



A CITIZEN'S GUIDE

TO PRACTICE BEFORE THE ENVIRONMENTAL HEARING BOARD

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Using this Citizen's Guide can help you understand the appeals process.

- This Citizen's Guide is primarily designed to help individuals who are representing themselves in front of the Board. It provides a general overview of some of the practices and procedures of the Board. Reading it can help you understand the steps of the appeal process and the basic requirements of each of those steps.
- **However, this Citizen's Guide is not legal advice and should not be used as legal advice.** The Board's official rules – known as the Environmental Hearing Board Rules of Practice and Procedure – can be found at [Title 25, Chapter 1021](#)¹ of the Pennsylvania Code.
- **The information provided in this Guide may not apply in all instances, and the Judges of the Board may deviate from the processes outlined in this Guide where appropriate.**

The Environmental Hearing Board recognizes and extends its appreciation to Megan Rulli, Summer Intern 2021, for her efforts in researching, drafting and developing the Citizens Guide.

¹ <http://bit.ly/ehbrules>

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ABOUT THE BOARD

Pennsylvania’s Environmental Hearing Board (“Board”) is a state government agency that was formed to hear appeals from final actions of the Department of Environmental Protection (“Department”).

The Board was established in 1971 and made completely independent of the Department by the Environmental Hearing Board Act in 1988.

The Board operates like a court, but it’s not part of the judicial branch of government.

The Board has five Judges and a set of rules and procedures that must be followed during the litigation process. The Judges oversee this process and review filings, address motions, resolve discovery disputes, preside over hearings and eventually decide the outcome of an appeal based on evidence presented by the parties.

The Board decides cases based on the evidence before it, which may differ from that considered by the Department.

The Board may uphold an action taken by the Department or determine that the Department erred. If the Board concludes that the Department incorrectly took an action, it has the authority to substitute its own discretion or send (remand) the case to the Department for corrected action. The Board is not bound by the evidence the Department considered when it took the action under appeal. The Board also has the authority to assess civil penalties under certain statutes and to award legal fees and expenses to qualifying litigants.

Biographical information on the Board’s Judges and staff can be found on the Board’s website, which you can visit here: [Judges of the Environmental Hearing Board](https://ehb.courtapps.com/content/Bios.php).¹

The Board has four office locations in Pennsylvania:

The Board has a Central Office in Harrisburg, a Pittsburgh Office, a Southeast Office in Norristown, and a Northwest Office in Erie. Contact information for each office can be found on the Board’s website, which you can visit here: [Board Office Locations](https://ehb.courtapps.com/content/officeLocations.pdf).²

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¹ <https://ehb.courtapps.com/content/Bios.php>

² <https://ehb.courtapps.com/content/officeLocations.pdf>

QUICK LOOK: REPRESENTATION

Individuals do not need an attorney to appear before the Board. However, the Board recommends you hire an attorney because the appeals process can be lengthy, and you will be required to follow all of the Board's rules and procedures. Before you decide to represent yourself, you should consider the time, costs, and organization required to appeal Department actions. If you are a low-income individual you may qualify for free representation, which you can find by reaching out to a bar association. No matter your choice of representation, you must file your Notice of Appeal within the 30-day deadline.

REPRESENTATION

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**READ THE
RULE:
25 Pa. Code
[§ 1021.21 -](#)
[§ 1021.24](#)**

WHO MUST HIRE AN ATTORNEY

Individuals do not need an attorney to appear before the Board.

However, organizations, corporations, or groups of individuals acting together are required to have legal representation to appear before the Board.

Individuals can appear in front of the Board in 3 ways:

1. Represent yourself.
2. Hire an attorney to represent you.
3. Get free representation (pro bono), depending on your income level.

WHAT TO EXPECT IF YOU REPRESENT YOURSELF

Appealing can be a real time commitment.

- The appeal process is much like participating in a trial at a county courthouse. It is a process that can last several months or longer. How long the appeal will take depends on the nature of the appeal – the more complex the appeal, the longer it is likely to last.
- It usually takes at least 6 months to 1 year from the date when you file a Notice Appeal until it is scheduled for a hearing, unless there is a request for an expedited timeframe. The Board tries to resolve all appeals within two years.

Filing is free, but there will likely be other costs associated with your appeal.

- Filing an appeal with the Board is free, as well as any other filing. At no time will the Board charge you for the services it provides. However, this doesn't mean that your appeal will be free because some outside services – like hiring an expert witness or ordering the transcript from a hearing – will cost money, even if you have free representation.

You will have to keep track of deadlines and schedules.

- You must follow all deadlines and schedules set by the Board. If you miss deadlines or do not respond to requests or filings on time, the Board can sanction you, which could include dismissing your appeal.
- An order from the Board is required to change any deadline, even if all parties agree to the change. This means that you must submit a written request ahead of time for any date change.

WHEN TO MAKE A DECISION ABOUT HIRING AN ATTORNEY

You should make the decision as soon as possible and within 30 days.

In general, you have only 30 days from the date you became aware of the Department's action to file a Notice of Appeal. If you do not file a Notice of Appeal within those 30 days, the action may no longer be appealable.

If you are unsure about hiring an attorney but the 30-day deadline is close:

You may file a Notice of Appeal before you hire an attorney. This Citizen's Guide includes helpful instructions on filing your Notice of Appeal.

For more information, visit the Notice of Appeal section of this Guide, [linked here](#).

WHY HIRE AN ATTORNEY

The Board strongly recommends you hire a lawyer to represent you in an appeal before the Board.

- You will be required to follow the same Board rules and procedures that attorneys follow. Failure to follow Board rules and procedures could result in a dismissal of your appeal.
- During the appeals process you will be required to:
 - Draft and file motions, briefs, and other documents.
 - Conduct and respond to requests for information (known as discovery).
 - Meet deadlines.
 - Present evidence at the hearing, including questioning witnesses and providing exhibits.
- The Department of Environmental Protection will be represented by experienced attorneys.

Hiring an attorney who practices environmental law may help your appeal.

- Environmental lawyers are familiar with the technical and scientific nature of issues involved in handling environmental disputes.
- Environmental lawyers may be more familiar with the many stages of the appeal process, including the Board's rules and procedures, the documents that need to be drafted and filed, and preparing for and presenting arguments and evidence effectively at a hearing.

WHERE TO FIND AN ENVIRONMENTAL ATTORNEY

Start with the lawyer referral services of a bar association.

- A good place to look for an environmental attorney is a **bar association**, which is a group of lawyers organized by geographic location or field of law.
- Bar associations often operate **lawyer referral services**, which connect people in need of lawyers with lawyers who can meet those needs.

Contact your county's bar association.

Your county's bar association may have its own lawyer referral service.

- The easiest way to find information about your county’s bar association is to do an internet search of “[your county] bar association”
- The Pennsylvania Bar Association also keeps a directory of county bar association websites, which you can visit here: [County Bar Association Directory](#)¹

Use the Pennsylvania Bar Association’s Lawyer Referral Service.

The Pennsylvania Bar Association is a statewide organization of lawyers practicing in Pennsylvania and has two services you can use to find a lawyer:

- Online Lawyer Referral Service, found here: [Online Lawyer Referral Service](#)²
- Phone Lawyer Referral Service, which can be called at: 1-800-692-7375

You may be able to hire an attorney from outside Pennsylvania

Out-of-state attorneys must file a petition to be admitted pro hac vice (pro hac vice means “for this occasion only”). The petition must state whether the petitioning attorney is a member in good standing of another state’s bar and whether the other state allows Pennsylvania attorneys to appear before its tribunals like the Board.

HOW TO REQUEST FREE REPRESENTATION

If you can’t afford to hire an attorney, you may qualify for free – also known as pro bono – representation. Free representation depends on 2 things:

1. Whether you qualify based on your income level.
2. Whether a volunteer lawyer is available to take your case.

Unfortunately, even if you qualify for free representation, you aren’t guaranteed a lawyer who can take your case.

There are 3 ways to request free representation:

1. Request free help from the Environmental and Energy Law Section of the Pennsylvania Bar Association.
2. Contact your county bar association.
 - Here is an overview of PA county pro bono services: [County Pro Bono Map](#)³

¹ <https://www.pabar.org/public/legalproflinks/llcbassociations.asp>

² <https://www.pabar.org/site/For-the-Public/Find-a-Lawyer>

³ <http://www.pabar.org/public/probono/countyprobono.asp>

3. Use the Pennsylvania Bar Association's resources: [Pro Bono Services](#)⁴

REQUESTING FREE HELP FROM THE ENVIRONMENTAL & ENERGY LAW SECTION

The Environmental & Energy Law Section is made up of environmental lawyers from across Pennsylvania.

As soon as possible, but preferably within 15 days of filing your Notice of Appeal, figure out if you qualify for free representation.

- Individuals: You may qualify if your household income is less than 200% of the federal poverty level.
- Small Corporations owned by no more than 3 individuals: You may qualify if each of the owners' household income is less than 300% of the federal poverty level.
- The federal poverty levels are published here: [Federal Poverty Guidelines](#)⁵

If you qualify, send a written request for free representation to the Environmental & Energy Law Section by mail, email, or fax, addressed to:

Thomas M. Duncan, Esq.
PBA Environmental & Energy Law Section
Chair, Pro Bono Committee
c/o Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Phone: 484-430-2358
Fax: 484-430-5711
tduncan@mankogold.com

You must also mail a copy of your request to the Board's Harrisburg office:

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

⁴ <https://www.pabar.org/site/Probono-Services>

⁵ <https://aspe.hhs.gov/poverty-guidelines>

Remember, this is just a request.

Even if you qualify based on your income, free representation is not guaranteed and is based on the availability of volunteers. Until you have representation, you are personally responsible for meeting all deadlines, schedules, and requests related to your appeal.

CHECKLIST: REQUESTING FREE HELP FROM THE ENVIRONMENTAL & ENERGY LAW SECTION

- 1. Confirm you are within the **30-day appeal period**.
- 2. File your Notice of Appeal.
- 3. Within 15 calendar days of submitting your Notice of Appeal:
 - a. Check that your income level qualifies you for free representation.
 - b. Submit a written request to the Environmental & Energy Law Section's Pro Bono Committee, by mail, fax, or email.
- 4. Mail a copy of your request for free representation to the Board's Harrisburg office.

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QUICK LOOK: FILING A NOTICE OF APPEAL

If you are affected by an action of the Department of Environmental Protection, you can appeal that action. To begin the appeal process, you must file a Notice of Appeal, which formally asks the Environmental Hearing Board to review the action. Your Notice of Appeal must be filed within 30 days of when you first become aware of the action. To file you must complete a Notice of Appeal Form, file it with the Environmental Hearing Board, and send copies of it to the Department of Environmental Protection and any other directly affected person, business, or municipality. If the action requires you to pay a penalty, you are still responsible for payment while you appeal the action.

FILING A NOTICE OF APPEAL

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READ THE
RULE:
25 Pa. Code
[§ 1021.51-52](#)

[QUICK LINK:
NOTICE OF
APPEAL FORM](#)

WHY FILE A NOTICE OF APPEAL

By filing a Notice of Appeal with the Environmental Hearing Board, you are choosing to start legal proceedings, which ask the Environmental Hearing Board to review an action of the Department of Environmental Protection. The proceedings will require you to file documents, participate in discovery, and may ultimately require you to participate in a hearing before the Environmental Hearing Board.

WHEN TO FILE YOUR NOTICE OF APPEAL

You only have 30 days to file a Notice of Appeal, starting from the date you became aware of the Department’s action. If you do not file a Notice of Appeal within those 30 days, the action may no longer be appealable.

The 30-day period begins in one of three ways:

1. You receive written notice of the Department’s action, which is directed at you or issued to you;
2. The Department publishes notice of its action in the *Pennsylvania Bulletin*;¹ or
3. You receive actual notice of a Department action that was not published in the *Pennsylvania Bulletin*.

WHO CAN FILE A NOTICE OF APPEAL

Generally, if you have been directly and adversely affected by a Department action, you can appeal that action. The first step of the appeal process is to file a Notice of Appeal.

You do not need an attorney to file a Notice of Appeal

However, organizations, corporations, or groups of individuals acting together are required to have legal representation for all stages of the appeal once a Notice of Appeal is filed. See 25 Pa. Code § 1021.21(a).²

Deciding whether to hire an attorney

The Board strongly recommends that everyone hire a lawyer to represent them in an appeal before the Board.

- **For more information, visit the Representation section of this Guide, [linked here](#).**

Who else is involved in an appeal?

