa. Code § 1021.71 (relating to complaints filed by the Department); 25 Pa. Code § 1021.72 (relating to complaints filed by other persons); 25 Pa. Code § 1021.73 (relating to transferred matters); 25 Pa. Code § 1021.94 (relating to dispositive motions other than summary judgment motions); and 25 Pa. Code § 1021.94a (relating to summary judgment motions).

**§ 1021.35. Date of service.**

(a) For electronic service, the date of service of a document is the date that the electronic filing provider transmits the notice of electronic filing. For other types of service, the date of service is the date the document served is mailed, delivered in person or transmitted to the party's facsimile line.

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

(1) Documents served by electronic service shall be deemed served, for purposes of responding, when notice of the electronic filing is transmitted to registered users in the proceeding, provided the transmission is complete before 4:30 p.m. Eastern Time on a business day. Otherwise, documents served by electronic service shall be deemed served the next business day.

(2) Documents served by facsimile shall be deemed served, for purposes of responding, when transmission of the facsimile is complete, provided the transmission is complete before 4:30 p.m. Eastern Time on a business day. Otherwise, documents served by facsimile shall be deemed served the next business day.

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

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.34 (relating to date of service).

**Authority**

The provisions of this § 1021.35 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.35 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial page (388227).

**§ 1021.36. Certificate of service.**

(a) Each document filed with the Board must include a certificate of service which certifies the date and manner of service and the name and mailing address of the person served, except as provided in subsection (b).

(b) For electronic service, it shall be sufficient for the certificate to state that the document was filed using the electronic filing provider and to identify the registered users in the proceedings.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.35 (relating to proof of service).

**Authority**

The provisions of this § 1021.36 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.36 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial page (345892).

**§ 1021.36a. E-mail addresses.**

A registered user shall maintain an active e-mail address to receive electronic notice and electronic service from the electronic filing provider. A registered user has a duty to promptly update his e-mail account information with the electronic filing provider when there is a change in e-mail address.

**Authority**

The provisions of this § 1021.36a issued under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.36a adopted August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328.

**§ 1021.37. Number of copies.**

(a) When a document is electronically filed, the filer shall electronically file one copy of the document.

(b) For conventional filings and hard copies mailed to the Board in association with a facsimile filing, one original shall be filed unless the Board orders otherwise.

(c) One copy of all documents submitted to the Board shall be served on the other parties to the proceeding.

**Authority**

The provisions of this § 1021.37 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.37 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial pages (345892) to (345893).

**§ 1021.38. Publication of notice.**

Publication of a notice of action or proposed action by the Department or Board in the *Pennsylvania Bulletin* shall constitute notice to or service upon all persons, except a party, effective as of the date of publication.

**Source**

The provisions of this § 1021.38 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883. Immediately preceding text appears at serial pages (289939) to (289940).

**§ 1021.39. Docket.**

(a) The Board will maintain a docket of proceedings and a proceeding as initiated will be assigned an appropriate designation. The Board will maintain the docket on its web site available to all members of the public and will accept electronic filing of documents from registered users subject to the provisions in this chapter.

(b) The docket will register the date of all filings. When a document is filed electronically, the electronic filing provider will transmit a notice of the electronic filing to all registered users in the proceeding, which includes the date and time of the filing.

(c) The Board will maintain a complete official file on all proceedings consisting of electronic and hard copy filings. The official copy of an electronically filed document or Board order shall be that appearing on the Board's web site.

(d) The electronic docket will be available on the Board's web site and the hard copy portion of the official file shall be available for inspection and copying by the public during the office hours of the Board insofar as consistent with the proper discharge of the duties of the Board.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.51 (relating to docket).

**Authority**

The provisions of this § 1021.39 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.39 adopted November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial page (372805).

**Cross References**

This section cited in 25 Pa. Code § 1021.125 (relating to official notice of facts); and 25 Pa. Code § 1021.201 (relating to composition of the certified record on appeal to Commonwealth Court).

**§ 1021.41. [Reserved].****Source**

The provisions of this § 1021.41 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274624).

**FORMAL PROCEEDINGS****APPEALS****§ 1021.51. Commencement, form and content.**

(a) An appeal from an action of the Department shall commence with the filing of a notice of appeal with the Board.

(b) The caption of a notice of appeal must be in the following form:

ENVIRONMENTAL HEARING BOARD  
2nd Floor, Rachel Carson State Office Building  
400 Market Street, Post Office Box 8457  
Harrisburg, Pennsylvania 17105-8457

JOHN DOE, Appellant  
234 Main Street, Smithtown,  
Jones County, Pennsylvania 15555  
(Telephone (123) 456-7890)

(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 in the attorney's individual name or by the appellant(s).

(d) If the appellant has received written notification of an action of the Department, the appellant shall attach a copy of that notification and any documents received with the notification to the notice of appeal. If the documents include a permit, the appellant only needs to attach the first page of the permit. Instead of attaching a copy of the notification of the action or related documents, the appellant may provide a link to the publication of the action in the *Pennsylvania Bulletin*.

(e) The notice of appeal must set forth in separate numbered paragraphs the specific objections to the action of the Department. The objections may be factual or legal.

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

(1) *Electronic filing.*

(i) If a bond or check is required to secure payment of a penalty, a copy of the bond or check must be included with the electronic filing. The notice of appeal and attachments, including the original bond or check, shall be deposited in the mail, addressed to the Board's headquarters at the address provided in paragraph (2)(i).

(ii) An electronic filing complete before midnight Eastern Time will be considered to be filed on that date.

(iii) To the extent practical, the notice of appeal must be formatted in accordance with paragraph (2)(v). Failure to comply with this requirement will not result in rejection or dismissal of the notice of appeal. The Board may request that the appellant file an amended version of the notice of appeal in proper form.

(iv) In a third-party appeal, 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. 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.

(v) The Board, through the electronic filing provider, will provide prompt notice of, and access to, all notices of appeal electronically filed to the Office of Chief Counsel of the Department, at an e-mail address designated by the Office of Chief Counsel.

(2) *Conventional filing.*

(i) An original notice of appeal that is conventionally filed shall be filed at the Board's headquarters—2nd Floor, Rachel Carson State Office Building, 400 Market Street, Post Office Box 8457, Harrisburg, Pennsylvania 17105-8457.

(ii) The date of conventional filing is the date the original notice of appeal is received by the Board.

(iii) One copy of the notice of appeal and attachments shall be conventionally filed unless the Board orders otherwise.

(iv) Only hard copies of original notices of appeal shall be conventionally filed unless the filer has secured prior approval from the Board to conventionally file the original notice of appeal in another format, such as CDs, DVDs or other digital storage media.

(v) The notice of appeal must be typewritten on letter-size paper (approximately 8 to 8 1/2 inches by 10 1/2 to 11 inches) and pages after the first must be numbered. Photocopies will be accepted as typewritten, provided that the copies are legible. Failure to comply with these requirements will not result in rejection or dismissal of the notice of appeal. The Board may request that the appellant file an amended version of the notice of appeal in proper form.

(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. 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.

(3) *Facsimile filing.*

(i) Original notices of appeal filed by facsimile shall be transmitted to the Board's facsimile line at (717) 783-4738. If a bond or check is required to secure payment of a penalty, a copy of the bond or check must be included with the facsimile filing. The notice of appeal and attachments, including the original bond or check, shall be deposited in the mail, addressed to the Board's headquarters at the address provided in paragraph (2)(i).

(ii) The date of facsimile filing is the date the original notice of appeal is received by the Board.

(iii) For original notices of appeal more than ten pages long, the facsimile filed must consist of the certificate of service and the first five pages and last five pages of the notice of appeal except exhibits. Except for copies

of checks and bonds required to secure payment of a penalty, exhibits shall be omitted from the filing transmitted to the Board's facsimile line.

(iv) On the same day an original notice of appeal is transmitted to the Board's facsimile line, the original, including exhibits, shall be deposited in the mail, addressed to the Board's headquarters at the address provided in paragraph (2)(i).

(v) The notice of appeal must be formatted in accordance with paragraph (2)(v). Failure to comply with this requirement will not result in rejection or dismissal of the notice of appeal. The Board may request that the appellant file an amended version of the notice of appeal in proper form.

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

(g) When the appeal is from an assessment of a civil penalty for which the statute requires an appellant to prepay the penalty or post a bond, the appellant shall follow the procedures in § 1021.54a (relating to prepayment of penalties) in addition to the procedures in this section.

(h) For purposes of this section, "recipient of the action" includes the following:

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

(2) Any affected municipality, its municipal authority and the proponent of the decision, 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).

(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 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 under subsection (h)(2), (3) or (4) may intervene as of course 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.

(k) The original notice of appeal must include a certificate of service which certifies the date and manner of service and the name and mailing address of the person served.

(l) Subsections (a)—(k) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

*Comment:* If a recipient of an action 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 rights may be affected by an appeal, the recipient'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*, 867 A.2d 724 (Pa. Cmwlth. 2005).

#### Authority

The provisions of this § 1021.51 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

#### Source

The provisions of this § 1021.51 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035; amended August 8, 2014, effective August 9, 2014, except for subsection (f)(1)(v), which takes effect on September 8, 2014, 44 Pa.B. 5328; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial pages (388230) to (388233).

