

**ENVIRONMENTAL HEARING BOARD  
RULES COMMITTEE MINUTES**

**Emergency Meeting of March 28, 2001**

**Attendance:**

The Environmental Hearing Board Rules Committee held an emergency meeting on Wednesday, March 28, 2001, at 2:00 p.m. Brian Clark, Maxine Woelfling, Mike Bedrin, Dennis Strain, Terry Bossert, George Miller and Michelle Coleman attended at the Board's Harrisburg office. Howard Wein and Tom Renwand attended the meeting via teleconference at the Board's Pittsburgh office. Bob Jackson also participated via teleconference. Howard noted Terry's recent appointment to the Rules Committee and welcomed him back.

**Electronic Filing – 4:30 p.m. Filing Deadline:**

The purpose of the meeting was to discuss the issue of the Board's current 4:30 p.m. filing deadline, in particular with regard to the newly proposed rule amendments on electronic filing. Because the Board intends to begin work on a rules package prior to the next Rules Committee meeting, it was necessary to resolve this issue prior to the next regularly scheduled meeting.

George proposed the following amendments to the Board's rules: Establish a filing deadline of midnight for documents filed by electronic transmission or fax machine and a 4:30 p.m. filing deadline for documents filed by mail or personal delivery since that is when the office closes. Terry asked whether exhibits to an electronically filed motion or response must be filed by 4:30 if they are filed in hard copy. George replied that the

exhibits must simply be put in the mail on the same date as the electronic transmission of the motion or response.

Bob agreed there seemed to be no reason for the 4:30 p.m. deadline for electronically filed documents or documents filed by fax machine since the machine or computer would accept the documents and stamp them.

Brian posed the following question: If the deadline for electronic and fax transmission is midnight, does that mean that the first page or last page must be received by midnight? Bob suggested that the rule state that the electronic transmission must be completed by midnight. However, Maxine questioned how to interpret "completed."

Bob suggested allowing filing up to the start of business the next day since documents can be deposited through a business' mail slot at any time. The consensus of the Committee was that filing had to be completed at least by midnight and not extended to the next day as per Bob's suggestion.

Terry suggested the filing should be considered timely as long as the transmission commences prior to midnight since problems can occur, for example, with a fax machine in the middle of the transmission. Brian pointed out that if someone waits until 11:45 p.m. to file something electronically, he takes his chances that something could go wrong.

George suggested that the language should say that as long as a document is received by the Board by midnight, the filing will be considered timely. This leaves some wiggle room.

Mike noted that it was appropriate to indicate that the close of business is 4:30 p.m. and, therefore, no one would be available to tend to the fax machine after that time.

This might encourage e-filing. Brian noted, however, that problems can occur with a computer after 4:30 p.m. as well.

George noted that if a party misses a filing deadline by one day for anything other than a notice of appeal, the filing would not be thrown out.

Maxine suggested adding the following language to the rule on Filing (currently § 1021.30): Documents filed by United States mail, hand, or other delivery services after the close of the business day at 4:30 p.m. Eastern Time shall be deemed to be filed on the following business day. George also suggested adding the following language: Documents filed electronically, including by facsimile transmission, shall be deemed filed on the day received by the Board.

Mike noted that the first sentence of § 1021.30 (c) states that documents may be filed by personal delivery, mail or facsimile and a reference to electronic filing should be added. Howard pointed out that it needed to be made clear that notices of appeal could not be e-filed. He suggested adding such language to subsection (c). Terry suggested changing the term “legal documents” to “documents” in the proposed definitions. Maxine suggested including a note following the rule stating that a notice of appeal or complaint that is original process cannot be filed by electronic filing. Dennis suggested keeping the first sentence of subsection (c) as is and adding a second sentence saying that some documents may also be filed electronically. This will alert people to the fact that there is a limited class of documents that can be filed electronically.

Maxine moved to recommend adding the following language to the rule on Filing (currently § 1021.30). The motion was seconded by Brian.