- **Department of Environmental Protection (“Department”).** Nearly all appeals involve the Department because they challenge a Department action.
- **Judges of the Environmental Hearing Board (“Board”).** Board Judges are neutral decision-makers who oversee the appeal process, including any hearing, and issue a final decision resolving the objections raised in the appeal - known as an adjudication.
- **A directly affected person, business, municipality, or agency.** If you are appealing an action by the Department that involves someone else (for example, if you want to

¹ <http://www.pacodeandbulletin.gov>

² <https://bit.ly/Representation102121>

appeal a permit issued to another person or business), that person or business will also be included in the appeal process.

WHAT TO INCLUDE IN YOUR NOTICE OF APPEAL

Your Notice of Appeal will be made up of a completed Notice of Appeal Form. Once you have completed each section of the Notice of Appeal Form, you can file it with the Board.

The Notice of Appeal Form has 3 required sections:

1. Appeal Information

You will need the following information to complete the Notice of Appeal form:

- Each and every specific objection you have to the Department's action.
- A copy of any written notification of the Department action that the Department sent you (for example, notification of the order, letter, or permit you are appealing).
- Your contact information (name, address, phone number, email address).
- The Department action you seek the Board to review.
- The Department official who took the action.
- The location of the operation or activity that is the subject of the Department action.
- The date you received notice of the Department action.
- How you received notice of the Department action.
- Any related appeals pending before the Board.

2. Proof of Service Page

You must certify that you sent copies of your Notice of Appeal to the Department and any other directly affected person, business, or municipality ([see below](#)).

3. Signature Page

You must certify, with your signature, that the information in your Notice of Appeal is true and correct to the best of your knowledge.

HOW AND WHERE TO FILE YOUR NOTICE OF APPEAL

Your Notice of Appeal must be filed with the Board within the 30-day period to be considered by the Board. Your Notice of Appeal is considered filed after it is received by the Board at its Harrisburg office. You can mail, hand-deliver, or fax your Notice of Appeal.

Mail or hand-deliver your Notice of Appeal to the Board’s Harrisburg office

- Mail or hand-deliver your Notice of Appeal to:
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
- The Board must receive your Notice of Appeal before 4:30 PM Eastern Time to be filed on that date.
- If you mail your Notice of Appeal, you may wish to send it to the Board by certified mail, with a return receipt, so that you know it was received within the 30-day period.

Fax your Notice of Appeal to the Board’s Harrisburg office

- Fax a copy of your Notice of Appeal to: (717) 783-4738
- **NOTE: You must also follow up by mailing your original Notice of Appeal to the Board’s Harrisburg office.**
- The Notice of Appeal is filed on the date the Board receives the faxed copy.

Attorneys must Electronically File a Notice of Appeal.

- Individuals without attorneys cannot electronically file the Notice of Appeal but are eligible for electronic filing once the appeal is assigned and docketed.
- By filing electronically, the Department is automatically served the Notice of Appeal, both the Office of Chief Counsel and the officer of the Department who took the action.
For more information, visit the Electronic Filing section of this Guide, [linked here](#).

SERVING YOUR NOTICE OF APPEAL

You must also deliver copies of your Notice of Appeal, known as “service” or “serving,” to the Department and any other parties that are directly affected by your appeal.

WHERE TO SERVE YOUR NOTICE OF APPEAL

You must send a copy of your Notice of Appeal two places:

1. To the Department of Environmental Protection’s Office of Chief Counsel at:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building

400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

2. To the officer of the Department who took the action being appealed. If you do not know the correct address for the office involved in the appeal:
 - Contact the Department office directly.
 - Or contact the Board by phone at (717) 787-3483.

You may also need to send a copy of your Notice of Appeal to another person, business, or municipality:

If you are appealing an action by the Department that involves someone else (for example, if you want to appeal a permit issued to another person or business), you must also send that person or business a copy of your Notice of Appeal.

If applicable, you should also serve a copy of your appeal on any of the following:

- **Any affected municipality**, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7.
- **The mining company** in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. Sections 1406.5a, 1406.5b, 1406.5d, and 1406.5e.
- **The well operator** in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218.
- **The owner or operator of a storage tank** in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.

WHAT TO INCLUDE WHEN YOU SERVE

You must deliver a copy of your completed Notice of Appeal Form, including the appeal information, proof of service page, signature page, and any attachments.

HOW TO SERVE YOUR NOTICE OF APPEAL

You can serve other parties by sending a copy of your Notice of Appeal Form through first class mail (with the postage paid), overnight delivery, or personal delivery.

APPEALS INVOLVING A PENALTY ASSESSMENT

If the Department action requires you to pay a penalty, you must pay that penalty according to the statute even if you file a Notice of Appeal.

You may be appealing a Department action that resulted in a fine or penalty that you must pay. Many laws require the amount of the penalty or a bond in that amount to be submitted within the 30-day period required for the filing of the Notice of Appeal. This means you may be required to prepay your penalty before your appeal is resolved.

Sending your prepayment to the Board

Where the law requires you to make prepayment to the Board, you can pay in full by check or send a bond securing full payment of the penalty.

To pay by check:

- Your check should be made payable to the *Commonwealth of Pennsylvania*.
- Mail or hand-deliver your check to the Board with your Notice of Appeal to the Board's Harrisburg office.

To send a bond:

- Your bond should be in favor of the Board.
- Send your bond to the Board's Harrisburg office:
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

Sending your prepayment to the Department of Environmental Protection

Where the law requires you to make a prepayment to the Department of Environmental Protection, you must send your prepayment to the Department at the following address:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

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CHECKLIST: FILING A NOTICE OF APPEAL

- 1. Confirm you are within the 30-day appeal period.
- 2. Decide about representation, either:
 - a. Contact a lawyer.
 - b. Request free representation (pro bono).
 - c. Represent yourself.
- 3. Fill out the Notice of Appeal Form.
 - a. Complete Appeal Information section.
 - b. Include all your objections to the Department's action.
 - c. Complete Proof of Service page.
 - d. Sign Signature Page.
 - e. Attach a copy of written notice of the action the Department sent you (if any)
- 4. File your Notice of Appeal Form with the Board within the 30-day period, either:
 - a. Mail or hand-deliver to Harrisburg office.
 - b. Fax copy AND mail/hand-deliver original to Harrisburg office.
- 5. Send copies of your Notice of Appeal Form to directly affected parties:
 - a. Department of Environmental Protection, Office of Chief Counsel.
 - b. The officer of the Department who took the action being appealed.
 - c. Other directly affected parties, if any.
- 6. Prepay your penalty assessment (if any), to either:
 - a. Environmental Hearing Board – check or bond.
 - b. Department of Environmental Protection, Office of Chief Counsel.

QUICK LOOK: PRE-HEARING PROCEDURES

After you file a Notice of Appeal and before your hearing, there are many pre-hearing procedures you must follow. You may amend your Notice of Appeal without permission from the Board within 20 days of filing. You must keep up with your appeal by checking your email or mail daily to ensure you don't miss any deadlines or filings. Before a hearing, you must talk to the opposing parties about settlement, gather evidence to prove your objections, participate in discovery, file and respond to motions as needed, respond to requests by the Board and other parties, and file a pre-hearing memorandum. Failure to respond to or follow the Board's orders, deadlines, or procedures may result in the dismissal of your appeal.

PRE-HEARING PROCEDURES

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- 1. Amend your Notice of Appeal, if necessary.**
- 2. Talk to the opposing parties about settlement.**
- 3. Gather evidence to prove your objections.**
- 4. Participate in discovery.**
- 5. File motions asking the Board to take specific action in your appeal.**
- 6. Respond to requests by the Board or other parties.**
- 7. File your pre-hearing memorandum.**

WHAT ACTION WILL OTHER PARTIES TAKE IN RESPONSE TO YOUR NOTICE OF APPEAL?

CHECKLIST: IMPORTANT PRE-HEARING TASKS

READ THE

RULE:

25 Pa. Code

§ [1021.101-107](#)

HOW TO ACCESS YOUR APPEAL'S INFORMATION & DOCKET

You can view all the filed documents in your appeal on the Board's website, including those filed by other parties and orders issued by the Judge.

To view your appeal information on the Board's website:

1. Go to the Board’s website’s home page, linked here: [Board Website](#) ¹
2. Click “Docket Search” in the left-hand menu on the home page.
3. Enter your docket number in the “Docket Number Search” section without the hyphen or letter. For example, Docket No. 2020-501-R should be entered as 2020501. The Pre-Hearing Order Number 1 issued by the Board will contain your docket number.
4. This will take you to your appeal’s “Case Information” page. This page contains the name of your judge, basic information about your appeal, and the contact information for the lawyers of the other parties in your appeal.
5. Click on “Docket Sheet” to view a listing of all the documents filed in your appeal.
6. To view the documents themselves, click on the document icon, and then click on the document description that appears.
7. You will be taken to a separate tab that contains the document—from there, you can print or download the document.

Decide whether to register for electronic filing with the Board.

Electronic filing may be a convenient way for you keep up with your appeal, file documents, and notify other parties when you file documents. For more information, visit the Electronic Filing section of this Guide, [linked here](#).

Check your email or mail daily to keep up with your docket.

If you are registered for electronic filing, notifications that the Judge or other parties filed new documents will be emailed to you. If you are not registered for electronic filing, these documents will be mailed to the address on file with the Board.

WHAT DOES THE BOARD DO WITH YOUR NOTICE OF APPEAL?

Once your Notice of Appeal is received by the Board, it is docketed.

This means your appeal is added to a list of other appeals that will be heard by the Board. Your appeal will be given a **docket number**, which will be used to identify your appeal and should be included in any communication or filing with the Board.

Your appeal will then be assigned to one of the Judges on the Board.

Appeals are assigned based on several factors, such as caseload, the existence of related appeals, possible conflicts, and geographic location.

¹ <https://ehb.courtapps.com/public/index.php>

The Judge assigned to your appeal will issue orders that you must read and follow.

The Judge will issue orders related to your appeal, such as:

1. Pre-hearing orders setting deadlines and detailing information about your appeal. These deadlines can only be changed by filing a motion with the Board.
2. Orders deciding issues raised in motions by the parties. These orders can only be reconsidered by filing a petition under the Board's Rules at 25 Pa. Code § 1021.151.²

Pre-Hearing Order Number 1 will set your filing deadlines.

Pre-Hearing Order Number 1 is issued after your Notice of Appeal is docketed. It will assign your appeal to a Judge, identify a docket number, and contain important information about the appeal process. You should read the entire document carefully when you receive it and make note of the important dates and obligations contained in it. Standard deadlines for an appeal include:

- 180 days to conduct discovery.
- 210 days to file dispositive motions.
- 45 days to have a settlement conference, in person or by phone.
- 60 days to file a joint statement certifying you discussed settlement.

The Judge may hold a pre-hearing conference prior to the hearing.

The Judge can order a pre-hearing conference, or a party may request one by filing a motion. The conference may be held in person or by telephone. The conference may be held to discuss settlement, to address issues with evidence that may arise at the hearing, or to address any other matter that will help the hearing go smoothly.

The Judge may view the site involved in the appeal.

Prior to or during the hearing, the Judge may view the site involved in the appeal. Parties may request a site view by filing a motion, but they are held at the discretion of the presiding Judge.

The Judge will schedule a hearing.

After discovery is complete and all dispositive motions are filed and decided, the Judge will schedule a hearing. An order, normally called Pre-Hearing Order Number 2, will provide the date, time, and location of the hearing. It will also provide other deadlines for filing pre-hearing

² <https://bit.ly/reconsideration1021151>

memoranda, motions in limine, and responses to motions in limine. Pre-Hearing Order Number 2 may also schedule a pre-hearing conference with the parties a few days before the hearing.

YOUR NEXT STEPS AFTER FILING YOUR NOTICE OF APPEAL

1. Amend your Notice of Appeal, if necessary.

Your Judge may require you to correct your Notice of Appeal.

The Judge will review your Notice of Appeal to be sure that you included all the necessary information and that proper service to other parties was completed. If necessary, the Board will issue an order asking you to make corrections or to supply missing information. If you don't respond to the order or don't provide the necessary information, your appeal may be dismissed.

You have 20 days to amend your Notice of Appeal without permission from the Board.

To amend, simply file an updated version of your original Notice of Appeal that corrects any errors or adds, removes, or changes any objections you have to the Department's action. The 20 days are calculated by adding 20 days to the date your Notice of Appeal was filed.

After 20 days, you need permission from the Board to amend your Notice of Appeal.

You must submit a motion to amend your Notice of Appeal after 20 days. You must support this motion with verification and affidavits. If the Board decides that your changes will not unfairly harm the opposing parties in the appeal, you will be able to amend your Notice of Appeal. For more information, visit the Motions section of this Citizen's Guide, [linked here](#).