#### Notes of Decisions

##### *Appeal*

In an appeal to the Environmental Hearing Board, the failure to file specific grounds for the appeal within the prescribed time is a defect that goes to the jurisdiction of the EHB. *People United to Save Homes v. Department of Environmental Protection*, 789 A.2d 319 (Pa. Cmwlth. 2001).

##### *Financial Incapacity*

This section does not mandate that, where security is required, the appellant allege economic inability to pay or post a bond, nor does it require that a notice of appeal include documentation proving payment or the execution of a bond. *Stanley T. Pilawa & Disposal, Inc. v. Department of Environmental Protection*, 698 A.2d 141 (Pa. Cmwlth. 1997).

#### Cross References

This section cited in 25 Pa. Code § 1021.32 (relating to filing); 25 Pa. Code § 1021.34 (relating to service by a party); 25 Pa. Code § 1021.52 (relating to timeliness of appeal); and 25 Pa. Code § 1021.81 (relating to intervention).

### **§ 1021.52. Timeliness of appeal.**

(a) Except as specifically provided in § 1021.53 (relating to amendments to appeal or complaint), jurisdiction of the Board will not attach to an appeal from an action of the Department unless the appeal is in writing and is filed with the Board in a timely manner, as follows, unless a different time is provided by statute:

(1) The person to whom the action of the Department is directed or issued shall file its appeal with the Board within 30 days after it has received written notice of the action.

(2) Any other person aggrieved by an action of the Department shall file its appeal with the Board within one of the following:

(i) Thirty days after the notice of the action has been published in the *Pennsylvania Bulletin*.

(ii) Thirty days after actual notice of the action if a notice of the action is not published in the *Pennsylvania Bulletin*.

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

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

*Comment:* The language “person to whom the action of the Department is issued or directed” is intended to include, but not be limited to, the recipient of:

an order, a permit or license issuance or denial, a civil penalty assessment, or certification. See section 4(a) and (c) of the act (35 P.S. § 7514(a) and (c)).

#### Authority

The provisions of this § 1021.52 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

#### Source

The provisions of this § 1021.52 amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial page (380037).

#### Notes of Decision

##### *Appeal*

Objector did not have actual notice of the Department of Environmental Protection's renewal permit to the energy company to drill and operate the well until he received a copy of the renewal permit, rather than when the Department of Environmental Protection's permit-tracking system provided general information about the permit. Thus, objector's 30-day appeal period began with his receipt of the renewal permit. *Harvilchuck v. Dep't. of Environmental Protection*, 117 A.3d 368 (2015).

The 30 day appeal period provided for in regulation cannot be triggered in the absence of a final, appealable decision, *Seneca Landfill v. Dep't. of Env'tl. Protection* 948 A.2d 916, 922 (Pa. Cmwlth. 2008).

### § 1021.53. Amendments to appeal or complaint.

(a) An appeal or complaint may be amended as of right within 20 days after the filing thereof.

(b) After the 20-day period for amendment as of right, the Board, upon motion by the appellant or complainant, may grant leave for further amendment of the appeal or complaint. This leave may be granted if no undue prejudice will result to the opposing parties. The burden of proving that no undue prejudice will result to the opposing parties is on the party requesting the amendment.

(c) These motions shall be governed by the procedures in §§ 1021.91 and 1021.95 (relating to general; and miscellaneous motions) except that the motion shall be verified and supported by affidavits.

(d) If motion to amend is granted, a party may request, in writing, a period of time to conduct additional discovery limited to the issues raised by the amendment. These requests shall specify a period deemed necessary therefor. The Board will act on any such request as its discretion requires.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

*Comment:* In addition to establishing a new standard for assessing requests for leave to amend an appeal, this rule clarifies that a nunc pro tunc standard is not the appropriate standard to be applied in determining whether to grant leave for amendment of an appeal, contrary to the apparent holding in *Pennsylvania Game Commission v. Department of Environmental Resources*, 509 A.2d 877 (Pa. Cmwlth. 1986).

#### Source

The provisions of this § 1021.53 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709. Immediately preceding text appears at serial pages (313848) to (313849).

#### Notes of Decisions

Company was not entitled to leave to amend its notice of pleading on appeal to the Environmental Hearing Board from issuance by the Department of Environmental Protection of a mining permit revision regarding protection of biologically diverse streams, where company's request failed to pro-

vide any facts or averments demonstrating that the requested relief would not result in prejudice to Department. The company bore the burden of establishing a lack of prejudice, and it failed to satisfy its burden in this regard. *Consol Pennsylvania Coal Co., LLC v. Dep't of Env'tl. Prot.*, 129 A.3d 28 (Pa. Cmwlth. 2015).

#### Cross References

This section cited in 25 Pa. Code § 1021.52 (relating to timeliness of appeal); and 25 Pa. Code § 1021.83 (relating to substitution of parties).

### § 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” under § 1021.91 (relating to general), 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) 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 the person or persons, that the facts are verified as true and correct subject to the penalties for unsworn falsification to authorities, under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(6) If the petition to appeal nunc pro tunc is not supported by an affidavit or verification as set forth in paragraph (5), 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” under § 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.

**Authority**

The provisions of this § 1021.53a amended under section 5(c) of the Environmental Hearing Board Act (35 P.S. § 7515(c)).

**Source**

The provisions of this § 1021.53a adopted February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial page (388235).

**Cross References**

This section cited in 25 Pa. Code § 1021.32 (relating to filing).

**§ 1021.54. [Reserved].**

**Source**

The provisions of this § 1021.54 adopted January 19, 2001, effective January 20, 2001, 31 Pa.B. 428; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; reserved February 10, 2006, effective February 11, 2006, 36 Pa.B. 709. Immediately preceding text appears at serial pages (313849) to (313850).

**§ 1021.54a. Prepayment of penalties.**

(a) When an appeal is from the assessment of a civil penalty for which the statute requires an appellant to prepay the penalty or post a bond with the Department, the appellant shall submit to the Office of Chief Counsel of the Department a check in the amount of the penalty or an appropriate bond securing payment of the penalty or a verified statement that the appellant is unable to pay.

(b) When an appeal is from the assessment of a civil penalty for which the statute requires an appellant to prepay the penalty or post a bond with the Board, the appellant shall submit to the Board a check in the amount of the penalty or an appropriate bond securing payment of the penalty or a verified statement that the appellant is unable to pay.

(c) If a civil penalty is assessed under more than one statute, an appellant shall follow the procedures set forth in each statute.

(d) When an appellant submits a verified statement of inability to prepay, under subsection (a) or (b), a copy of the verified statement shall be included with the notice of appeal.

*Comment:* Practitioners should note that the Air Pollution Control Act (35 P. S. §§ 4001—4015), requires that prepayment of a civil penalty be made to the Board and not to the Department.

#### Source

The provisions of this § 1021.54a adopted October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035.

#### Cross References

This section cited in 25 Pa. Code § 1021.51 (relating to commencement, form and content); 25 Pa. Code § 1021.55 (relating to hearing on inability to prepay penalty).

### § 1021.55. Hearing on inability to prepay penalty.

(a) If an appellant submits a verified statement that he is unable to pay in accordance with § 1021.54a(c) (relating to prepayment of penalties), the Board may schedule a hearing on the validity of this claim and may require the appellant to supply appropriate financial information to the Department in advance of the hearing.

(b) If the Board determines that the appellant is able to prepay the penalty assessed or post a bond the Board will order the appellant to do so, within a period not to exceed 30 days.

#### Source

The provisions of this 1021.55 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035. Immediately preceding text appears at serial page (317397).

### § 1021.56. [Reserved].

#### Source

The provisions of this § 1021.56 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (259861) to (259862).

### § 1021.57. [Reserved].

#### Source

The provisions of this § 1021.57 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (259862) and (274921).

**§ 1021.58. [Reserved].****Source**

The provisions of this § 1021.58 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274921).

**SUPERSEDEAS****§ 1021.61. General.**

(a) A petition for supersedeas under section 4(d) of the act (35 P. S. § 7514(d)) may be filed at any time during the proceeding.

(b) The Board will not issue a supersedeas without a hearing, but a hearing may be limited under subsection (d).

(c) A hearing on a supersedeas, if necessary, shall be held expeditiously—if feasible within 2 weeks of the filing of the petition—taking into account the available time of a Board member or hearing examiner, and taking into account the urgency and seriousness of the environmental or other problem to which the order or action of the Department applies. If good cause is shown, the hearing shall be held as soon as possible after the filing of the petition.

(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.

(e) Under § 1021.161 (relating to sanctions), the Board may impose costs or other appropriate sanctions on parties or attorneys who, in the Board's opinion, have filed requests for supersedeas in bad faith or on frivolous grounds.

**Source**

The provisions of this § 1021.61 reserved September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274921).

**§ 1021.62. Contents of petition for supersedeas.**

(a) A petition for supersedeas shall plead facts with particularity and shall be supported by one of the following:

(1) Affidavits, prepared as specified in Pa.R.C.P. 76 and 1035.4 (relating to definitions; and motion for summary judgment), setting forth facts upon which issuance of the supersedeas may depend.

(2) An explanation of why affidavits have not accompanied the petition if no supporting affidavits are submitted with the petition for supersedeas.

(b) A petition for supersedeas shall state with particularity the citations of legal authority the petitioner believes form the basis for the grant of supersedeas.