§1021.30. Filing

- (a) \*\*\*\*\*
- (b) \*\*\*\*\*
- (c) Documents may be filed by personal delivery, by mail, or by facsimile. Legal documents, as defined in § 1021.2, may be filed electronically in accordance with these rules. When a document is filed by facsimile, the original shall be deposited in the mail on the same day. If a document exceeds ten pages, the facsimile shall consist of the first five pages and the last five pages of the document and the certificate of service. [A filing received after the close of the business day at 4:30 pm Eastern Time shall be deemed to be filed on the following business day.]
- (d) \*\*\*\*\* (New section dealing with electronic filing approved at March 8 Rules Committee meeting.)
- (e) \*\*\*\*\* (New section dealing with electronic filing approved at March 8 Rules Committee meeting.)
- (f) \*\*\*\*\* (New section dealing with electronic filing approved at March 8 Rules Committee meeting.)
- (g) Documents filed by United States mail, hand, or other delivery services after the close of the business day at 4:30 p.m. Eastern Time shall be deemed to be filed on the following business day. Documents filed electronically, including by facsimile, shall be deemed filed on the day received by the Board.<sup>1</sup>

The motion passed unanimously. The Committee further agreed that the Board should draft a note to appear after the rule, as discussed above.

A complete copy of the text of the Filing rule, containing all amendments approved by the Rules Committee at both the March 8 and March 29 meetings, is attached as Appendix A.

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<sup>1</sup> At the March 28 meeting, it was decided that the new language regarding the deadline for filing documents electronically versus by hand or mail should appear in subsection (e). However, because the new matter regarding electronic filing will appear in subsections (d) – (f), the language approved at the March 28 meeting has been moved to subsection (g).

## Appendix A

### [1021.30] 1021.31 Filing

- (a) Documents filed with the Board shall be filed at its headquarters – 2<sup>nd</sup> Floor, Rachel Carson State Office Building, 400 Market Street, Post Office Box 8457, Harrisburg, Pennsylvania 17105-8457.
- (b) The date of filing shall be the date the document is received by the Board.
- (c) Documents may be filed by personal delivery, by mail, or by facsimile. Legal documents, as defined in § 1021.2, may be filed electronically in accordance with these rules. When a document is filed by facsimile, the original shall be deposited in the mail on the same day. If a document exceeds ten pages, the facsimile shall consist of the first five pages and the last five pages of the document and the certificate of service. [A filing received after the close of the business day at 4:30 pm Eastern Time shall be deemed to be filed on the following business day.]
- (d) Legal documents may be filed with the Board electronically through the Board's website by a filing attorney unless provided otherwise by Board order. A legal document filed electronically shall be deemed the equivalent of the original document subject to the following conditions:
  - (1) The electronic filing of a legal document constitutes a certification by the filing attorney that the original hard copy was properly signed and, where applicable, verified.
  - (2) An executed hard copy of the legal document, with any required verifications, shall be maintained by the filing attorney and produced at the request of the Board or any other party within 14 days of the request.
- (e) In filing legal documents electronically, a filing attorney shall be responsible for:
  - (1) An objective description of the legal document consistent with the title placed on the legal document as required by the Board's website,
  - (2) Any delay, disruption, interruption of the electronic signals and readability of the legal document, and
  - (3) Any risk that a legal document may not be properly or timely filed with the Board.

- (f) Hard copy of any electronically filed legal document which exceeds 50 pages in length must also be filed with the Board in accordance with subparagraphs (a) and (c) of this rule and 25 Pa. Code § 1021.35 relating to the required number of copies. All exhibits to legal documents may be filed and served either electronically or by hard copy in accordance with these rules relating to filing and service. If these requirements are met by hard copy of exhibits, they must be sent to the Board by mail or express delivery and, in the case of requests for expedited disposition, service shall mean actual receipt by the opposing party as required by section 1021.32 (b).
- (g) Documents filed by United States mail, hand, or other delivery services after the close of the business day at 4:30 p.m. Eastern Time shall be deemed to be filed on the following business day. Documents filed electronically, including by facsimile, shall be deemed filed on the day received by the Board.