2. Talk to the opposing parties about settlement.

Pre-Hearing Order Number 1 will require you to have a settlement conference with all parties involved in your appeal to discuss settlement of some or all the issues raised in your appeal.

A settlement is a binding agreement between the parties that resolves the issues in an appeal without a hearing. This settlement conference must take place by a deadline set by Pre-Hearing Order Number 1, generally within the first 45 days of the discovery period. It may be held in person or by phone. The Judge will not be a part of this settlement conference. After the conference, the parties must file with the Board a joint statement certifying that they

discussed settlement. This statement must be filed by a date set by Pre-Hearing Order Number 1, generally within the first 60 days of the discovery period.

3. Gather evidence to prove your objections.

Your appeal will be made up of the objections you have to the Department’s action, from your Notice of Appeal and any amendments of the Notice of Appeal. As you collect evidence, prepare filings, interview witnesses, and organize your arguments, you should focus on proving your objections. At the hearing, you generally won’t be allowed to raise new objections and can only present evidence that is related to the objections contained in your Notice of Appeal.

Prove your objections by forming arguments and supporting them with evidence.

Remember, it’s not enough that you believe a fact is true or disagree with the Department’s action. At the hearing, you must support your objections with enough reliable evidence to convince the Judge that your position is more than 50% likely to be true. This burden of proof is known as a preponderance of evidence.

For each objection you have to the Department’s action, you can use this chart³ to help you form arguments and gather evidence to prove your objection:

Your objection to the Department’s action (taken from your Notice of Appeal):		
What do you want the Judge to order, or what fact do you want the Judge to believe about your objection?		
Your arguments for why the Judge should give the order you want or believe the fact you are stating:	Specific examples to support your arguments:	Proof you can use to support your arguments:

³ This chart is adapted from resources found in *The People’s Law Library of Maryland*, which can be accessed here: <https://www.peoples-law.org/proving-fact-court>.

4. Participate in discovery.

You will use discovery to gather evidence to support your objections.

Discovery is the process of exchanging information and evidence with opposing parties. It gives you information and documents that might not be readily available to you and access to witnesses or evidence that the opposing parties might introduce at the hearing. Likewise, opposing parties have the right to obtain such information from you regarding your case.

Discoverable information can include facts about the case, the identity of people who might know something about your appeal or the action that is being appealed, documents that relate to the case, and inspection of property or objects involved in your appeal.

In Pennsylvania, the methods you can use to collect information from the other parties in your appeal include:

1. **Depositions**, in which individuals give testimony under oath in response to questions asked by an opposing party.
2. **Production of documents and things, and entry for inspection or other purposes**, which is used to gather documents or make available for review documents, things, or premises upon request.
3. **Interrogatories**, which are formal sets of written questions from one party to another.
4. **Requests for admissions**, which allow one party to request that another party admit or deny the truth of a statement under oath.
5. **Electronic discovery**, which is the discovery and handling of electronic information like emails and other documents generated and/or stored electronically.

For more information, visit the Discovery section of this Guide, [linked here](#).

Locate and contact witnesses who will testify in support of your position.

You can support your arguments with testimony from fact witnesses or expert witnesses. Fact witnesses are individuals who give testimony based on their personal knowledge. Expert witnesses are individuals with the qualifications, training, or education to be considered an expert on a particular topic.

5. File motions asking the Board to take specific action in your appeal.

Pre-Hearing Order Number 1 will set deadlines for filing motions before the hearing.

A “motion” is an application to the Board for an order to make the Board or another party take a specific action. For example, if you need an extension of a Board deadline, you may ask the

Board for an extension of time in a Motion for an Extension of Time. Your motion must also include reasons in support of why the Board should grant your request. For more information, visit the Motions section of this Guide, [linked here](#).

Communicate with the Board on the record.

You can call the Board with administrative questions at 717-787-3483. All other communication with the Board, including with the Judge assigned to your case, must be done either on the record by filing motions or letters, or in a scheduled conference that includes all the parties in the appeal.

6. Respond to requests by the Board or other parties.

If the Judge issues an order, you must follow it.

The Board has broad powers to impose sanctions if you fail to comply with the Judge's orders or fail to follow the Board's Rules. Appeals have been dismissed as a sanction for numerous reasons, such as failure to comply with a Board order, failure to file answers to discovery requests and failure to file a pre-hearing memorandum. To avoid sanctions, it is crucial that you follow the Board's Rules and take seriously the deadlines set by the Judge.

You must respond to motions filed by other parties to your appeal.

The type of response required and the deadline for responding depends on the type of motion filed. If you fail to deny material facts set forth in a motion, those facts may be considered to be admitted for purposes of deciding the motion. If you fail to respond to a motion, the Board will consider that failure to be an admission of all facts contained in the motion.

For more information visit the Motions section of this Citizen's Guide, [linked here](#).

You must respond to discovery requests from the other parties to your appeal.

The other parties in the appeal have the right to discover information from you related to the appeal. This means **you must respond to and cooperate with the opposing parties to complete all their discovery requests**. If you can't meet a discovery deadline, ask for a reasonable extension and get the extension in writing. You can't withhold information and then surprise the opposing party with it at the hearing. The Board may limit what evidence you can present at trial for not properly responding to discovery requests and may bar expert testimony for failing to identify the expert witness during discovery.

7. File your pre-hearing memorandum.

At the close of discovery each party must file a pre-hearing memorandum.

The Judge will set the deadline for filing your pre-hearing memorandum in an order, usually Pre-Hearing Order Number 2. Your pre-hearing memorandum gives the Board and the other parties in your appeal a preview of the case that you will present at the hearing.

For more information, visit the Pre-hearing Memorandum section of this Citizen’s Guide, [linked here](#).

WHAT ACTION WILL THE OTHER PARTIES TAKE IN RESPONSE TO YOUR NOTICE OF APPEAL?

The other parties to your appeal will be preparing for a hearing as well.

They will be:

- Gathering evidence to respond to your objections.
- Communicating with you about settlement and the required settlement conference.
- Sending you discovery requests.
- Responding to your discovery requests.
- Responding to the Judge’s orders.
- Filing motions asking the Judge to take specific action, which could include dismissing or ruling on the issues presented in your appeal.
- Responding to motions that you file.

Communicate with the other parties through their lawyers.

Any communication you have with the other parties to your appeal should be done through the lawyers who represent them. The Board requires all parties to try to work out scheduling or discovery issues with each other before asking the Board to get involved. The contact information for the lawyers of the parties to your appeal can be found on the “Case Information” page of your online Docket (see above).

The Board encourages all parties to communicate civilly with each other.

The appeal process is lengthy and requires cooperation between the parties to coordinate discovery, discuss settlement, and schedule conferences. Although an appeal is an adversarial proceeding, much can be gained by communicating respectfully with opposing parties.

CHECKLIST: IMPORTANT PRE-HEARING TASKS

- 1. **Within 20 days** of filing your Notice of Appeal, decide whether to amend it.
 - Make any Board-ordered corrections to the Notice of Appeal within the set deadline.
- 2. Read your Pre-Hearing Order Number 1 carefully and record all deadlines.
 - If you cannot meet a deadline, file a Motion for an Extension of Time as soon as possible and before the deadline passes.
 - Record deadlines, your docket number, the Judge's name assigned to your case, and the contact information of the lawyers for other parties in the appeal.
- 3. If you want to use the electronic filing system, register to do so.
- 4. Check your email or mail daily for notifications related to your appeal.
- 5. **Within 45 days** (or the deadline set by Pre-Hearing Order Number 1) have a settlement conference with all the parties in your appeal.
- 6. **Within 60 days** (or the deadline set by Pre-Hearing Order Number 1) file a statement certifying you discussed settlement with the opposing parties.
- 7. Organize your arguments and gather evidence to prove your objections.
- 8. Participate in discovery with the opposing parties. The Judge will set a deadline for the end of discovery in Pre-Hearing Order Number 1.
 - Respond to discovery requests by the other parties.
 - If you can't meet a discovery deadline, ask for reasonable extensions and receive them in writing from the other party.
 - Try to work out discovery disputes with the other parties before getting the Board involved.
- 9. Respond to requests and orders by the Board within set deadlines.
- 10. File motions with the Board if you want the Board or another party to take a specific action. The Judge will set a deadline for filing motions in Pre-Hearing Order Number 1.
- 11. Respond to motions filed by the other parties within deadlines set by the Board's Rules.
- 12. File your pre-hearing memorandum. The Judge will set a deadline for you to file your pre-hearing memorandum, usually in Pre-Hearing Order Number 2.

QUICK LOOK: BASIC FILING PROCEDURES

If you are part of an active appeal, you will file documents related to that appeal with the Board. Every document you file must be typewritten, on letter-sized paper, and double-spaced, with pages numbered after the first page. You must send each filing to the Board’s Harrisburg office and to every other party to the appeal. Each filing must include 1 copy of your document, your signature, copies of any supporting documents, and a certificate of service. The Judge in your appeal sets deadlines for your filings and only orders from the Judge can change those deadlines.

BASIC FILING PROCEDURES

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[HOW TO FORMAT DOCUMENTS FOR FILING](#)

[WHAT TO INCLUDE IN YOUR FILING](#)

[WHAT YOUR FILING SHOULD NOT INCLUDE](#)

[WHERE AND HOW TO FILE DOCUMENTS](#)

[WHEN TO FILE YOUR DOCUMENTS](#)

[CHECKLIST: FILING A DOCUMENT WITH THE BOARD BY MAIL, FAX, OR HAND-DELIVERY](#)

READ THE RULE:

25 PA. Code

[§ 1021.32](#)

WHO CAN FILE DOCUMENTS

If you are directly involved in an active appeal before the Board, then you are a “party” to the appeal and can file documents related to the appeal with the Board.

In a typical appeal, the parties are:

- **Appellant:** When you appeal an action by the Department, you become an appellant. Appellants start the appeal process by filing a Notice of Appeal. Throughout the appeal, appellants file documents that support their objections to the Department’s action.
- **Department of Environmental Protection:** The Department’s lawyers file documents defending its action against the objections raised by the appellant.

Some appeals involve other parties, such as:

- **Permittee:** A business or person engaged in activity that is regulated by a permit from the Department is a **permittee**.
- **Intervenor:** In some appeals, an outside person or organization asks the Board's permission to join in the appeal process because they have a stake in the subject matter of the appeal (for example, a public interest group may support the Department's decision to deny a permit). If the Board grants them permission, they become an **intervenor** who can also file documents related to the appeal.

If you want to file a Notice of Appeal, visit the Notice of Appeal section of this Guide, [linked here](#).

If you want to electronically file a document, visit the Electronic Filing section of this Guide, [linked here](#).

WHY YOU FILE DOCUMENTS

You file documents to present facts, arguments, and necessary information to the Board. Filing a document delivers it to the Board, which the Board then accepts and adds to the official record of the appeal – known as the **docket**. The Board maintains a docket of every appeal on its web site, available to all members of the public. Once added to the docket, the Judge assigned to your appeal will review your document.

As part of your appeal, you will have to file certain documents:

- Notice of Appeal, for more information visit the section, [linked here](#).
- Pre-hearing Memorandum, for more information visit the section, [linked here](#).
- Posthearing Brief, for more information visit the section, [linked here](#).

You may also file documents related to specific parts of the appeal process:

- **Motions** ask the Board to take a particular action.
- **Responses** are mandatory replies to orders from the Board or responses to the motions filed by another party in the appeal.
- **Legal Briefs** (or Memoranda of Law) are documents filed at the same time as a motion or response that detail your arguments in support of your motion or response supported by citations to legal authority (statutes, regulations, decisions in other cases, etc.). Whether you are required to file a legal brief depends on the motion or response filed.
- **For more information, visit the Motions section of this Guide, [linked here](#).**

HOW TO FORMAT DOCUMENTS FOR FILING

Every document you file must be:

1. **On letter-sized paper** that is 8 to 8 ½ inches by 10 ½ to 11 inches.
2. **Typed.** Photocopied documents are considered typewritten if the copies are readable.
3. **With page numbers** on all pages after the first page.
4. **Double-spaced**, except for exhibits, notices of appeal, and complaints.

NOTE: The version of the document you deliver to the Board becomes the official and final version that will be considered by the Board. Be sure to double-check that you send in the correct version.

WHAT TO INCLUDE IN YOUR FILING

Each filing has two steps:

1. File with the Board → send the document to the Board.
2. Service → send a copy of the document to all other parties to the appeal.

Step 1: Send your document to the Board.