(c) A petition for supersedeas may be denied upon motion made before a supersedeas hearing or during the proceedings, or sua sponte, without hearing, for one of the following reasons:

- (1) Lack of particularity in the facts pleaded.
  - (2) Lack of particularity in the legal authority cited as the basis for the grant of the supersedeas.
  - (3) An inadequately explained failure to support factual allegations by affidavits.
  - (4) A failure to state grounds sufficient for the granting of a supersedeas.
- (d) The Board, upon motion or sua sponte, may direct that a prehearing conference be held.

#### Source

The provisions of this § 1021.62 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274921) to (274922).

#### Cross References

This section cited in 25 Pa. Code § 1021.64 (relating to temporary supersedeas).

### § 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.
- (b) A supersedeas will not be issued in cases where pollution or injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect.
- (c) In granting a supersedeas, the Board may impose conditions that are warranted by the circumstances, including the filing of a bond or other security.

#### Source

The provisions of this 1021.63 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

### § 1021.64. Temporary supersedeas.

(a) An application for temporary supersedeas may be filed when a party may suffer immediate and irreparable injury before the Board can conduct a hearing on a petition for supersedeas.

(b) The application for temporary supersedeas shall be accompanied by a petition for supersedeas which comports with § 1021.62 (relating to contents of petitions for supersedeas).

(c) The application for temporary supersedeas and accompanying petition for supersedeas shall:

(1) Be served upon the office of the Department which issued notice of the action the applicant seeks to supersede and upon the Department's Office of Chief Counsel.

(2) Include a proof of service in accordance with Pa.R.A.P. 122 (relating to content and form of proof of services).

(d) The Board will not issue a temporary supersedeas until it determines that the Department has been served in accordance with subsection (c) and has had a reasonable opportunity to respond by conference call or otherwise.

(e) When determining whether it will grant an application for temporary supersedeas, the Board will consider:

(1) The immediate and irreparable injury the applicant will suffer before a supersedeas hearing can be held.

(2) The likelihood that injury to the public, including the possibility of pollution, will occur while the temporary supersedeas is in effect.

(3) The length of time required before the Board can hold a hearing on the petition for supersedeas.

(f) Unless the Board orders otherwise, a temporary supersedeas will automatically terminate 6 business days after the date of issuance.

**Source**

The provisions of this § 1021.64 reserved September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274922).

**§ 1021.65. [Reserved].**

**Source**

The provisions of this § 1021.65 reserved September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683. Immediately preceding text appears at serial page (248239).

**§ 1021.66. [Reserved].**

**Source**

The provisions of this § 1021.66 reserved September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683. Immediately preceding text appears at serial pages (248239) to (248240).



**§ 1021.70. [Reserved].****Source**

The provisions of this § 1021.70 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (270931) to (270932).

**Cross References**

This section cited in 25 Pa. Code § 1021.53 (relating to amendments to appeal; nunc pro tunc appeals).

**SPECIAL ACTIONS****§ 1021.71. Complaints filed by the Department.**

(a) When authorized by statute the Department may commence the action by filing a complaint or petition and a notice of a right to respond. The action is commenced when the complaint or petition is filed with the Board.

(b) Service of the complaint or petition shall be by personal service or by certified or registered mail. In the instance of mail, service shall be complete upon delivery. Service of all other documents shall be made in accordance with § 1021.34 (relating to service by party).

(c) The complaint shall set forth the statutory authority under which the Board is authorized to act and shall set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for action is based.

(d) The notice of a right to respond or defend shall conform to the following:

[Case Caption]

**NOTICE**

If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the Board your answers, defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Board without further notice for any claim or relief requested by the Department.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, contact the Secretary to the Board at (717) 787-3483.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

**Source**

The provisions of this 1021.71 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883. Immediately preceding text appears at serial page (289951).

**Cross References**

This section cited in 25 Pa. Code § 1021.2 (relating to definitions); 25 Pa. Code § 1021.34 (relating to service by a party); and 25 Pa. Code § 1021.74a (relating to verification of pleadings).

**§ 1021.72. Complaints filed by other persons.**

(a) When authorized by statute, a person may institute an action against the Department by filing a complaint.

(b) Service of the complaint or petition shall be by personal service or by certified or registered mail. In the instance of mail, service shall be complete upon delivery. Service of all other documents shall be made in accordance with § 1021.34 (relating to service by a party).

(c) The complaint shall set forth the statutory authority under which the Board is authorized to act and shall set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for action is based.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

**Source**

The provisions of this 1021.72 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883. Immediately preceding text appears at serial page (289952).

**Cross References**

This section cited in 25 Pa. Code § 1021.2 (relating to definitions); and 25 Pa. Code § 1021.74a (relating to verification of pleadings).

**§ 1021.73. Transferred matters.**

(a) This rule addresses matters transferred to the Board from a court.

(b) Within the 30-day time period directed by the Board, the party who initiated the transferred action shall file a complaint with the Board.

(c) Service of the complaint or petition shall be by personal service or by certified or registered mail. In the instance of mail, service shall be complete upon delivery. Service of all other documents shall be made in accordance with § 1021.34 (relating to service by a party).

(d) The complaint shall set forth in separate numbered paragraphs the specific facts and circumstances upon which the request for relief is based.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.5—35.7 and 35.9—35.11 (relating to informal complaints; and formal complaints).

**Source**

The provisions of this § 1021.73 amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883. Immediately preceding text appears at serial page (289952).

**Cross References**

This section cited in 25 Pa. Code § 1021.2 (relating to definitions); and 25 Pa. Code § 1021.74a (relating to verification of pleadings).

**§ 1021.74. Answers to complaints.**

(a) Answers to complaints shall be filed with the Board within 30 days after the date of service of the complaint, unless for cause the Board, with or without motion, prescribes a different time. An answer will not be required in less than 10 days after date of service.

(b) Answers to complaints shall set forth any legal objections as well as any denial of facts, in a single pleading.

(c) Answers shall be in writing and so drawn as to fully and completely advise the parties and the Board as to the nature of the defense, including affirmative defenses. Answers shall admit or deny specifically and in detail each material allegation of the complaint and state clearly and concisely the facts and matters of law relied upon.

(d) A defendant failing to file an answer within the prescribed time shall be deemed in default and, upon motion made as set forth in § 1021.76a (relating to entry of default judgment), all relevant facts in the complaint may be deemed admitted and default judgment may be entered. Further, the Board may impose any other sanctions for failure to file an answer in accordance with § 1021.161 (relating to sanctions).

(e) No new matter or preliminary objections shall be filed.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.5—35.7 and 35.35 (relating to informal complaints; and answers to complaints and petitions).

**Source**

The provisions of this § 1021.74 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035. Immediately preceding text appears at serial pages (317402) to (317403).

**Cross References**

This section cited in 25 Pa. Code § 1021.2 (relating to definitions); and 25 Pa. Code § 1021.74a (relating to verification of pleadings).

**§ 1021.74a. Verification of pleadings.**

Pleadings authorized under §§ 1021.71—1021.74 shall be verified in accordance with Pa.R.C.P. 1024 (relating to verification).

**Authority**

The provisions of this § 1021.74a issued under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

**Source**

The provisions of this § 1021.74a adopted August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328.

**§ 1021.75. Procedure after an answer is filed.**

After an answer is filed the prehearing procedures in § 1021.101 (relating to prehearing procedures) shall be followed.

**Source**

The provisions of this § 1021.75 adopted November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883.

**§ 1021.76. [Reserved].**

**Source**

The provisions of this § 1021.76 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (270395).

**§ 1021.76a. Entry of default judgment.**

(a) The Board, on motion of the plaintiff, may enter default judgment against the defendant for failure to file within the required time an answer to a complaint that contains a notice to defend.

(b) The motion for default judgment must contain a certification that the plaintiff served on the defendant a notice of intention to seek default judgment after the date on which the answer to the complaint was due and at least 10 days prior to filing the motion.

(c) The filing of an answer to the complaint by the defendant prior to the filing of a motion for default judgment by the plaintiff shall correct the default.

(d) When default judgment is entered in a matter involving a complaint for civil penalties, the Board may assess civil penalties in the amount of the plaintiff's claim or may assess the amount of the penalty following an evidentiary hearing, as directed by the Board, at which the issues shall be limited to the amount of the civil penalties.

*Comment:* This rule is modeled after Pa.R.C.P. 237.1 and 1037.

**Source**

The provisions of this § 1021.76a adopted October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035.

**Cross References**

This section cited in 25 Pa. Code § 1021.74 (relating to answers to complaints).

**§ 1021.77. [Reserved].****Source**

The provisions of this § 1021.77 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (270935) to (270936).

**§ 1021.78. [Reserved].****Source**

The provisions of this § 1021.78 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (270936) to (270937).

**§ 1021.79. [Reserved].****Source**

The provisions of this § 1021.79 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (270937) to (270938).

**§ 1021.80. [Reserved].****Source**

The provisions of this § 1021.80 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (270938).

**CONSOLIDATION, INTERVENTION AND SUBSTITUTION OF  
PARTIES****§ 1021.81. Intervention.**

- (a) A person may petition the Board to intervene in any pending matter prior to the initial presentation of evidence.
- (b) A petition to intervene shall be verified, and shall contain sufficient factual averments and legal assertions to establish the following:
  - (1) The reasons the petitioner seeks to intervene.
  - (2) The basis for asserting that the identified interest is greater than that of the general public.
  - (3) The manner in which that interest will be affected by the Board's adjudication.
  - (4) The specific issues upon which the petitioner will offer evidence or legal argument.
- (c) A copy of the petition shall be served upon the parties to the proceedings.