When you send your document to the Board you must include:

- One copy of the document.
- A signature block on the last page of the document that includes your:
 - Signature.
 - Mailing address.
 - Email address (if you have one).
 - Phone number.
 - Your signature certifies that the information contained in the document is true and supported by good grounds to the best of your knowledge, and that it is submitted in good faith (not for any improper purpose like to harass).
- A certificate of service, which tells the Board that you sent a copy of your document to the other parties of the appeal. Your certificate of service must include:
 - **The date** when you sent a copy of the document to the other parties.

- How – **by mail, fax, hand-delivery, or by electronic filing (if you have signed up)** – you sent the copy to the other party(s).
- The **name** of each person you sent the copy to **and their mailing address or fax number**.
- A copy of any supporting documents, such as:
 - Any exhibits or attachments your document relies on.
 - Any required items like a proposed order or a memorandum of law. Double-check the specific requirements for each type of filing.

Step 2: Send a copy of your document to all other parties in your appeal.

When you send the document to the other parties to your appeal you must:

1. Include one copy of the document, with each of the items listed above: the document, signature block, Certificate of Service, and any supporting documents.
2. Send the copy on or before the day you file the document with the Board.
3. Send the copy to the party's attorney if that party is represented by an attorney. You can send a copy directly to an unrepresented party.

WHAT YOUR FILING SHOULD NOT INCLUDE

All filings with the Board become public, so you should not include (or redact if it's necessary to include) certain information:

- Social Security numbers.
- Financial account numbers.
- Dates of birth.
- Names of minor children.

WHERE AND HOW TO FILE DOCUMENTS

No matter the Judge assigned to your case or the type of document you are filing, you must file it with the Board's Harrisburg office.

There are three ways to file documents:

1. Mail or hand-deliver your document to the Board's Harrisburg office.
2. Fax your document to the Board at (717) 783-4738.

3. Upload your document online using the Board's electronic filing system. For more information, visit the Electronic Filing section of this Guide, [linked here](#).

Mail or deliver your document to the Board's Harrisburg office at:

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

NOTE: The Board must receive your Notice of Appeal before 4:30 PM Eastern Time to be filed on that date.

Fax your document to the Board's fax line at (717) 783-4738.

- **You must also send an original to the Board's Harrisburg office at:**

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

NOTE: Your document is considered filed on the date it is received by the Board. If your fax transmission starts before midnight, then it's considered filed on that date.

WHEN TO FILE YOUR DOCUMENTS

Your documents are considered filed when they are received by the Board, not when you send them, so do not wait until the last minute to prepare and file.

If you miss deadlines or do not respond to requests on time, the Board can sanction you, which could include dismissing your appeal.

The Board sets deadlines for filing certain documents in Pre-Hearing Order Number 1.

The Judge assigned your appeal will set these deadlines, which you must follow, so read your Pre-Hearing Order Number 1, and any other orders, very closely and be sure to keep track of the deadlines.

If you need more time, you must request it ahead of time.

A Board order is required to change any deadline, even if all parties agree to the change. If you fail to file on time or respond to a request in a timely manner, the Board can impose sanctions – or penalties – on you, up to and including dismissing your appeal.

For more information, visit the Motions section of this Guide, [linked here](#).

[RETURN TO TABLE OF CONTENTS](#)

CHECKLIST: FILING A DOCUMENT WITH THE BOARD BY MAIL, FAX, OR HAND-DELIVERY

- 1. Confirm you are within the deadline set to file your document: check your Pre-hearing Order Number 1 or the appropriate rule for a response deadline to a motion.
- 2. Format your document, be sure that it is:
 - a. On letter-sized paper (8 - 8 ½ x 10 ½ - 11 inches).
 - b. Typed (or a readable photocopy).
 - c. Page numbers (except for 1st page).
 - d. Double-spaced.
- 3. Double-check you are sending the correct, final version of your document.
- 4. Mail, fax, or hand-deliver the document to the Board's Harrisburg office and include:
 - a. One copy of the document.
 - b. Signature block with signature, mailing address, email address, and phone number.
 - c. Certificate of service that includes:
 - Date you sent copy to other parties.
 - How you sent the copy: by mail, fax, hand-delivery, or electronic filing.
 - Name & mailing address or fax number of each person you sent the copy to.
 - d. Attach a copy of any exhibits or attachments your document relies on.
- 5. Send a copy of the document to **every other party to the appeal**:
 - a. Be sure your copy includes:
 - One copy of the document.
 - Signature block with signature, mailing address, email address, and phone number.
 - Certificate of service.

- Any exhibits or attachments.
- b. Send the same day you file with the Board (or earlier).
- c. Send to the attorney representing the party.

QUICK LOOK: ELECTRONIC FILING

If you do not have an attorney, you can register for electronic filing with the Board **after** you file your Notice of Appeal. Once you are registered, all notifications and delivery of documents filed in your appeal will be electronic, whether from the Board or another party. This means you will need to register with an email account that you check regularly. Each electronic filing made by you must include 1 copy of your document, a signature block, copies of any supporting documents, and a certificate of service. When you electronically file, a copy of the document is automatically delivered to all other parties to the appeal who are registered users. If you have technical issues or trouble registering or electronically filing, contact the Board at 717-787-3483.

ELECTRONIC FILING

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[WHO CAN FILE DOCUMENTS ELECTRONICALLY](#)

[DOCUMENTS & INFORMATION THAT CAN'T BE ELECTRONICALLY FILED](#)

[HOW TO REGISTER FOR THE ELECTRONIC FILING SYSTEM](#)

[WHEN TO FILE YOUR DOCUMENTS](#)

[WHAT TO INCLUDE IN YOUR ELECTRONIC FILING](#)

[HOW TO FORMAT YOUR DOCUMENTS FOR UPLOAD](#)

[HOW TO ELECTRONICALLY FILE DOCUMENTS](#)

[IF YOU HAVE TECHNICAL ISSUES](#)

[CHECKLIST: ELECTRONICALLY FILING A DOCUMENT WITH THE BOARD](#)

**READ THE
RULE:
25 PA. Code
[§ 1021.32](#)**

WHY FILE DOCUMENTS ELECTRONICALLY

Electronic filing is convenient.

- When you electronically file, a copy is automatically delivered to the other parties of the appeal who are also signed up for electronic filing. This means you do not have to mail or fax additional copies of the documents you file with the Board.
- You can electronically file at any time of the day – any document uploaded before midnight is considered filed on that date.

- You can electronically file from anywhere you have a secure internet connection.

WHO CAN FILE DOCUMENTS ELECTRONICALLY

Only registered users can file documents electronically.

- Individuals representing themselves can only register and file documents electronically **after** filing a Notice of Appeal by mail, hand-delivery, or fax. The Board will upload the Notice of Appeal to its online public docket.
- Attorneys must register and file all documents electronically.

You will be expected to become a registered user after you file your Notice of Appeal.

The Board has rules requiring electronic filing for all documents in an appeal. However, you can file a motion to be excused from electronic filing after you file your Notice of Appeal. The motion should state the reasons why electronic filing would be an unreasonable burden.

DOCUMENTS & INFORMATION THAT CAN'T BE ELECTRONICALLY FILED

If you don't have an attorney, you can't electronically file your Notice of Appeal.

- You can file your Notice of Appeal by mailing, hand-delivering, or faxing it to the Board's Harrisburg office.

For more information, visit the Notice of Appeal section of this Guide, [linked here](#).

You can't electronically file certain documents or information:

- A motion to be excused from the Board's mandatory electronic filing requirement must be filed by mail, hand-delivery, or fax. For other documents that can't be filed electronically, see [25 Pa. Code § 1021.32\(a\)](#).¹
- All filings with the Board become public, so you should not include (or redact if it is necessary to include) certain information:
 - Social Security numbers.
 - Financial account numbers.
 - Dates of birth.
 - Names of minor children.
- If the Board issues a protective order, information subject to that order may be electronically filed under seal, which means it won't become part of the public record.

¹ <https://bit.ly/privacy102132a>

4 BASIC REQUIREMENTS TO ELECTRONICALLY FILE

1. You're registered for electronic filing (instructions below).
 - Your registration information is unique to you and cannot be shared with anyone.
2. You have access to a secure internet connection that allows you to upload files.
3. You have an email address that you check regularly.
 - Once you are registered for electronic filing, you will receive all notices related to your appeal at your registered email address – this includes orders from the Board and filings from other parties that may require a quick response.
4. You know how to create and format documents in Microsoft Word or Adobe PDF format.
 - The ability to scan documents may also be helpful.

If you don't think you can meet these 4 requirements, you should file a motion with the Board requesting to be excused from electronic filing. The motion should state in numbered paragraphs the reasons why electronic filing would be an unreasonable burden to you. For information on how to file this motion, read the Basic Filing Procedures section, [linked here](#).

HOW TO REGISTER FOR THE ELECTRONIC FILING SYSTEM

The screenshot shows a registration form with several sections. Red circles and arrows indicate the following steps:

- Step 2:** A red circle around the "Select Access Type" dropdown menu, which is set to "Pro Se Filer".
- Step 3:** A red circle around the "Contact Information" section header.
- Step 4:** A red circle around the "Find Parties" button, which is next to the "Docket Number" field containing "2020051".
- Step 5:** A red circle around the "Select" button, which is next to the "Select Pro Se Party" dropdown menu. The dropdown menu is open, showing "Appellants" and "Test Appellant".
- Step 6:** A red circle around the "Submit Registration" button at the bottom of the form.

1. Navigate to the registration form here: [Registration Form](#)²
2. Select "Pro Se Filer" as access type.
3. Fill out the Contact Information section of the form.

² <https://ehb.courtapps.com/efile/userRegistration.php>

4. Enter the docket number of your case under Pro Se Information and click “Find Parties.”
5. If you don’t have this number, you can call the Board at 717-787-3483, or you will receive it with your Pre-hearing Number 1.
6. Select your name from the list of Appellants.
7. Submit the registration form to the Board for review.
8. After the Board accepts your registration, you will receive a confirmation email.
 - **NOTE:** You cannot electronically file until you receive the confirmation email.
9. Add the Board’s email address to your contacts or your safe sender list.
 - PAEnvironmentalHearingBoard@courtapps.com is the email address from which all electronic filing notifications will be sent.
 - Your confirmation email—and all notifications from your appeal—will come from this address. Adding it to your contacts will keep it out of your spam folder.
 - **NOTE:** This email address is not monitored and people should not use this email address to contact the Board.

By registering, you are agreeing to accept all documents filed in your appeal—from the Board or other parties—by electronic delivery.

NOTE: You may not be able to electronically file on the same day you register.

If you register after business hours, you may not be able to electronically file until the next business day. If you need to file a document on the day you register and haven’t received a confirmation email, you must fax, or hand deliver it to the Board’s Harrisburg office.

WHEN TO FILE YOUR DOCUMENTS

Documents electronically filed before midnight are considered filed on that date.

If you miss deadlines or do not respond to requests or filings on time, an opposing party’s motion may be granted against you, or the Board can sanction you. This could include dismissing your appeal.

You must meet the deadlines set by the Board in your Pre-Hearing Order Number 1.

The Judge assigned to your appeal will set these deadlines, which you must follow, so read your Pre-Hearing Order Number 1 very closely and be sure to keep track of your deadlines.

Standard deadlines for an appeal include:

- 180 days to conduct discovery.
- 210 days to file dispositive motions.

- 45 days to have a settlement conference.
- 60 days to file a joint statement certifying you discussed settlement.

If you need more time to meet a Board-ordered deadline or to respond to another party’s motion, you must request it ahead of time.

A Board order is required to change any deadline, even if all parties agree to the change. If you fail to file on time or respond to a request in a timely manner, the Board can impose sanctions – or penalties – on you, up to and including dismissing your appeal.

For more information, visit the Motions section of this Guide, [linked here](#).

WHAT TO INCLUDE IN YOUR ELECTRONIC FILING

Your electronic filing must include:

- One copy of the document.
- A signature block on the last page of the document that includes your:
 - Signature: you may use your actual signature or an electronic signature.
 - An electronic signature must use “s/” and your name: “s/ Jane Doe.”
 - The signature must be the signature of the registered user.
 - Mailing address.
 - Email address.
 - Phone number.
 - Your signature certifies that the information contained in the document is true and supported by good information to the best of your knowledge and submitted in good faith (not for any improper purpose like to harass).
- A certificate of service, which tells the Board that you sent a copy of your document to the other parties of the appeal. **Your certificate of service must:**
 - State that the document was filed using the electronic filing provider.
 - List the parties in your appeal who are registered for electronic filing.
- A copy of any supporting documents, such as:
 - Any exhibits or attachments your document relies on.
 - Any required items like a proposed order or a memorandum of law. Double-check the specific requirements for each type of document you file.

HOW TO FORMAT YOUR DOCUMENTS FOR UPLOAD

Save your documents in Microsoft Word for Windows or Adobe Acrobat PDF Format.

Documents filed in Word format will be automatically converted to PDF format by the electronic filing software. This means the document cannot be edited after it is filed, regardless of the original format in which it was filed. Any registered user and members of the public can view and print the documents you file.

Your documents (other than exhibits or attachments) must be:

- On letter-sized paper that is 8 to 8 ½ inches by 10 ½ to 11 inches.
- **Typed.** Photocopied documents are considered typewritten if the copies are readable.
- **With page numbers** on all pages after the first page.
- **Double-spaced**, except for exhibits, notices of appeal, and complaints.
- **Up to 25 mb each.** You may need to divide larger files to upload them.

The Board may require you to resubmit improperly formatted documents.

NOTE: The version of the document you deliver to the Board becomes the official and final version that will be considered by the Board. Be sure to double-check that you send in the correct version.

HOW TO ELECTRONICALLY FILE DOCUMENTS

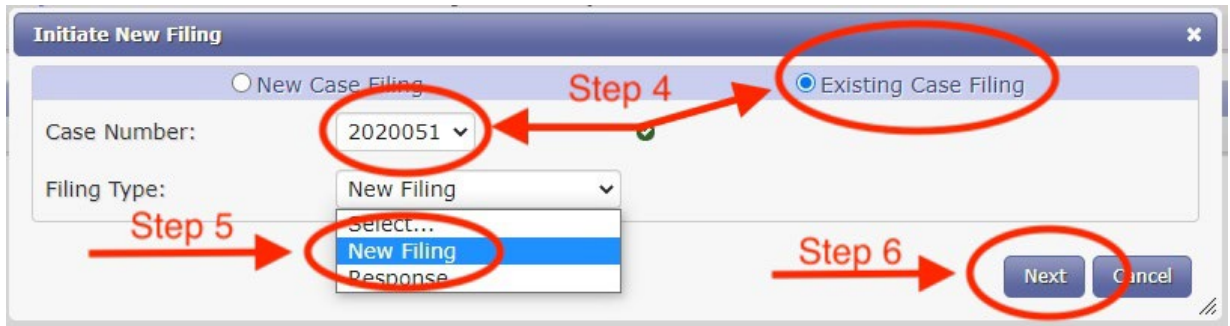
Step 1: Submit your document using the electronic filing system.

1. Register for electronic filing at least one business day before your deadline (see above).
2. Log-in here: [Registered User Log On Page](#).³
3. Once you are logged in, click “New Filing” in the upper right corner.

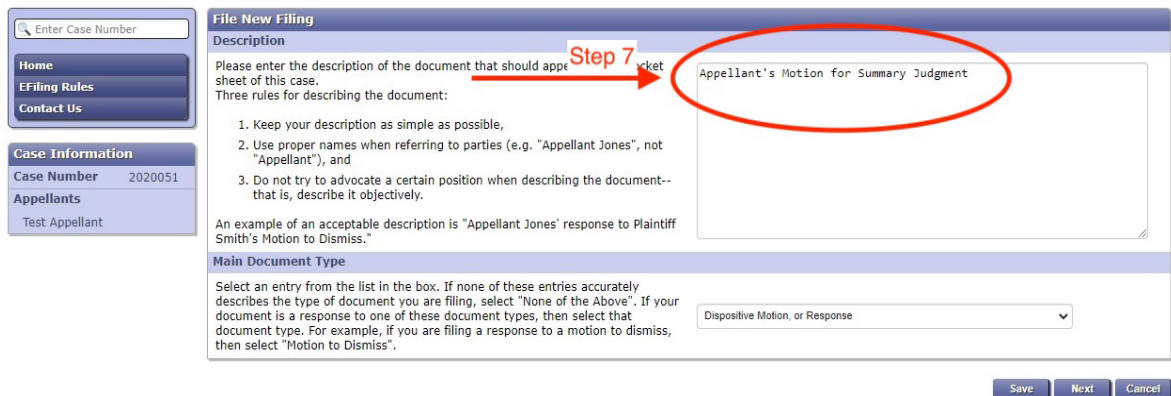
Status	Description	Count
Draft	eFilings created but not submitted to court	0
Pending	eFilings submitted to court but are pending review	0
Rejected	eFilings that were rejected	0
Approved	eFilings that were approved	0

³ <https://ehb.courtapps.com/efile/logon.php>

4. A dialog box will appear called Initiate New Filing. Select “Existing Case Filing” and choose your appeal’s docket number from the dropdown list of case numbers.
5. Select the type of filing from the “Filing Type” dropdown list.
6. Click “Next” and a new screen appears containing instructions on how to describe the document to be filed.



7. Enter a description of the document. This description must include:
 - Your name (or your role in the appeal) and the title of your document.
 - For example: Appellant Smith’s Motion for Summary Judgment.



8. Select the type of document you are uploading and click “Next.”
 - If none of the selections fit your document, select “None of the Above.”

- If your document is a response to one of the document types, then select that document type.

9. Upload your document using the “Choose File” button to locate it on your hard drive. Locate your document, select it, and click “Open.”
10. Upload any supporting documents for your filing:
 - Enter a description of the document.
 - Upload your document using the “Choose File” button, locate the document, select it, and click “Open.”
11. Double-check that:
 - You uploaded the correct & final version of your document.
 - Your filing includes: the document, signature block, certificate of service, and any exhibits or attachments.
12. Click the “Submit to Court” button to file the document.

- You will see a Submission Summary if your submission was successful.

The screenshot displays a web interface for electronic filing. On the left is a navigation menu with a search bar labeled 'Enter Case Number' and buttons for 'Home', 'E-filing Rules', and 'Contact Us'. The main content area features a green 'Success' notification box with a close button (X) in the top right corner. The notification text reads: 'Success', 'Your filing was successfully submitted to court.', 'A court clerk will soon review your filing in order to verify that it conforms to the court's filing rules.', 'Upon review by the court, you will receive an email stating whether or not the court has accepted your filing.', 'You should receive an email shortly with the details of your submission.', 'If you have any questions in regards to the status of your filing, you may contact the PA Environmental Hearing Board at 717-787-3483 and reference confirmation number 121717.', and 'Additionally, you may continue to submit filings by either navigating back to the home screen and clicking the 'New Filing' link, or by clicking the 'New Filing' icon in the top right menu.' Below the notification is a 'Submission Summary' table with the following data:

Submission Summary	
Filed By	Test Appellant
Filing Date	07-21-2021 03:16 PM
Confirmation #	121717
Docket Number	2020051
Appellants	Test Appellant
Documents	
Appellant's Motion for Summary Judgment	
Statement of Undisputed Material Facts	
Memorandum of Law	
Certificate of Service	

- Your document is considered filed at the time you submit it.
- The system will also email you a transaction receipt that includes the date and time the document was received – save this receipt as proof of your filing.

Step 2: Make sure the Board accepted your document.

The system will send you an acceptance email once the Board accepts it. Board staff will review and – if there are no issues – accept your document at their earliest convenience, usually the day you submit, if it is submitted during regular business hours.

If the Board rejects your document, it will not be filed, and you will receive an email notification of the rejection.

Step 3: Make sure all other parties to your appeal were sent a copy of your document.

- Your acceptance email lists the parties who were served through the website. Delivery to registered users (called “service”) is complete when this acceptance email is sent.
- An automatic message is also emailed to all parties to the appeal who are registered users of the electronic filing system. The email will notify the parties that you filed an electronic document in their case and will include a link to the document itself.

Step 4: If any party wasn’t electronically sent a copy of your document, you must deliver a copy of it – by mail, fax, or hand-delivery – to that party:

- Include one copy of the document, including: the document, signature block, certificate of service, and any supporting documents.
- Send the copy on or before the day you file the document with the Board.

- Send the copy to the party’s attorney if that party is represented by an attorney. You can send a copy directly to an unrepresented party.
- **For more information, visit the Basic Filing Procedures section of this Guide, [linked here](#).**

Step 5: Keep a hard copy of your filing available by request from the Board or another party.

- The Board or another party may ask you for a hard copy of a document filed in your appeal. If so, you need to send it to the requesting party within 14 days.

IF YOU HAVE TECHNICAL ISSUES

Contact the Board at 717-787-3483 if you have any problems registering or filing a document electronically.

If electronic filing or service does not occur or is late because of a technical issue, notify the Board to fix the issue. If you submit your document on time, a delay in receipt on the part of the Board or another party will not result in a dismissal of your appeal or other sanctions.

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CHECKLIST: ELECTRONICALLY FILING A DOCUMENT WITH THE BOARD

- 1. Register for electronic filing at least one business day before you need to file.
- 2. Confirm you are within the deadline to file by checking the Board's order setting your deadlines, usually Pre-hearing Number 1 or the rules for responding to motions.
- 3. Format your document:
 - a. Saved in Word or PDF format.
 - b. On letter-sized paper (8 - 8 ½ x 10 ½ - 11 inches).
 - c. Typed (or a readable photocopy).
 - d. Page numbers (except for 1st page).
 - e. Double-spaced.
- 4. Double-check you are sending the correct & final version of your document.
- 5. Log-in to submit your filing and include:
 - a. One copy of the document.
 - b. Signature block with signature, mailing address, email address, and phone number.
 - c. Certificate of service that includes:
 - Date you electronically filed.
 - Statement that the document was electronically filed.
 - Name & mailing address of the parties in your appeal who are registered for electronic filing.
 - If any party is not registered for electronic filing, you must list how you sent that party a copy of the document (by mail, hand-delivery, or fax).
 - d. Copies of any supporting documents.
- 6. Submit before midnight on the date you file & save the transaction receipt from the system as proof of filing.
- 7. Make sure the Board accepted your document.

- a. If the Board accepted your document → Continue to **step 8**.
 - b. If the Board rejected your filing → You must resubmit, making any corrections the Board requires.
8. Make sure the system delivered a copy of your document to all parties in your appeal.
- a. If the list of who was served includes every party → Continue to **step 10**.
 - a. If any party to your appeal was not served electronically → continue to **step 9**.
9. Send a hard copy of your document to any party not registered for electronic filing:
- a. Be sure your copy includes:
 - One copy of the document.
 - Signature block with signature, mailing address, email address, and phone number.
 - Certificate of service.
 - Any supporting documents.
 - b. Send the same day you file with the Board (or earlier).
 - c. Send to the attorney representing the party.
10. Keep a hard copy of your filing available by request from the Board or another party.

QUICK LOOK: DISCOVERY

Discovery is the process that parties to an appeal use to gather and exchange information to support their cases. There are four main discovery tools: interrogatories, requests for production, admissions, and depositions. Parties can also discover electronically stored information. If you are a party to the appeal, you must participate in discovery and should expect discovery requests. In general, discovery requests are not filed with the Board. The Board will only get involved with a discovery dispute after the parties have made a good faith effort to work through the issue together. If you ignore discovery requests or miss discovery deadlines the Board can impose sanctions.

DISCOVERY

Contents:

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READ THE RULES:

25 Pa. Code

[§ 1021.102](#)

and

PA Rules of Civil

Procedure:

[4000-4025](#)

WHAT IS DISCOVERY

Discovery is the process that parties to an appeal use to gather and exchange

information and evidence to support their cases.

Discoverable information can include facts about the appeal, the identity of people who might know something about the appeal or the action that is being appealed, written or oral testimony by witnesses or the parties, documents that relate to the appeal, and inspections of property or objects involved in the appeal.

Unlike most Board procedures, the rules that control discovery come from PA's Rules of Civil Procedure, which contain the rules for civil cases in Pennsylvania.

Because this Citizen's Guide is an overview of the Board's rules and procedures, it does not address all the discovery rules for civil trials in PA. Instead, it highlights some of the rules that appellants are likely to encounter during the appeal process.

- PA's Rules of Civil Procedure on discovery are found at [Pa.R.C.P. 4001—4025](#).¹
- The Board's rules discussing discovery are found at [25 Pa. Code § 1021.102](#).²

WHAT IS DISCOVERABLE?

In general, you can discover any matter relevant to the subject matter of your appeal, so long as it is not privileged (see below).

- Types of things that are discoverable include documents, electronically stored information, tangible items, and knowledgeable persons. This includes the existence, description, nature, content, custody, condition, and location of any books, documents, or other tangible things and the identity and locations of persons with knowledge of any discovery matter.

However, that discovery must be proportional to the nature of the appeal.

- This means that the amount of discovery conducted will depend on the complexity or importance of the issues in the appeal, the amount at stake in the appeal, and the costs and burdens discovery will place on the parties.
- So, a complex appeal will generally have more in-depth discovery and a straightforward appeal will generally have less discovery.