(d) A party may file an answer to the petition. An answer shall be verified and filed within 15 days after service of the petition, unless a shorter time is ordered by the Board.

(e) The Board will deny the petition if it fails to include sufficient legal grounds or verified factual averments to establish the right to intervene.

(f) If the Board grants the petition, the order may specify the issues as to which intervention is allowed. An order granting intervention allows the intervenor to participate in the proceedings remaining at the time of the order granting intervention.

(g) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.27—35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

*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).

#### Authority

The provisions of this § 1021.81 amended under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

#### Source

The provisions of this § 1021.81 amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial page (345906).

#### Cross References

This section cited in 25 Pa. Code § 1021.2 (relating to definitions); and 25 Pa. Code § 1021.51 (relating to commencement, form and content).

### § 1021.82. Consolidation.

(a) The Board, on its own motion or on the motion of any party, may order proceedings involving a common question of law or fact to be consolidated for hearing of any or all of the matters in issue in such proceedings.

(b) Subsection (a) supersedes 1 Pa. Code § 35.45 (relating to consolidation).

*Comment:* See also § 1021.4 (relating to construction and application of rules) authorizing the Board to interpret its rules to insure just, speedy and inexpensive determinations.

#### Source

The provisions of this § 1021.82 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259873).

### § 1021.83. Substitution of parties.

(a) A person who has succeeded to the interests of a party to an appeal by operation of law, election to public office, appointment or transfer of interest may become a party to the pending action by filing with the Board a verified petition

for substitution of party, which includes a statement of material facts upon which the right to substitute is based.

(b) The substituted party shall have all the rights and liabilities of the original party to the proceeding provided that any other party to the proceeding may move to strike the substituted party for just cause. A substituted party-appellant is limited to pursuing only those objections raised by the original appellant in its appeal, unless both the original appellant and the substituted appellant meet the conditions of § 1021.53(b)(2) (relating to amendments to appeal and complaint).

**Source**

The provisions of this § 1021.83 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. Immediately preceding text appears at serial page (259873).

**§ 1021.84. [Reserved].**

**Source**

The provisions of this § 1021.84 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259874).

**§ 1021.85. [Reserved].**

**Source**

The provisions of this § 1021.85 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259874).

**§ 1021.86. [Reserved].**

**Source**

The provisions of this § 1021.86 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (259874) and (274629).

**§ 1021.87. [Reserved].**

**Source**

The provisions of this § 1021.87 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274629).

**§ 1021.88. [Reserved].**

**Source**

The provisions of this § 1021.88 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274629).

**§ 1021.89. [Reserved].****Source**

The provisions of this § 1021.89 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274629).

**§ 1021.90. [Reserved].****Source**

The provisions of this § 1021.90 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274629) to (274630).

**MOTIONS****§ 1021.91. General.**

(a) This section applies to all motions except summary judgment motions and those made during the course of a hearing.

(b) Motions and responses shall be in writing, signed by a party or its attorney and shall be accompanied by a proposed order.

(c) A copy of the motion or response shall be served on the opposing party.

(d) A motion shall set forth in numbered paragraphs the facts in support of the motion and the relief requested.

(e) A response to a motion shall set forth in correspondingly-numbered paragraphs all factual disputes and the reason the opposing party objects to the motion. Material facts set forth in a motion that are not denied may be deemed admitted for the purposes of deciding the motion.

(f) For purposes of the relief sought by a motion, the Board will deem a party's failure to respond to a motion to be an admission of all properly-pleaded facts contained in the motion.

(g) The moving party may not file a reply to a response to procedural, discovery or miscellaneous motions, unless the Board orders otherwise.

(h) Subsection (b) supplements 1 Pa. Code § 33.11 (relating to the execution) and supersedes 1 Pa. Code § 35.178 (relating to presentation of motions). Subsection (c) supersedes 1 Pa. Code §§ 33.32, 33.35 and 33.36 (relating to service by a participant; proof of service; and form of certificate of service). Subsections (d)—(f) supersede 1 Pa. Code §§ 35.177 and 35.178 (relating to the scope and content of motions; and presentation of motions).

**Source**

The provisions of this § 1021.91 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709. Immediately preceding text appears at serial pages (313860) to (313861).



**Cross References**

This section cited in 25 Pa. Code § 1021.53 (relating to amendments to appeal or complaint); 25 Pa. Code § 1021.53a (relating to nunc pro tunc appeals); 25 Pa. Code § 1021.133 (relating to reopening of record prior to adjudication); and 25 Pa. Code § 1021.153 (relating to amendment of interlocutory orders).

**§ 1021.92. Procedural motions.**

(a) This section applies to motions pertaining to the procedural aspects of a case, including motions for continuance, for expedited consideration, for extensions of time in which to file documents and for stay of proceedings.

(b) Procedural motions do not require verification.

(c) Procedural motions shall contain a statement indicating the nonmoving party's position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position.

(d) If all parties consent to the relief requested, the request may be embodied in a letter, provided the letter indicates the consent of the other parties.

(e) Requests for extensions or continuances, whether in letter or motion form, shall be accompanied by a proposed order.

(f) A response to a procedural motion shall be filed with the Board within 15 days of the date of service of the motion unless otherwise ordered by the Board.

(g) Procedural motions may not be accompanied by supporting memoranda of law unless otherwise ordered by the Board.

(h) Subsection (b) supersedes 1 Pa. Code § 33.12 (relating to verification). Subsections (c) and (e) supersede 1 Pa. Code § 35.177 (relating to the scope and contents of motions). Subsection (d) supersedes 1 Pa. Code § 35.179 (relating to objections to motions).

**Source**

The provisions of this § 1021.92 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883. Immediately preceding text appears at serial pages (289958) to (289959).

**Cross References**

This section cited in 25 Pa. Code § 1021.12 (relating to extensions of time); 25 Pa. Code § 1021.32 (relating to filing); 25 Pa. Code § 1021.95 (relating to miscellaneous motions); and 25 Pa. Code § 1021.133 (relating to reopening of record prior to adjudication).

**§ 1021.93. Discovery motions.**

(a) This section applies to motions filed to resolve disputes arising from the conduct of discovery.

(b) A discovery motion may not be filed unless it contains a certification that the movant has in good faith conferred or attempted to confer with the party against whom the motion is directed in an effort to secure the requested discovery without Board action. Discovery motions must contain as exhibits the discovery requests and answers giving rise to the dispute.

(c) Responses to discovery motions shall be filed within 15 days of the date of service of the motion, unless the Board orders otherwise.

(d) A party may file a memorandum of law in support of its discovery motion or its response to a discovery motion. The supporting memorandum of law shall be filed at the same time the motion or response is filed.

(e) Subsection (b) supersedes 1 Pa. Code § 33.12 (relating to verification). Subsections (b) and (d) supersedes 1 Pa. Code § 35.177 (relating to the scope and contents of motions). Subsection (c) supersedes 1 Pa. Code § 35.179 (relating to objections to motions).

#### Source

The provisions of this § 1021.93 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035. Immediately preceding text appears at serial pages (317408) to (317409).

#### Cross References

This section cited in 25 Pa. Code § 1021.95 (relating to miscellaneous motions); 25 Pa. Code § 1021.102 (relating to discovery); and 25 Pa. Code § 1021.133 (relating to reopening of record prior to adjudication).

### § 1021.94. Dispositive motions other than summary judgment motions.

(a) Dispositive motions, responses and replies shall be in writing, signed by a party or its attorney and served on the opposing party in accordance with § 1021.34 (relating to service by a party). Dispositive motions shall be accompanied by a supporting memorandum of law or brief. The Board may deny a dispositive motion if a party fails to file a supporting memorandum of law or brief.

(b) Parties, other than the moving party, that wish to support a pending dispositive motion may file a memorandum of law within 15 days of service of the motion or within 15 days of the deadline for filing dispositive motions, whichever comes first. The scope of facts that the Board will consider in support of the motion is limited to the scope in the original motion unless a separate dispositive motion accompanies the supporting party's memorandum of law.

(c) A response to a dispositive motion shall be filed 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 that memorandum of law. The response to a dispositive motion must be accompanied by a supporting memorandum of law or brief.

(d) A moving party, or a supporting party that files a memorandum of law alone, may file a reply to a response to a dispositive motion within 15 days of the date of service of the response. The reply may be accompanied by a supporting memorandum of law or brief. Reply briefs or memoranda of law shall be as concise as possible and may not exceed 25 pages. Longer briefs or memoranda of law may be permitted at the discretion of the Board.

(e) An affidavit or other document relied upon in support of a dispositive motion or response, that is not already a part of the record, shall be filed at the same time as the motion or response or it will not be considered by the Board in ruling thereon.

(f) When a dispositive motion is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of the adverse party's pleading or its notice of appeal, but the adverse party's response must set forth specific issues of fact or law showing there is a genuine issue for hearing. If the adverse party fails to adequately respond, the dispositive motion may be granted against the adverse party.

(g) Subsection (a) supersedes 1 Pa. Code § 35.177 (relating to scope and contents of motions). Subsection (b) supersedes 1 Pa. Code § 35.179 (relating to objections to motions).

#### Source

The provisions of this § 1021.94 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended November 21, 2014, effective November 22, 2014, 44 Pa.B. 7365 and 44 Pa.B. 7368. Immediately preceding text appears at serial pages (372824) to (372825).

#### Cross References

This section cited in 25 Pa. Code § 1021.95 (relating to miscellaneous motions); and 25 Pa. Code § 1021.133 (relating to reopening of record prior to adjudication).

### § 1021.94a. Summary judgment motions.

(a) *Rules governing summary judgment motions.* Except as otherwise provided by these rules, motions for summary judgment shall be governed by Pa.R.C.P. Rules 1035.1—1035.5.

(b) *Summary judgment motion record.*

(1) A summary judgment motion record must contain the following separate items:

- (i) A motion prepared in accordance with subsection (c).
- (ii) A statement of undisputed material facts in accordance with subsection (d).
- (iii) A supporting brief prepared in accordance with subsection (e).
- (iv) The evidentiary materials relied upon by the movant.
- (v) A proposed order.

(2) Motions and responses must be in writing, signed by a party or its attorney, and served on the opposing party in accordance with § 1021.34 (relating to service by a party).

(c) *Motion.* A motion for summary judgment must contain only a concise statement of the relief requested and the reasons for granting that relief. The motion should not include any recitation of the facts and should not exceed two pages in length.

(d) *Statement of undisputed material facts.* A statement of undisputed material facts must consist of numbered paragraphs and contain only those material facts to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation must identify the document and specify the paragraphs and pages or lines thereof or the specific portions of exhibits relied on. The statement of undisputed material facts, absent the portions of exhibits and affidavits relied upon, may not exceed five pages in length unless leave of the Board is granted.

(e) *Brief in support of the motion for summary judgment.* The motion for summary judgment shall be accompanied by a brief containing an introduction, summary of the case and the legal argument supporting the motion.

(f) *Other parties supporting a motion for summary judgment.* Parties, other than the moving party, that wish to support a pending motion for summary judgment may file a memorandum of law within 15 days of service of the motion or within 15 days of the deadline for dispositive motions, whichever comes first. The scope of facts that the Board will consider in support of the motion is limited to the scope in the original motion unless a separate motion for summary judgment accompanies the supporting party's memorandum of law.

(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 citation to the portion of the record contraverting 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.

(3) A brief containing the legal argument in opposition to the motion.

(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.

(i) *Evidentiary materials.* Affidavits, deposition transcripts or other documents relied upon in support of a motion for summary judgment or response must accompany the motion or response and be separately bound and labeled as exhibits. Affidavits must conform to Pa.R.C.P. 76 and 1035.4 (relating to definitions; and affidavits).

(j) *Proposed order.* The motion must be accompanied by a proposed order.

(k) *Reply brief.* Within 15 days of service of the response, the movant, or a supporting party that files a memorandum of law alone, may file a reply brief. The reply brief may not exceed 15 pages unless leave of the Board is granted. Additional briefing may be permitted at the discretion of the Board.

(l) *Summary judgment.* When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading or its notice of appeal, but the adverse party's response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing there is a genuine issue for hearing. If the adverse party does not so respond, summary judgment may be entered against the adverse party. Summary judgment may be entered against a party who fails to respond to a summary judgment motion.

(m) *Judgment rendered.* The judgment sought shall be rendered forthwith if the motion record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

#### **Comment**

The statement of material facts should be limited to those facts which are material to disposition of the summary judgment motion and should not include lengthy recitations of undisputed background facts or legal context.

#### **Authority**

The provisions of this § 1021.94a amended under section 5(c) of the Environmental Hearing Board Act (35 P.S. 7515(c)).

#### **Source**

The provisions of this § 1021.94a adopted February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035; amended November 21, 2014, effective November 22, 2014, 44 Pa.B. 7365; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial pages (374933) to (374935).

#### **Cross References**

This section cited in 25 Pa. Code § 1021.133 (relating to reopening of record prior to adjudication).

**§ 1021.95. Miscellaneous motions.**

(a) This section applies to a motion not otherwise addressed in §§ 1021.92—1021.94 (relating to procedural motions; discovery motions; and dispositive motions), including a motion in limine, a motion to strike and a motion for recusal.

(b) Miscellaneous motions do not require verification.

(c) Responses to miscellaneous motions shall be filed within 15 days of the date of service of the motion, unless otherwise ordered by the Board.

(d) A memorandum of law in support of a miscellaneous motion or response to a miscellaneous motion shall be filed with the miscellaneous motion or response.

(e) Subsection (b) supersedes 1 Pa. Code § 33.12 (relating to verification).

**Source**

The provisions of this § 1021.95 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883. Immediately preceding text appears at serial page (289961).

**Cross References**

This section cited in 25 Pa. Code § 1021.53 (relating to amendments to appeal or complaint); 25 Pa. Code § 1021.133 (relating to reopening of record prior to adjudication).

**§ 1021.96. [Reserved].****Source**

The provisions of this § 1021.96 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274630).

**§ 1021.96a. Motions for expedited hearing.**

(a) A motion for an expedited hearing may be filed at any time in either an appeal or special action, or the Board may order an expedited hearing on its own motion.

(b) The Board may issue an order for an expedited hearing notwithstanding the time requirements contained in a previous order of the Board, the Board's Rules of Practice and Procedure in § 1021.101 (relating to prehearing procedure), or Title 231 (relating to rules of civil procedure) relating to discovery.

(c) In issuing such an order, the Board will be guided by relevant judicial and Board precedent. Among other factors to be considered:

(1) Whether pollution or injury to the public health, safety or welfare exists or is threatened during the period ordinarily required to complete the proceedings.

(2) Severity of prejudice to any party during the time period ordinarily required to complete the proceedings.

- (3) The status of discovery and the realistic need of the parties for extended discovery and for time to prepare for a hearing.
- (4) Whether the issuance of such an order would promote judicial economy or would otherwise be in the public interest.
- (5) The effect of expedited proceedings on the nonrequesting party.
- (d) The Board may direct that a prehearing conference be held to determine an appropriate schedule for the completion of prehearing proceedings as well as the time and place of the hearing.

**Source**

The provisions of this § 1021.96a adopted October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035.

**§ 1021.96b. Contents of motion for expedited hearing.**

- (a) A motion for an expedited hearing must state facts with particularity and be supported by one of the following:
  - (1) Affidavits based on personal knowledge or experience setting forth facts supporting the issuance of an order for an expedited hearing.
  - (2) An explanation of why affidavits have not accompanied the motion if no affidavits are submitted with the motion for an expedited hearing.
- (b) A motion for an expedited hearing shall be accompanied by a memorandum of law.
- (c) A motion may not be filed unless it contains a certification that the moving party has in good faith conferred or attempted to confer with the party against whom the motion is directed in an effort to secure an agreement on expediting the proceeding.

**Source**

The provisions of this § 1021.96b adopted October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035.

**§ 1021.96c. Response to motion for expedited hearing.**

A response and supporting memorandum of law shall be filed within 10 days of service unless otherwise ordered by the Board.

**Source**

The provisions of this § 1021.96c adopted October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035.

**§ 1021.96d. Conduct of expedited hearing.**

- (a) Nothing contained in this rule shall limit the rights of the parties to a full hearing before the Board under the applicable rules of evidence with full rights





of cross-examination of witnesses. The Board may limit the number of witnesses or the subjects of examination in order to avoid duplication of evidence as provided in § 1021.126 (relating to limiting number of witnesses and additional evidence).

(b) Testimony may be submitted by prepared written testimony as provided for under § 1021.124 (relating to written testimony).

(c) After the conclusion of the hearing, the Board will direct the prompt filing of posthearing briefs.

*Comment:* The Board will grant a motion for expedited hearing only in rare circumstances.

**Source**

The provisions of this § 1021.96d adopted October 16, 2009, effective October 17, 2009, 39 Pa.B. 6035.

**§ 1021.98. [Reserved].**

**Source**

The provisions of this § 1021.98 reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274630).

**§ 1021.99. [Reserved].**

**Source**

The provisions of this § 1021.99 adopted January 19, 2001, effective January 20, 2001, 31 Pa.B. 428; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274631).

**PREHEARING PROCEDURES AND PREHEARING CONFERENCES**

**§ 1021.101. Prehearing procedure.**

(a) Upon the filing of an appeal, the Board will issue a prehearing order providing that:

(1) All discovery shall be completed no later than 180 days from the date of the prehearing order.

(2) The service of a report of an expert together with a statement of qualifications may be substituted for an answer to expert interrogatories.

(3) Dispositive motions shall be filed within 210 days of the date of the prehearing order.

(4) The parties may, within 60 days of the date of the prehearing order, submit a Joint Proposed Case Management Order to the Board.

(b) A Joint Proposed Case Management Order shall propose alternate dates for the conclusion of discovery, the service of expert or supplemental reports, and

the filing of dispositive motions. The Board may issue subsequent prehearing orders incorporating the alternate dates proposed by the parties or other dates the Board deems appropriate.

(c) The Board will establish a hearing date for the issues in the appeal. The Board may also direct that the parties meet prior to the hearing to stipulate to uncontested facts, the qualifications of experts and the admissibility of exhibits.

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

(e) Subsection (d) supersedes 1 Pa. Code § 35.121 (relating to initiation of hearings).

#### Authority

The provisions of this § 1021.101 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

#### Source

The provisions of this § 1021.101 amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial pages (372829) to (372830).

#### Cross References

This section cited in 25 Pa. Code § 1021.96a (relating to motions for expedited hearing); 25 Pa. Code § 1021.75 (relating to procedure after an answer is filed); and 25 Pa. Code § 1021.104 (relating to prehearing memorandum).