WHAT IS NOT DISCOVERABLE?

- **Privileged material**, such as information protected by the attorney-client privilege or a party's attorney's opinions, notes, legal research or theories about the case.
- **Material subject to a protective order**, which is an order from the Board that prevents the disclosure of certain sensitive or confidential information.
- **Information that:**
 - Is not relevant to the subject matter of the appeal;

¹ <https://bit.ly/padiscoveryrules>

² <https://bit.ly/pacode102discovery>

- Is requested in bad faith;
- Would cause unreasonable annoyance, embarrassment, burden or expense;
- Would require a party, deponent, or witness to make an unreasonable investigation to provide the requested material.

WHY PARTICIPATE IN DISCOVERY

Many cases are resolved based on information uncovered during discovery. Discovery allows you to obtain information that might not be readily available to you and lets you access information that opposing parties might introduce at the hearing. Likewise, opposing parties have the right to obtain information from you regarding your case.

WHO PARTICIPATES IN DISCOVERY

All parties participate in discovery without the Board’s direct involvement.

The Judge will only intervene in a discovery dispute if the parties try and fail to resolve the issue on their own, and a party files a discovery motion with the Board. Parties don’t file discovery requests or responses with the Board unless they’re necessary to resolve a discovery dispute or a pending motion.

WHEN DISCOVERY TAKES PLACE

Discovery begins after the Judge issues Pre-hearing Order Number 1, which sets deadlines for conducting discovery, including the deadline for when discovery requests must be served on the other parties.

The default deadline is 180 days for discovery. The Board may issue later orders changing the deadlines at the parties’ request.

The parties may propose alternate dates for discovery deadlines by jointly submitting a Joint Proposed Case Management Order to the Board, which:

- Must be filed within 60 days of when the Judge issues Pre-hearing Order Number 1, and may propose alternate dates for:
 - Ending discovery;
 - Serving expert or supplemental reports;
 - Filing dispositive motions.

Discovery ends according to the Judge’s deadline. The Judge may issue an order using the alternate dates proposed by the parties in the Joint Proposed Case Management Order or other dates the Judge finds appropriate.

HOW TO PARTICIPATE IN DISCOVERY & GATHER EVIDENCE

There are 4 main ways to get information from the other parties in your appeal:

If you are a named party, you should expect the other parties to use these same methods to get information from you as well.

- 1. Interrogatories, which are written questions used by parties to obtain information from each other. Interrogatories can only be served on parties.**

Interrogatories can be used to identify the witnesses, expert witnesses, documents, electronically stored information, or tangible things that a party will rely on to support their position in the appeal. Interrogatories are usually sent early on during discovery.

- 2. Requests for production, which allow you to request that the opposing party produce and provide you with documents such as writings, drawings, letters, graphs, charts, photographs, and electronically stored information.**

These requests can also allow you to inspect, copy, test, or sample any tangible things that are within the possession, custody, or control of you or another party. Any party may serve a request on another party.

- 3. Requests for admissions, which are lists of statements relating to the appeal that ask the opposing party to either admit or deny the statements listed.**

These requests save parties time and expense by identifying facts that aren't in dispute. They can also be used to authenticate documents and challenge the qualifications of expert witnesses.

- 4. Depositions, which are face-to-face questioning sessions of a party or a witness.**

The "deponent" is the person who is testifying by answering questions under oath at the deposition. A deponent can be an opposing party, a witness with personal knowledge, or an expert witness. Depositions usually occur between the parties without the judge present.

DO NOT IGNORE DISCOVERY REQUESTS!

You must respond to discovery requests from the other parties to the appeal.

The other parties have the right to discover information from you related to the appeal. This means you must respond to and cooperate with the other parties and complete all discovery requests within set deadlines.

- **If you can't meet a discovery deadline,** ask the other party for a reasonable extension

and get it in writing. If that fails, you may file a motion for an extension of time with the Board. **For more information, visit the Motions Section of this Guide, [linked here](#).**

You can't withhold information and surprise the opposing party with it at the hearing.

The Board may limit what evidence you can present at trial if you don't properly respond to discovery requests and may exclude expert testimony if you don't identify the expert witness during discovery.

The Board has broad powers to issue sanctions if you don't cooperate with discovery.

If you don't respond to discovery requests on time, the Board can impose penalties on you, up to and including dismissing your appeal. See [PA Rule of Civil Procedure 4019](#).³

RESPONDING TO DISCOVERY REQUESTS FROM OTHER PARTIES

1. Responding to interrogatories

- **You must respond within 30 days** of the date you received the request, unless otherwise agreed to by the parties.
- **You must provide a complete answer to each of the interrogatories** in the spaces provided, either written or typed. If you run out of space, you can continue the answer on a separate piece of paper that you will need to attach and return with your answered interrogatories.
- **If you object**, you must state the objection for that question in place of the answer. You should include the legal reason for your objection (for example: why the request is not within the scope of discovery).
- **The answer must be signed and verified**, which means that at the end of the document you must include a signed statement saying that the information you provided is true and correct to the best of your knowledge, under penalty of perjury.
 - **Sample verification statement:** I verify that the statements made in this [document name] are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

2. Responding to a request for production

- **You must respond within 30 days** of the date you received the request, unless otherwise agreed to by the parties.

³ <https://bit.ly/pacoderule4019>

- **You must provide an answer to each of the numbered paragraphs** in the request served on you. If you object, you should include the legal reason for your objection.
- **Your answers must identify, in correspondingly numbered paragraphs, either:**
 1. The documents you provided or made available;
 2. The documents you did not provide or make available due to an objection to a request;
 3. Or a statement that after reasonable investigation, you determined that there are no documents that respond to the request.
- **The answer must be signed and verified**, which means that at the end of the document you must include a signed statement saying that the information you provided is true and correct to the best of your knowledge, under penalty of perjury. See above for an example of a verification.
- **Include with your response copies of the documents that you could provide, or coordinate with the requesting party to make them available for review.**

3. Responding to a request for admission

- **You must respond within 30 days** of the date you received the request, unless otherwise agreed to by the parties.
- **You must respond to each statement listed in the request or the matter will be considered admitted.** Respond in correspondingly numbered paragraphs. For each statement you must either:
 1. **Admit** that the statement is true;
 2. **Deny** that the statement is true;
 3. **Partially admit or partially deny** that the statement is true, taking care to specify what part of the statement is true and what part is denied;
 4. **State that you are unable to admit or deny because you do not have enough information or knowledge about the statement.** You may only respond this way after you've made a good faith attempt to find out if the statement is true using information known or readily available to you.
 5. **Object**, if you have a valid legal objection. If you object to any of the requests, you must state the reason for the objection in your response.
- **The answer must be signed and verified**, which means that at the end of the document you must include a signed statement saying that the information you provided is true and correct to the best of your knowledge, under penalty of perjury. See above for an example of a verification.

4. Appearing for a deposition

If you are a named party, you will likely be deposed by an opposing party and are required to cooperate when a party requests a deposition.

What to expect at a typical deposition:

- **The deposition will be recorded.** A court reporter will be present to record all questions

asked and answers given and will produce a transcript of the deposition. Depositions are often also recorded on video.

- Transcripts from depositions can be used later at the hearing or in motions.
- **The usual order of the deposition:**
 - The court reporter asks the deponent to swear an oath to tell the truth.
 - The party who requested the deposition will ask questions first.
 - The opposing party's attorney will ask the deponent questions next.
 - The deponent must answer every question asked truthfully.
- **Objections to questions may be made during depositions, but the deponent will still have to answer.** Generally, deponents should not refuse to answer questions and attorneys should not instruct deponents to not answer questions.
 - **To object**, state "objection" after the question is asked. The court reporter will record the objection, and the deponent will answer. The objection is then preserved and can be raised later in a motion or hearing, if necessary.

SUPPLEMENTING A DISCOVERY RESPONSE

If information surfaces or changes after you've already submitted a discovery response, you must let the other party know by supplementing that discovery response in a timely manner. This includes the identity of witnesses.

MAKING DISCOVERY REQUESTS

Sending interrogatories, requests for production, or requests for admission:

1. If you are sending the request to a party to the appeal, you do not need the Board's permission to send interrogatories, requests for production, or requests for admission.
2. Interrogatories and requests must be listed in separately numbered paragraphs, one for each specific question or request.
3. Leave enough space between each numbered paragraph for the answer.
4. The party has 30 days (unless the parties agree otherwise) from the day they were served with the request to respond, provide copies of requested documents, or make available to you the requested items.

If you plan to send out discovery requests, you should refer to PA's Rules of Civil Procedure:

- For more information on interrogatories, see [Rule 4005](https://bit.ly/parcp4005).⁴

⁴ <https://bit.ly/parcp4005>

- For more information on requests for production, see [Rule 4009.11](#).⁵
- For more information on requests for admission, see [Rule 4014](#).⁶

The Board recommends that appellants engage a lawyer before conducting depositions.

- For more information on depositions, see [Rule 4007.1](#).⁷

ELECTRONIC DISCOVERY

Electronic discovery is the discovery and handling of electronic information, such as emails and other documents generated and/or stored electronically.

In Pre-Hearing Order Number 1, the Judge will address electronic discovery and outline your duties if you use electronic discovery.

Within 45 days from when the Judge issues the Pre-Hearing Order Number 1, the parties must hold a conference to discuss electronic discovery. Topics the parties should discuss include:

1. If it is likely that the parties will request electronically stored information;
2. How the parties will preserve discoverable electronic information;
3. The form parties will use to produce the information (PDF file, USB drive, etc.);
4. The timeline for producing the information;
5. How the parties will assert and preserve claims of privilege;
6. How the parties will assert and preserve confidentiality, including for persons not a party to the appeal;
7. How the parties will divide the expense of production;
8. Any other issues relating to the discovery of electronically stored information.

If electronic discovery is likely, the parties may develop a proposed plan or agree that a plan is not necessary. If the parties choose to create an electronic discovery plan, they must file a summary of the plan with the Board within 60 days from the issuance of the Pre-Hearing Order Number 1. The filed report should:

- Summarize the plan.
- List any issues the parties couldn't agree on and their positions on those issues.
- The Board will consider the report and may issue an order addressing it and any issues it may contain.

The Board can, on its own motion or the motion of any party, issue an order governing electronic

⁵ <https://bit.ly/parcp400911>

⁶ <https://bit.ly/parcp4014>

⁷ <https://bit.ly/parcp40071>

discovery and addressing all the issues listed above.

HOW TO RESOLVE DISCOVERY DISPUTES

Parties must make a good faith effort to resolve discovery disputes before involving the Board. If you have a dispute:

1. Communicate civilly with the other party through their lawyer about the dispute and make a good faith attempt to resolve the issue.
2. If that fails, you may file a discovery motion asking the Judge to resolve the dispute.
 - You must include as exhibits the discovery requests and answers at issue.
 - For example: A motion to compel can be filed to force a party to turn over requested discovery, while a motion for a protective order can block certain information from being discovered if there is good cause.

For more information, visit the Motions Section of this Guide, [linked here](#).
3. The Judge will issue an order deciding the motion that all parties must follow.
 - Sometimes, the Judge will hold a conference call to resolve the dispute.

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CHECKLIST: PARTICIPATING IN DISCOVERY

- 1. Read Pre-Hearing Order Number 1 and record the deadlines set for discovery.**
 - a. Optional and within 60 days of Pre-Hearing Order Number 1's issuance:
 - With the other parties in your appeal, file a Joint Proposed Case Management Order offering alternate discovery deadlines.
- 2. Respond to discovery requests by other parties.**
 - a. If you cannot meet a deadline:
 - First, ask the other party for a reasonable extension & get it in writing.
 - If that fails, file a motion for an extension of time with the Board.
 - b. **Responding to interrogatories:**
 - Respond within 30 days of the date you received the request.
 - Completely respond to each interrogatory in the space provided.
 - If you object, state the objection to the question in place of an answer and include the legal reason for the objection.
 - Sign and verify the response.
 - Return to the requesting party within the 30-day deadline.
 - c. **Responding to a request for production:**
 - Respond within 30 days of the date you received the request.
 - Provide an answer to each of the numbered paragraphs, which either:
 - Identifies the documents you provided or made available;
 - Identifies the documents you have not provided or made available due to an objection;
 - States that after reasonable investigation, you determined that there are no documents that respond to the request.
 - Sign and verify the response.
 - Attach copies of the requested documents to the response or make them available.
 - Return your answer to the requesting party or the make items available within the 30-day deadline.