### § 1021.102. Discovery.

(a) Except as otherwise provided in this chapter or by order of the Board, discovery in proceedings before the Board shall be governed by the Pa.R.C.P. When the term “court” is used in the Pa.R.C.P., “Board” is to be understood; when the terms “prothonotary” or “clerk of court” are used in the Pa.R.C.P., “Secretary to the Board” is to be understood.

(b) Copies of requests for discovery or responses to requests are not to be filed with the Board unless they are necessary for the resolution of a discovery dispute or disposition of a motion pending before the Board.

(c) If a person or party is to be deposed by oral examination more than 100 miles from his or its residence or principal place of business, the Board may, upon motion, order the payment of reasonable expenses, including attorney’s fees, as the Board deems proper.

(d) Discovery disputes shall be resolved pursuant to a motion filed in accordance with § 1021.93 (relating to discovery motions), except that to facilitate the prompt completion of discovery, the Board may hear argument on discovery dis-

putes by telephone conference call at the time the dispute arises and may issue oral rulings which will be later memorialized in written orders.

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

**Source**

The provisions of this § 1021.102 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

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

(a) Except as otherwise provided in this chapter or by order of the Board, requests for subpoenas, subpoenas, notices to attend and notices to produce shall be governed by Pa.R.C.P. 234.1—234.4, 234.6—234.9 and 4009.21—4009.27. When the term “court” is used in Pa.R.C.P. “Board” is to be understood; when the terms “Prothonotary” or “clerk of court” are used in Pa.R.C.P. “Secretary to the Board” is to be understood.

(b) Proof of service of the subpoena need not be filed with the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.139 and 35.142 (relating to fees of witnesses; and subpoenas).

**Authority**

The provisions of this § 1021.103 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.103 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial page (372831).

**§ 1021.104. Prehearing memorandum.**

(a) A prehearing memorandum shall contain the following:

(1) A statement of the facts in dispute and the facts upon which the parties agree.

(2) A statement of the legal issues in dispute, including citations to statutes, regulations and caselaw supporting the party’s position.

(3) A description of scientific tests upon which the party will rely and a statement indicating whether an opposing party will object to their use.

(4) A list of expert witnesses whose qualifications will not be challenged and which may be entered into the record as an unchallenged exhibit.

(5) For each expert witness a party intends to call at the hearing, answers to expert interrogatories and a copy of any expert report provided under § 1021.101(a)(2) (relating to prehearing procedure). In the absence of answers to the expert interrogatories or an expert report, a summary of the testimony of each expert witness.

(6) The proposed order of witnesses.

- (7) A list of the exhibits the party seeks to introduce into evidence and a statement indicating whether the opposing party will object to their introduction. A copy of each exhibit shall be attached.
- (8) Signed copies of any stipulations reached by the parties.
- (9) Other information as may be required by the Board's prehearing orders.
- (b) The Board may impose sanctions on a party which does not comply with the requirements of subsection (a). These sanctions may include the preclusion of testimony or documentary evidence and the cancellation of the hearing.
- (c) The requirements of this section apply only to a party's case-in-chief.

**Source**

The provisions of this § 1021.104 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709. Immediately preceding text appears at serial page (313866).

**§ 1021.105. Prehearing conferences.**

- (a) The Board, on its own motion or on motion of a party, may hold a conference either prior to or during a hearing for the purpose of considering offers of settlement, adjustment of the proceeding or any issue therein, or other matters to expedite the orderly conduct and disposition of a hearing.
- (b) A stipulation of the parties or rulings of the Board as a result of the conference shall be binding upon the parties.
- (c) The Board may issue prehearing orders as it considers necessary for limiting issues of fact and law.
- (d) The Board will, at any time, be authorized to delay a formal hearing and order settlement discussions or stipulations, either on or off the record.
- (e) Subsections (a)—(d) supplement 1 Pa. Code §§ 35.111—35.115.

**Source**

The provisions of this § 1021.105 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.106. Voluntary mediation.**

- (a) Upon request by all the parties, the Board may stay a matter for up to 120 days to allow the parties to utilize voluntary mediation services.
- (b) The parties are responsible for selection of a mediator and payment of the mediator's fees.
- (c) The request shall be filed at least 14 days before initiation of hearings by the Board. The request shall identify the mediator selected and shall certify that the parties have made arrangements for payment of the mediator's fee.
- (d) At the end of the initial stay, the parties shall jointly file a report, prepared and signed by the mediator, 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.
- (e) The grant of an additional stay for mediation is in the Board's discretion and the Board may impose limitations the Board deems appropriate.
- (f) A settlement reached by the parties as a result of voluntary mediation shall be submitted to the Board for approval under § 1021.141 (relating to termination of proceedings).

(g) Only a signed settlement agreement shall be binding and it shall bind only the parties signing it.

(h) A party's participation in voluntary mediation may not be used as evidence in a proceeding before the Board. Communications between the parties during the mediation period shall be regarded as offers of settlement and are neither discoverable nor admissible as evidence in a proceeding before the Board.

(i) Subsections (a)—(h) supplement 1 Pa. Code §§ 35.111 and 35.115 (relating to conferences to adjust, settle or expedite proceedings; and offers of settlement).

#### Authority

The provisions of this § 1021.106 amended under section 5(c) of the Environmental Hearing Board Act (35 P.S. § 7515(c)).

#### Source

The provisions of this § 1021.106 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial pages (388242) and (372833).

### § 1021.107. Authority delegated to hearing examiners.

(a) The Board may appoint hearing examiners to preside at hearings. Subject to the approval of the Board member assigned to the case, the hearing examiner shall have the following authority:

(1) To schedule and regulate the course of the hearings.

(2) To administer oaths and affirmations.

(3) To rule on motions in limine, offers of proof and the admission or exclusion of evidence.

(4) To conduct pretrial conferences, settlement conferences and related pretrial proceedings and to dispose of procedural matters.

(5) To schedule the filing of posthearing briefs following the conclusion of the hearing.

(6) To recommend to the Board member or to the Board an opinion and order or adjudication disposing of the matters considered at the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

#### Source

The provisions of this § 1021.107 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (270942) to (270943).

### § 1021.108. [Reserved].

#### Source

The provisions of this § 1021.108 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259879).

**§ 1021.109. [Reserved].**

**Source**

The provisions of this § 1021.109 amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259879).

**HEARINGS**

**§ 1021.111. Initiation of hearings.**

(a) If the proceedings are at issue and a hearing is required, a formal evidentiary hearing shall be scheduled and a notice of hearing shall be sent to all parties to the proceedings.

(b) Subsection (a) supersedes 1 Pa. Code § 35.121 (relating to initiation of hearings).

**Source**

The provisions of this § 1021.111 amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (259879) to (259880).

**§ 1021.112. Waiver of hearings.**

(a) A hearing need not be held if waived by appellant or respondent or if parties stipulate the essential facts or agree to submit direct and rebuttal testimony or documentary evidence in affidavit form (sworn or affirmed on personal knowledge) or by deposition.

(b) Subsection (a) supersedes 1 Pa. Code § 35.101 (relating to waiver of hearing).

**Source**

The provisions of this 1021.112 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.113. Continuance of hearings.**

(a) Hearings may not be continued except for compelling reasons. Requests for continuances shall be submitted to the Board in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

**Source**

The provisions of this 1021.113 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.114. Venue of hearings.**

At the discretion of the Board, hearings will be held at the Commonwealth facility nearest the location of the complaint sought to be remedied by the Department with consideration for the convenience of witnesses, the public and the parties in attending the hearings.

**Source**

The provisions of this § 1021.114 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259880).

**§ 1021.115. View of premises.**

The Board may upon reasonable notice and at reasonable times inspect any real estate including a body of water, industrial plant, building or other premises when the Board is of the opinion that a viewing would have probative value in a matter in hearing or pending before the Board.

**Source**

The provisions of this 1021.115 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.116. Conduct of hearings.**

(a) Hearings may be held, at the discretion of the Board, before the Board as a whole, by individual Board members sitting as administrative law judges, or by hearing examiners who are not members of the Board. Hearings held by hearing examiners not members of the Board will be decided by the Board based upon its review of the record and the examiner's proposed adjudication. All final decisions shall be decisions of the Board decided by majority vote. Petitions for supersedeas and other petitions and motions may be decided by the Board member hearing the petition or motion.

(b) Subsection (a) supersedes 1 Pa. Code § 35.123 (relating to conduct of hearings).

**Source**

The provisions of this § 1021.116 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274925).

**§ 1021.117. Presentation by the parties.**

(a) Parties shall have the right to an opening statement, presentation of evidence, cross-examination, objection, motion and argument, and closing argument.

(b) The party with the burden of proof is required to make a prima facie case by the close of its case-in-chief.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.126 (relating to presentation by the parties).

**Source**

The provisions of this § 1021.117 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274925).

**§ 1021.118. Transcript.**

- (a) Hearings shall be stenographically reported and a transcript of the report shall be a part of the record.
- (b) Parties desiring copies of the transcript shall obtain the copies from the official reporter.
- (c) Parties shall have the opportunity to review a copy of the transcript on file with the Board.
- (d) Subsections (a)—(c) supplement 1 Pa. Code §§ 35.131—35.133 (relating to transcript).

**Source**

The provisions of this § 1021.118 amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274925) to (274926).

**§ 1021.120. [Reserved].****Source**

The provisions of this § 1021.120 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274926) and (259883) to (259884).

**EVIDENCE****§ 1021.121. Motions in limine.**

A party may obtain a ruling on evidentiary issues by filing a motion in limine.

**Source**

The provisions of this 1021.121 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.122. Burden of proceeding and burden of proof.**

- (a) In proceedings before the Board, the burden of proceeding and the burden of proof shall be the same as at common law in that the burden shall normally rest with the party asserting the affirmative of an issue. It shall generally be the burden of the party asserting the affirmative of the issue to establish it by a preponderance of the evidence. In cases where a party has the burden of proof to establish the party's case by a preponderance of the evidence, the Board may nonetheless require the other party to assume the burden of proceeding with the



evidence in whole or in part if that party is in possession of facts or should have knowledge of facts relevant to the issue.

(b) The Department has the burden of proof in the following cases:

- (1) When it assesses or files a complaint for a civil penalty.
- (2) When it files a complaint for any other purpose.
- (3) When it revokes or suspends a license, permit, approval or certification.
- (4) When it issues an order.

(c) A party appealing an action of the Department shall have the burden of proof in the following cases:

- (1) When the Department denies a license, permit, approval or certification.
- (2) When a party who is not the recipient of an action by the Department protests the action.
- (3) When a party to whom a permit approval or certification is issued protests one or more aspects of its issuance or modification.
- (4) When a party appeals or objects to a settlement of a matter between the Department and another private party.

#### Authority

The provisions of this § 1021.122 amended under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

#### Source

The provisions of this § 1021.122 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial pages (345922) to (345923).

### § 1021.123. Evidence.

(a) The Board is not bound by technical rules of evidence and relevant and material evidence of reasonable probative value is admissible. The Board generally applies the Pennsylvania Rules of Evidence.

(b) Copies of an exhibit to be offered into evidence shall be made available to parties at the time it is identified as an exhibit unless otherwise ordered by the Board.

(c) Witnesses shall be sworn or shall affirm.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.137—35.139, 35.162 and 35.166.

#### Source

The provisions of this § 1021.123 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (259886) and (274927).

**§ 1021.124. Written testimony.**

(a) Written testimony of a witness, on numbered lines in question and answer form, may be admitted into evidence provided the witness is present for cross-examination.

(b) Written testimony shall be filed concurrently with the prehearing memorandum unless a different time is prescribed by the Board. Objections to written testimony which can be reasonably anticipated prior to hearing shall be in writing and filed at least 5 days before the hearing unless otherwise ordered by the Board.

(c) If a party desires to file written testimony prior to the close of the record, it may do so only upon motion approved by the Board. This approval shall include the scope of the written testimony and the time for filing the testimony and service upon opposing counsel.

**Source**

The provisions of this § 1021.24 amended August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274927) to (274928).

**Cross References**

This section cited in 25 Pa. Code § 1021.96d (relating to conduct of expedited hearing).

**§ 1021.125. Official notice of facts.**

(a) The Board may take official notice of the following:

(1) Matters which may be judicially noticed by the courts of the Commonwealth.

(2) Facts which are not in dispute.

(3) Record facts reflected in the official docket of the Board as referenced in § 1021.39(a) (relating to docket).

(b) Any party shall, on timely request, be afforded an opportunity to show why the Board should not take official notice of items listed in subsection (a).

(c) A party requesting the taking of official notice after the conclusion of the hearing shall do so in accordance with § 1021.133 (relating to reopening of record prior to adjudication).

**Source**

The provisions of this § 1021.125 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274928) to (274929).

**§ 1021.126. Limiting number of witnesses and additional evidence.**

(a) The Board may limit the number of witnesses upon an issue and may request a party to present additional evidence on an issue.

(b) Subsection (a) supplements 1 Pa. Code §§ 35.127 and 35.128 (relating to limiting number of witnesses; and additional evidence).

**Source**

The provisions of this § 1021.126 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**Cross References**

This section cited in 25 Pa. Code § 1021.96d (relating to conduct of expedited hearing).

**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.

(b) Reply briefs shall be as concise as possible and may not exceed 25 pages. Longer briefs may be permitted at the discretion of the presiding administrative law judge.

(c) An issue which is not argued in a posthearing brief may be waived.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.191—35.193 (relating to briefs).

**Authority**

The provisions of this § 1021.131 amended under section 5(c) of the Environmental Hearing Board Act (35 P.S. § 7515(c)).

**Source**

The provisions of this § 1021.131 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended October 21, 2022, effective October 22, 2022, 52 Pa.B. 6534. Immediately preceding text appears at serial page (372839).

**§ 1021.132. Oral argument after hearing.**

(a) A party may, within 5 days after the last post-hearing briefing and prior to adjudication, request oral argument before the entire Board. The Board may grant or deny the request.

(b) Subsection (a) supersedes 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

**Source**

The provisions of this § 1021.132 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (274930).

**§ 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, the Board, upon its own motion or upon a petition filed by a party, may reopen the record as provided in this section.

(b) The record may be reopened upon the basis of recently discovered evidence when all of the following circumstances are present:

(1) Evidence has been discovered which would conclusively establish a material fact of the case or would contradict a material fact which had been assumed or stipulated by the parties to be true.

(2) The evidence is discovered after the close of the record and could not have been discovered earlier with the exercise of due diligence.

(3) The evidence is not cumulative.

(c) The record may also be reopened to consider evidence which has become material as a result of a change in legal authority occurring after the close of the record. A petition to reopen the record on this basis shall specify the change in legal authority and demonstrate that it applies to the matter pending before the Board. Such a petition need not meet the requirements of subsection (d)(2) and (3).

(d) A petition seeking to reopen the record shall:

(1) Identify the evidence which the petitioner seeks to add to the record.

(2) Describe the efforts which the petitioner had made to discover the evidence prior to the close of the record.

(3) Explain how the evidence was discovered after the close of the record.

A petition filed under subsection (b) shall be verified and all petitions shall contain a certification by counsel that the petition is being filed in good faith and not for the purpose of delay.

(e) The petition shall be served upon the parties to the proceedings. A petition will be treated as a miscellaneous motion under § 1021.95 (relating to miscellaneous motions) except that the motion would have to be verified or supported by affidavits. The answer shall be verified if it includes factual assertions which are not of record.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.232 and 35.233 (relating to reopening by presiding officer; and reopening by agency action).

*Comment:* This sets a standard which is more stringent than the materiality test of *Spang & Company v. DER*, 592 A.2d 815 (Pa. Cmwlth. 1991), but broader than the grounds justifying reconsideration. The procedure differs from the standard motions practice under §§ 1021.91—1021.95 (relating to motions).

#### Source

The provisions of this § 1021.133 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274930) to (274931).

#### Cross References

This section cited in 25 Pa. Code § 1021.125 (relating to official notice of facts).

### § 1021.134. Adjudications.

(a) At the conclusion of the proceedings, the Board will issue an adjudication containing a discussion, findings of fact, conclusions of law and an order.

(b) The Board will serve a copy of the adjudication on all parties to the proceeding or their representatives.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.226 (relating to final orders).

#### Source

The provisions of this § 1021.134 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (274931) and (259891).

**TERMINATION OF PROCEEDINGS****§ 1021.141. Termination of proceedings.**

(a) A proceeding before the Board may be terminated by one of the following:

- (1) Withdrawal of the appeal prior to adjudication.
- (2) Settlement agreement.
- (3) Consent adjudication.

(b) When a proceeding is sought to be terminated by the parties as a result of a settlement agreement, the form of the settlement agreement may be a consent order, a consent assessment of civil penalties, a permit modification, or any other basis for settling an action as permitted by law. If the settlement includes any action of the Department which would have to be published if taken independently of the settlement, that action shall be published by the Department as required by law. Appealable actions of the Department contained in the settlement may be appealed to the Board by an aggrieved person not a party to the settlement in the manner provided by law. A party to the settlement may appeal only to the extent permitted by the terms of the agreement. After the parties have agreed upon a settlement they may do one of the following:

- (1) Notify the Board that the case has been settled and request that the docket be marked settled.
- (2) Notify the Board that the case has been settled, provide the Board with a copy of the settlement agreement for inclusion in the record of the case, and request that the docket be marked settled.
- (3) Notify the Board that the case has been settled, provide the Board with a copy of the settlement agreement for inclusion in the record, request the notice of the settlement be published in the *Pennsylvania Bulletin* and request that the case be marked as settled.

The notice of publication shall be in substantially the following form:

RE: (Case and Docket Number)

(The Commonwealth of Pennsylvania Department of Environmental Protection and (name of party or parties) have agreed to a settlement of the above matter. The Commonwealth had ordered under date of \_\_\_\_\_, (name of party or parties) to:

(Summarize order or appeal describing other action of the Commonwealth from which appeal was taken.)

The parties have agreed to a settlement, the major provisions of which include:

(Summarize major substantive provisions of settlement agreement.)

Copies of the full agreement are in the hands of:

(Names, addresses of counsel and telephone numbers) and at the office of the Environmental Hearing Board, and may be reviewed by any interested party on request during normal business hours.