- d. **Responding to a request for admission:**
 - Respond within 30 days of the date you receive the request.
 - Respond to each statement in correspondingly numbered paragraphs that either:
 - Admits the statement is true.
 - Denies the statement is true.
 - Partially admitting or partially denying the statement is true.
 - State you are unable to admit or deny the statement because you don't have information or knowledge of the statement.
 - Object if you have a valid legal objection.
 - Sign and verify the response.
 - Return to the requesting party within the 30-day deadline.
- e. **Responding to a request for deposition:**
 - Coordinate details of deposition with the requesting party.
 - Appear at the agreed upon time and location.
 - Answer all questions to the best of your knowledge, and only object if you have a valid legal reason.

3. If you wish to serve discovery requests on other parties to the appeal:

- a. Prepare your interrogatories, request for production, or request for admission:
 - Include your specific interrogatories or requests, listed in numbered paragraphs, one for each specific question or request.
 - Leave enough space between each numbered paragraph for the answer.
- b. Send the discovery request to the attorney of the party.
- c. Expect a response within 30 days of receipt unless the parties agree otherwise.

4. If electronic discovery is likely:

- a. Read Pre-Hearing Order No. 1.
- b. Within 45 days: hold a conference with the other parties about electronic

discovery.

c. If electronic discovery is likely either create a plan with the other parties or agree that a plan isn't necessary.

If the parties choose to create an electronic discovery plan, file a plan with the Board within 60 days of the issuance of Pre-Hearing Order No. 1.

5. To resolve a discovery dispute:

a. Try to resolve the issue in good faith with the other party.

Communicate with the other party through their lawyer.

b. If that fails, you may file a discovery motion asking the Judge to resolve the dispute.

Include as exhibits the discovery requests and answers at issue.

c. Follow the Board's order resolving the dispute.

QUICK LOOK: FILING MOTIONS

A motion is a specific request to the Judge to decide an issue in your case. Your motion must include reasons in support of your request. Once the other parties have a chance to respond to your motion on the record, the Judge will either grant or deny your request. There are 4 basic types of motions: procedural, discovery, dispositive, and miscellaneous. All motions must include a draft order and a certificate of service; other requirements depend on the type of motion you file. You must respond to motions filed by other parties in your appeal. Failure to respond to another party's motion will be deemed by the Board as an admission of all the facts in the motion.

FILING MOTIONS

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[WHAT HAPPENS AFTER YOUR MOTION IS FILED](#)

[FILING A RESPONSE TO ANOTHER PARTY'S MOTION](#)

[FILING A REPLY TO ANOTHER PARTY'S RESPONSE TO YOUR MOTION](#)

[TABLE 2: REQUIREMENTS WHEN FILING RESPONSES & REPLIES](#)

[CHECKLIST: FILING A MOTION, RESPONSE, OR REPLY](#)

**READ THE
RULE:
25 Pa. Code
§§ [1021.91](#)**

**[QUICK LINK:
MOTION
TEMPLATE](#)**

WHY FILE A MOTION

You may file a motion to ask the Board to take a specific action in your case. For example, if you need an extension of a deadline, you can ask the Board for an extension in a Motion for an Extension of Time. Your motion must include reasons in support of your request. The other parties to your appeal will have a chance to respond to your motion.

WHAT IS A MOTION

A motion is a request to the Judge to decide an issue in your case. That issue can range from an extension of time to file documents to a motion to dismiss the case altogether. Once the other parties in your appeal have a chance to respond on the record, the Judge will issue an order either granting or denying your motion. All parties must follow the Judge's order.

There are four main categories of motions used in proceedings before the Board:

- 1. Procedural motions**, which ask the Board to take an action relating to the rules, practices, or procedures of the appeal process itself. For example, a motion for the extension of time, a motion for a continuance, a motion for expedited consideration, or a motion to stay the proceedings.
- 2. Discovery motions**, which ask the Board to resolve a dispute between the parties during the discovery process. Parties must make a good faith attempt to resolve the dispute between themselves before filing a discovery motion with the Board. For example, a motion to compel responses to a discovery request.
- 3. Dispositive motions**, which ask the Board to “dispose of” one or more claims in an appeal, or the entire appeal, in favor of the party who makes the motion without further proceedings before the Board. For example, a motion to dismiss.
Motions for summary judgment are dispositive motions that have special requirements.
For more information, visit the Summary Judgment section of this Guide, [linked here](#).
- 4. Miscellaneous motions**, which are motions that are not procedural, discovery, or dispositive motions. For example, a motion to limit issues (also known as motions in limine), motions to strike, and motions for recusal.

WHAT TO INCLUDE WHEN YOU FILE YOUR MOTION

Filing a motion requires more than submitting your written request for action. All motions must include a draft order and a certificate of service (which means you also must send a copy of your motion to all other parties to your appeal). Depending on the type of motion, you may need to file other documents like a memorandum of law, affidavit, or verification.

Documents you must file with your motion:

- 1. The motion**, which asks the Board to take a specific action in your case. It must include:
 - **A caption**, which is a heading that identifies the parties, the court (in this case the Environmental Hearing Board), and the docket number of your case.

- **The title of your motion**, which includes your party name and the specific request you are making.
 - For example: Appellant’s Motion for an Extension of Time.
- **The facts and arguments that support granting your motion, listed in numbered paragraphs.** Try to stick to one fact or argument per numbered paragraph. If your motion relies on exhibits or affidavits, be sure to refer to the specific section of the exhibits or affidavits where the information is found, and to file those exhibits or affidavits with your motion (see below).
- **A signature block** on the last page of the document that includes your signature, mailing address, email address, and phone number.

For an example, view a Template Motion, [linked here](#).

2. A draft order, which is your proposed order, written as if the Judge grants your motion. It must include:

- **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number of your appeal.
- **A statement of the specific relief you are requesting**, worded as if the Judge is granting exactly what you asked for.
 - For example: It is hereby ordered that Appellant’s motion to extend time to file a pre-hearing memorandum until [date] is granted.

For an example, view a Template Order, [linked here](#).

3. A certificate of service, which tells the Board that you sent a copy of your document to the other parties of the appeal. It must include:

- The date** when you sent a copy of the document to the other parties.
- How – **by mail, fax, electronic filing, or hand-delivery** – you sent the copy.
 - The **name and mailing address** of each person you sent the copy to.
- For an example, view a Template Certificate of Service, [linked here](#).**

Depending on the motion, you may also need to file:

- **A memorandum of law**, which is a document that argues your position on the legal issue(s) raised in your motion. It should include:
 - **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number.
 - **The legal arguments in support of your motion.** You should include the relevant background facts of your case, the law you rely on to make your arguments, and your arguments for how the law should apply to the facts of your case. If your

motion relies on exhibits or affidavits, be sure to refer to the specific section of the exhibits or affidavits where the information can be found.

- For information on finding sources of law, visit the Basics of Legal Research Section of this Guide, [linked here](#)

For an example, view a Template Memorandum of Law, [linked here](#).

- **Affidavit**, which is a written statement of facts that you affirm are true, as if you were testifying to those facts under oath. If your motion depends on the existence of facts within your personal knowledge you may need to submit an affidavit for the Board to consider your motion. You may also submit the affidavit of another person with personal knowledge of the details of your motion. You must include:
 - **A list of facts**, in numbered paragraphs, that are within your personal knowledge, which your motion relies on.
 - **A statement** that affirms that the statements you made in the affidavit are true to the best of your knowledge and subject to the penalties of [18 Pa. C.S.A. Section 4904](#)¹ relating to unsworn falsification to authorities.
 - **Your signature**, with a date.

For an example, view a Template Affidavit, [linked here](#).

- **Exhibits**, which are documents containing information or evidence that supports your motion or memorandum of law. Any hard copies of exhibits submitted to the Board or served on other parties should be copies, not originals. Examples of exhibits include photographs, maps, or communications with the Department that support the facts or arguments you present in your motion.
- **Statement of concurrence**, which tells the Board the nonmoving (i.e. opposing) party's position on your motion or is a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position. You must ask all other parties to the appeal. The statement of concurrence should be included within the motion itself.
 - For example: [Party name] sought concurrence from [all other parties to the appeal] with respect to [motion]. [Other parties] indicated they [do/do not] concur in the motion.
 - **NOTE:** For procedural motions only, if all parties consent to the relief requested, the request can be made in a letter that indicates the consent of the other parties instead of a formal motion. See [25 Pa. Code § 1021.92\(d\)](#).²

¹ <https://bit.ly/section4904>

² <https://bit.ly/3obnHlx>

- **Certification of a good faith attempt to confer for discovery motions**, which certifies that in good faith you tried to resolve the discovery dispute or to get the requested materials before asking the Board to get involved. According to the Board’s rules, you must discuss or attempt to discuss the issue with the party the motion is directed at **before** you file a discovery motion. You must include:
 - **Statement of your good faith attempt to confer.**
 - **The discovery requests and answers** that gave rise to the dispute, filed as exhibits.

For an example, view a **Template Certification**, [linked here](#).

TABLE 1: FILING REQUIREMENTS BASED ON TYPE OF MOTION

	Procedural Motion	Discovery Motion	Dispositive Motion (not summary judgment)	Miscellaneous Motion
Certificate of Service	Yes	Yes	Yes	Yes
Draft Order	Yes	Yes	Yes	Yes
Memorandum of Law	No, unless otherwise ordered by the Judge.	Optional, must be filed at same time as motion.	Yes	Yes
Affidavit	No	No	Yes, if motion relies on facts within personal knowledge.	Yes, if motion relies on facts within personal knowledge.
Exhibits	As needed	As needed	As needed	As needed
Statement of concurrence	Yes	No	No	No
Good faith certification	No	Yes	No	No

NOTE: The Judge can order changes in the requirements or deadlines of any motion.

HOW TO FORMAT & FILE MOTIONS

You should format motions like all other filings in your appeal, being sure to include each of the required sections (listed above). It should be:

1. **On letter-sized paper** that is 8 to 8 ½ inches by 10 ½ to 11 inches.
2. **Typed.** Photocopied documents are considered typewritten if the copies are readable.
3. **With page numbers** on all pages after the first page.
4. **Double-spaced**, except for exhibits.

NOTE: The version of the document you deliver to the Board becomes the official and final version that will be considered by the Board. Be sure to double-check that you send in the complete and correct version.

You can file motions like all other filings in your appeal. Either send to the Board’s Harrisburg office by mail, hand-delivery, or fax, or submit by using the Board’s electronic filing system.

For more information on how to file, visit the Basic Filing Procedures section, [linked here](#), or the Electronic Filing section, [linked here](#).

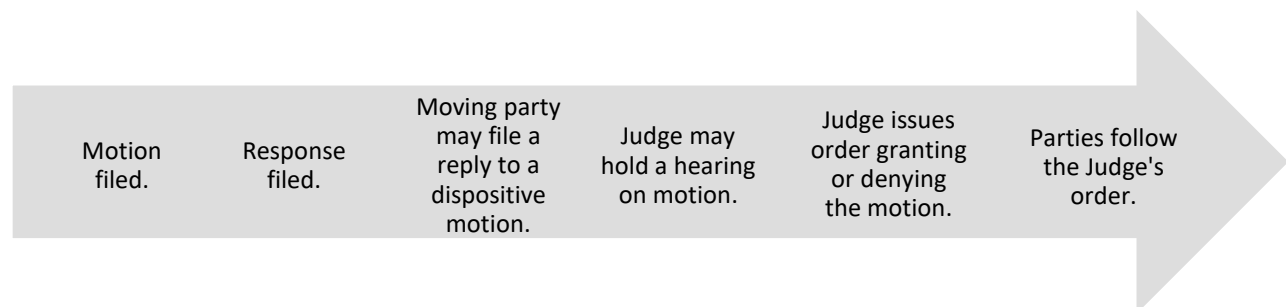
WHEN TO FILE YOUR MOTION

In **Pre-Hearing Order Number 1**, your Judge will set deadlines for filing pre-hearing motions. This order will be issued shortly after your Notice of Appeal is filed.

In **Pre-hearing Order Number 2**, your Judge will provide other deadlines for filing of pre-hearing memoranda, other motions, and often, a pre-hearing conference or conference call a few days before the hearing.

WHAT HAPPENS AFTER YOUR MOTION IS FILED

After a motion is filed, all parties in the appeal have a chance to respond to the issues raised in the motion before the Judge decides to grant or deny the motion.



FILING A RESPONSE TO ANOTHER PARTY’S MOTION

You **MUST** respond to motions made by the other party(s) to your appeal by filing a “response” with the Board. If you fail to file a response to a motion, the Board may consider that to be an admission of all the facts contained in the motion.