(c) When a proceeding is sought to be terminated by the parties pursuant to a consent adjudication, all parties shall submit the proposed consent adjudication to the Board for approval. No proposed consent adjudication will be approved by the Board unless it contains the agreement of all parties to the action. The Board may refuse to approve a proposed consent adjudication if any of its provisions are contrary to law or constitute, in the discretion of the Board, overreaching or bad faith by any party. Prior to approval, the Board will publish the major substantive provisions of the consent adjudication in the manner indicated in subsection (b)(3). In addition, the notice shall provide a comment period of at least 30 days for comments to be provided by the public. When comments are received from the public the parties to the consent adjudication shall respond to the comments. The Board may schedule a hearing prior to taking action on the consent adjudication. Any appeal from a consent adjudication shall be with the Commonwealth Court, and shall, when taken by an aggrieved person not a party to the action, be taken within 30 days of the date of the Board's action.

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

#### Authority

The provisions of this § 1021.141 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

#### Source

The provisions of this § 1021.141 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended February 10, 2006, effective February 11, 2006, 36 Pa.B. 709; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial pages (372841) to (372842).

#### Cross References

This section cited in 25 Pa. Code § 1021.106 (relating to voluntary mediation).

### §§ 1021.142—1021.144. [Reserved].

#### Source

The provisions of these §§ 1021.142—1021.144 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial pages (259891) to (259892).

## RECONSIDERATION

### § 1021.151. Reconsideration of interlocutory orders.

(a) A petition for reconsideration of an interlocutory order or ruling shall be filed within 10 days of the order or ruling. The petition must demonstrate that

extraordinary circumstances justify consideration of the matter by the Board. A party may file a memorandum of law at the time the petition or response is filed.

(b) A copy of the petition shall be served upon the parties. A party wishing to file an answer may do so within 10 days of service or as ordered by the Board.

(c) The failure of a party to file a petition under this section will not result in a waiver of any issue.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

*Comment:* There is no need to file a petition for reconsideration of an interlocutory order in order to preserve an issue for later argument. Reconsideration is an extraordinary remedy and is inappropriate for the vast majority of the rulings issued by the Board.

#### Authority

The provisions of this § 1021.151 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

#### Source

The provisions of this § 1021.151 adopted August 30, 1996, effective August 31, 1996, 26 Pa.B. 4222; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial pages (372842) to (372843).

### § 1021.152. Reconsideration of final orders.

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

- (1) The final order rests on a legal ground or a factual finding which has not been proposed by any party.
- (2) The crucial facts set forth in the petition:
  - (i) Are inconsistent with the findings of the Board.
  - (ii) Are such as would justify a reversal of the Board's decision.
  - (iii) Could not have been presented earlier to the Board with the exercise of due diligence.

(b) A copy of the petition shall be served upon all parties simultaneously with and in the same manner as the filing of an appeal with the Board. A party wishing to file an answer may do so within 10 days of service or as ordered by the Board.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

*Comment:* This provides a shorter time than the standard motions practice, since reconsideration must be granted within 30 days under Pa.R.A.P. 1701. The

Board's period for reconsideration of final orders will run contemporaneously with the 30-day right of appeal to Commonwealth Court.

**Authority**

The provisions of this § 1021.152 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.152 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial page (372843).

**§ 1021.153. Amendment of interlocutory orders.**

(a) Requests to amend an interlocutory order to certify one or more issues for appeal in accordance with 42 Pa.C.S. § 702(b) (relating to interlocutory orders) shall be filed within 10 days of service of the order and shall take the form of a motion under § 1021.91 (relating to general).

(b) Motions filed under subsection (a) must be accompanied by a memorandum of law setting forth the reasons why the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter.

(c) Responses to motions filed under this section shall be filed within 10 days of service of the motion and shall be consistent with § 1021.91.

(d) If the Board does not act on the motion within 30 days of it being filed, the motion shall be deemed denied.

(e) The filing of a motion under this section or the amendment of an interlocutory order containing the requested finding will not stay a proceeding unless otherwise ordered by the Board or by Commonwealth Court.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.225 (relating to interlocutory orders).

**Authority**

The provisions of this § 1021.153 issued under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.153 adopted October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205.

**SANCTIONS**

**§ 1021.161. Sanctions.**

The Board may impose sanctions upon a party for failure to abide by a Board order or Board rule of practice and procedure. The sanctions may include dismissing an appeal, entering adjudication against the offending party, precluding



introduction of evidence or documents not disclosed, barring the use of witnesses not disclosed, or other appropriate sanctions including those permitted under Pa.R.C.P. 4019 (relating to sanctions regarding discovery matters).

**Source**

The provisions of this 1021.161 adopted September 18, 1998, effective September 19, 1998, 28 Pa.B. 4714; amended September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259893).

**Cross References**

This section cited in 25 Pa. Code § 1021.31 (relating to signing); 25 Pa. Code § 1021.61 (relating to general); and 25 Pa. Code § 1021.74 (relating to answers to complaints).

**§ 1021.162. [Reserved].**

**Source**

The provisions of this § 1021.162 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; reserved June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085. Immediately preceding text appears at serial page (259893).

**§ 1021.171. [Reserved].**

**Authority**

The provisions of this § 1021.71 reserved under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

**Source**

The provisions of this § 1021.171 adopted September 3, 1999, effective September 4, 1999, 29 Pa.B. 4683; amended June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; reserved August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial page (345930).

**§§ 1021.172—1021.174. [Reserved].**

**Authority**

The provisions of these §§ 1021.172—1021.174 reserved under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

**Source**

The provisions of these §§ 1021.172—1021.174 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; reserved August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial pages (345930) to (345932).

**ATTORNEY FEES AND COSTS AUTHORIZED BY STATUTE**

**§ 1021.181. Scope.**

This subchapter applies to requests for costs and attorney fees when authorized by statute. When a statute provides procedures inconsistent with these procedures, the statutory procedures will be followed.

**Authority**

The provisions of this § 1021.181 amended under section 5 of the Environmental Hearing Board Act (35 P. S. § 7515).

**Source**

The provisions of this § 1021.181 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328. Immediately preceding text appears at serial pages (345932) to (345933).

**§ 1021.182. Application for costs and fees.**

(a) A request for costs and fees shall conform to any requirements set forth in the statute under which costs are being sought.

(b) A request for costs and fees shall be by verified application, setting 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 costs and attorney fees.

(2) A statement of the basis upon which the applicant claims to be entitled to costs and attorney fees.

(3) An affidavit setting forth in detail all reasonable costs and fees incurred for or in connection with the party's participation in the proceeding, including receipts or other evidence of such costs and fees.

(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 party from whom costs and fees are sought.

(c) An applicant shall file an 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 application upon the other parties to the proceeding.

(d) The Board may deny an application sua sponte if it fails to provide all the information required by this section in sufficient detail to enable the Board to grant the relief requested.

**Source**

The provisions of this § 1021.182 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883. Immediately preceding text appears at serial page (289984).

**§ 1021.183. Response to application.**

A response to an application shall be filed within 30 days of service. A factual basis for the response shall be verified by affidavit.

**Source**

The provisions of this § 1021.183 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**§ 1021.184. Disposition of application.**

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

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

**Source**

The provisions of this § 1021.184 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

**ATTORNEY FEES AND COSTS UNDER MORE THAN ONE STATUTE****§ 1021.191. Application for counsel fees under more than one statute.**

An applicant seeking to recover fees and costs under more than one statute shall file a single application which sets forth, in separate counts, the basis upon which fees and costs are claimed under each statute.

**Source**

The provisions of this § 1021.191 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085.

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

(a) Unless the parties file a stipulation with the Board or the Commonwealth Court requires otherwise, the Board shall certify the record in accordance with the applicable Rules of Appellate Procedure. The record must consist of:

(1) A list of the docket entries.

(2) The notice of appeal and the Department action appealed to the Board, or, if the proceedings before the Board were initiated with a complaint, the complaint.

(b) In addition to items listed in subsection (a), for appeals of Board adjudication, the record must also include:

(1) The Board's adjudication and order.

(2) The notes of testimony from the hearing, all exhibits admitted into evidence.

(3) The parties' posthearing briefs, including requested findings of fact and conclusions of law.

(4) Petitions for reconsideration or to reopen the record, answers and accompanying exhibits.

(5) Other documents which formed the basis of the Board's adjudication.

(c) In addition to items listed in subsection (a), for appeals of Board opinions and orders, the record must also include:

- (1) The Board's opinion and order.
- (2) The motion or petition which was the subject of the Board's opinion and order, together with responses, answers and replies, and accompanying exhibits.
- (3) Petitions for reconsideration of the Board's opinion and order, responses, answers and replies, and accompanying exhibits.
- (4) Other documents which formed the basis of the Board's opinion and order.
- (d) For electronic filings, a paper copy of the electronic filing will be submitted to the Commonwealth Court as part of the certified record in accordance with this rule, notwithstanding the provisions of § 1021.39(c) (relating to docket) that the official copy of an electronically filed document shall be that appearing on the Board's web site.

**Authority**

The provisions of this § 1021.201 amended under section 5 of the Environmental Hearing Board Act (35 P.S. § 7515).

**Source**

The provisions of this § 1021.201 adopted June 28, 2002, effective June 29, 2002, 32 Pa.B. 3085; amended November 29, 2002, effective November 30, 2002, 32 Pa.B. 5883; amended August 8, 2014, effective August 9, 2014, 44 Pa.B. 5328; amended October 6, 2017, effective October 7, 2017, 47 Pa.B. 6205. Immediately preceding text appears at serial pages (372846) to (372847).