HOW TO DRAFT YOUR RESPONSE:

Your response must specifically respond to each numbered paragraph of the original motion in correspondingly numbered paragraphs. For each paragraph you must either:

1. **Admit** that the facts in the paragraph are true, or
2. **Deny** that the facts in the paragraph are true and/or **include the specific reasons you object** to the facts or arguments made in the paragraph.
3. **If you fail to deny material facts stated in a motion, those facts may be considered admitted by the Board for purposes of deciding the motion.**

WHAT TO INCLUDE WHEN YOU FILE YOUR RESPONSE:

1. **Your response**, which will be formatted just like an original motion (see above) and must include a **signature block** on the last page of the document that includes your signature, mailing address, email address, and phone number.
2. **A draft order** (see above).
3. **A certificate of service** (see above).
4. **Depending on the type of motion originally filed**, your response may also include:
 - A memorandum of law (see above).
 - Exhibits (see above).

See Table 2 below for requirements and deadlines when filing a response.

FILING A REPLY TO ANOTHER PARTY’S RESPONSE TO YOUR MOTION

For some motions, you can file a “reply” to the response another party files to your original motion. Your ability to file a reply depends on the Board’s rules for the type of motion originally filed. Whether you can file a memorandum of law in support of your reply is also determined by Board rules.

Your reply should address the issues raised in the other party’s response to your motion and should be formatted and filed like the original motion.

WHAT TO INCLUDE WHEN YOU FILE YOUR REPLY:

1. **Your reply**, responding to the issues raised in the other party’s response.
2. **A certificate of service.**
3. **Depending on the type of motion originally filed**, your reply may also include:
 - A memorandum of law.

See Table 2 for requirements and deadlines when filing a reply.

TABLE 2: REQUIREMENTS WHEN FILING RESPONSES & REPLIES

	Procedural Motion	Discovery Motion	Dispositive Motion (not summary judgment)	Miscellaneous Motion
Response Deadline	Within 15 days of the date of service of the motion.	Within 15 days of the date of service of the motion.	Within 30 days of the date of service of the motion.	Within 15 days of the date of service of the motion.
Filing Memorandum of Law with Response	No, except as ordered by the Judge.	Optional, must be filed at same time as the response.	Required, must be filed at the same time as the response.	Required, must be filed at the same time as the response.
Reply Deadline	No reply allowed unless the Board orders otherwise.	No reply allowed unless the Board orders otherwise.	Within 15 days of service of the date of the response.	No reply allowed unless the Board orders otherwise.
Filing Memorandum of Law with Reply	N/A	N/A	Yes, but cannot exceed 25 pages.	N/A

NOTE: The Judge can order changes in the requirements or deadlines of any motion.

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CHECKLIST: FILING A MOTION, RESPONSE, OR REPLY

- 1. Understand whether you are filing, or responding to, a procedural, discovery, dispositive, or miscellaneous motion.
- 2. Confirm you are within the deadline for filing your motion, response or reply. Check:
 - a. Deadlines set by the Judge in any orders.
 - b. Deadlines set by the Board's Rules, summarized in Table 2.
- 3. To file a **motion**, continue to **Step 4**.
To file a **response**, continue to **Step 5**.
To file a **reply**, continue to **Step 6**.
- 4. **Filing a motion:**
 - a. Prepare the motion itself.
 - b. Prepare the draft order.
 - c. Prepare the certificate of service.
 - d. Using the information on Table 1 and your knowledge of the content of your motion, determine whether you also need to prepare:
 - Memorandum of law.
 - Verification.
 - Affidavit.
 - Exhibits.
 - Statement of concurrence.
 - Certification of good faith attempt to confer.
 - Discovery requests and correspondence.
 - e. Continue to **Step 7** for your final steps.
- 5. **Filing a response to another party's motion:**
 - a. Prepare the response.
 - Respond to every paragraph of the original motion, remembering that any facts you do not dispute will be deemed admitted by the Board.
 - b. Prepare the draft order.

- c. Prepare the certificate of service.
 - d. Using the information on Table 2 and your knowledge of the content of your motion, determine whether you also need to prepare:
 - Memorandum of law.
 - Exhibits.
 - Any other documents or attachments.
 - e. Continue to **Step 7** for your final steps.
6. **Filing a reply to a response to your original motion:**
- a. Prepare the reply.
 - b. Prepare the certificate of service.
 - c. Using the information on Table 2 and your knowledge of the content of your motion, determine whether you also need to prepare:
 - Memorandum of law.
 - Any other documents or attachments.
 - d. Continue to **Step 7** for your final steps.
7. Format your motion/response/reply:
- a. Saved in Word or PDF format.
 - b. On letter-sized paper (8 - 8 ½ x 10 ½ - 11 inches).
 - c. Typed (or a readable photocopy).
 - d. Page numbers (except for 1st page).
 - e. Double-spaced (except for exhibits).
8. Double-check you are sending the correct & final version of your document.
9. To file **electronically** continue to **Step 10**.
- To file by **mail, fax, or hand-delivery**, continue to **Step 11**.
10. **To file electronically:**
- a. Submit before midnight on the date you file & save the transaction receipt from the system as proof of filing.
 - b. Make sure the Board accepted your document.

- If the Board accepted your document → Continue to **Step 10c**.
- If the Board rejected your filing → You must resubmit, making any corrections the Board requires.
- c. Make sure the system delivered a copy of your document to all parties in your appeal.
 - If the list of who was served includes every party → Continue to **Step 12**.
 - If any party to your appeal was not served electronically → continue to **Step 10d**.
- d. Send a hard copy of your document to any party not registered for electronic filing and include:
 - One copy of the motion/response/reply.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - Certificate of service.
 - Draft order.
 - Any other required documents (see Table 1).
 - All exhibits and attachments.
- 11. **To file your document by mail, fax, or hand-delivery:**
 - a. Mail, fax, or hand-deliver the document to the Board’s Harrisburg office and include:
 - One copy of the motion/response/reply.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - Certificate of service.
 - Draft order.
 - Any other required documents (see Table 1).
 - All exhibits and attachments.
 - b. Send a copy of the document to **every other party to the appeal:**
 - Be sure the copy includes:
 - One copy of the motion/response/reply.

- With signature block on the last page with your signature, mailing address, email address, and phone number.
 - Certificate of service.
 - Draft order.
 - Any other required documents (see Table 1).
 - All exhibits and attachments.
 - Send the same day you file with the Board (or earlier).
 - Send to the attorney representing the party.
12. Keep a hard copy of your motion/reply/response and all exhibits or attachments available by request from the Board or another party.

QUICK LOOK: MOTION FOR SUMMARY JUDGMENT

A motion for summary judgment asks the Board to resolve an appeal, or an issue in an appeal, without a hearing. A Judge may grant a motion for summary judgment when no genuine issues of material fact remain in an appeal, making a hearing unnecessary. Instead, the Judge resolves the appeal based on the filings of the parties. A summary judgment motion has special requirements and must include a motion, a statement of undisputed material facts, a brief in support, evidentiary materials in support, a proposed order, and a certificate of service. You must respond to a motion for summary judgment filed by an opposing party in your appeal within 30 days of service. Summary judgment may be entered against a party who fails to respond to a summary judgment motion.

MOTION FOR SUMMARY JUDGMENT

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[CHECKLIST: FILING A MOTION, RESPONSE, OR REPLY](#)

**READ THE
RULE:
25 Pa. Code
§ [1021.94a](#)**

**[QUICK LINK:](#)
[SUMMARY](#)
[JUDGMENT](#)
[TEMPLATE](#)**

WHY FILE A MOTION FOR SUMMARY JUDGMENT

You may file a motion for summary judgment if the undisputed facts in your appeal require a judgment in your favor. A successful motion for summary judgment resolves the appeal, or an issue in the appeal, without a hearing. Instead, the Judge makes her decision based on the arguments made in filings by the parties.

WHAT IS A MOTION FOR SUMMARY JUDGMENT

A summary judgment motion is a request to the Judge to rule on all or part of an appeal without going to a hearing because there is no dispute over the key facts. To succeed, the moving party must show the Judge that:

1. The key facts of the appeal are not in dispute.
2. When the law is applied to the undisputed facts, it requires judgment in favor of the moving party.

An issue or an appeal that is resolved by summary judgment is dismissed. To defeat a motion for summary judgment, the nonmoving party must show key facts remain in dispute or the law does not support the moving party's position. If facts are still in dispute, the Judge will deny the motion.

WHAT TO INCLUDE WHEN YOU FILE YOUR SUMMARY JUDGMENT MOTION

Motions for summary judgment are different from other motions and have specific requirements set out in the Board's rules.

You must file a Summary Judgment Motion Record which contains:

1. **The motion for summary judgment**, which must include:
 - **A caption**, which is a heading that identifies the parties, the court (in this case the Environmental Hearing Board), and the docket number of your case.
 - **The title of your motion**, which includes your party name and the specific request you are making.
 - For example: Appellant's Motion for Summary Judgment.
 - **A brief statement** of the relief you are requesting.
 - **Your reasons in support of granting that relief**, without reciting the facts.
 - **A signature block** on the last page of the document that includes your signature, mailing address, email address, and phone number.
 - **The motion may not exceed 2 pages.**
2. **Statement of undisputed material facts**, which must include:
 - **The undisputed material facts**, listed in numbered paragraphs.
 - A **material fact** is a fact that would affect the result of the case. Background facts unimportant to the issues in the appeal are not material facts.
 - An **undisputed fact** is a fact whose existence you can prove through information in an exhibit or affidavit, or a fact that the parties agree upon.

- **Citation for each undisputed material fact**, which identifies:
 1. The **document** in the motion record, such as an exhibit or affidavit, that establishes the fact or demonstrates that it is undisputed.
 2. The **specific portion** of the document relied on to establish the fact, such as a specific paragraph, page or line.
 - **The statement of facts may not exceed 5 pages.**
- 3. Supporting brief**, which must include:
- **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number of your appeal.
 - An **introduction** stating the relief you are requesting.
 - A **summary of the case**, including a history of your appeal to this point.
 - **The legal arguments in support of your motion**, including the law you rely on to make your arguments, and your arguments for how the law should apply to the facts of your case. Be sure to refer to the specific section of the motion record, such as exhibits or affidavits, where the facts can be found.
 - For information on finding sources of law, visit the Basics of Legal Research Section Appendix to this Guide, [linked here](#).
 - **The supporting brief may not exceed 30 pages.**
- 4. The evidentiary materials relied on by the movant**, which can be:
- Affidavits, deposition transcripts, exhibits, or other documents relied on in your summary judgment motion, statement of facts, or brief in support.
 - **Label and number your evidentiary materials as exhibits** and refer to those numbers when citing the exhibits in your statement of facts or brief.
 - For example: Exhibit 1, Exhibit 2, etc.
 - To file these materials, either:
 - File them with the motion; or
 - File them separately and label them as exhibits.
- 5. Proposed order**, written as if the Judge grants your motion. It must include:
- **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number.
 - **A statement of the specific relief you are requesting**, worded as if the Judge is granting exactly what you asked for.
- 6. A certificate of service**, which tells the Board that you sent a copy of your document to the other parties of the appeal. It must include:
- **The date** when you sent a copy of the document to the other parties.
 - How – **by mail, fax, electronic filing, or hand-delivery** – you sent the copy.
 - The **name and mailing address** of each person you sent the copy to.
 - For an example, view a Template Certificate of Service, [linked here](#).

More about evidentiary materials:

- **Affidavit**, which is a written statement of facts that you affirm are true, as if you were testifying to those facts under oath. If your motion depends on the existence of facts within your personal knowledge you may need to submit an affidavit for the Board to consider your motion. You may also submit the affidavit of another person with personal knowledge of the details of your motion. You must include:
 - **A list of facts**, in numbered paragraphs, that are within your personal knowledge, which your motion relies on.
 - **A statement** that affirms that the statements you made in the affidavit are true to the best of your knowledge and subject to the penalties of [18 Pa. C.S.A. Section 4904](#)¹ relating to unsworn falsification to authorities.
 - **Your signature**, with a date.
For an example, view a Template Affidavit, [linked here](#).
- **Exhibits**, which are documents containing information or evidence that supports your motion or memorandum of law. Any exhibits submitted should be copies, not originals. Examples of exhibits include photographs, maps, or communications with the Department that support the facts or arguments you present in your motion.
 - **Remember to label and number any exhibits you include** with your summary judgment record, for example: Exhibit 1, Exhibit 2, etc.
- **Deposition transcript**, which is a written document that records every question and answer asked and given during a deposition, either by a party, an attorney, or a witness. A **deposition** is a type of testimony given out of court, under oath, which is used to gather evidence and testimony within the knowledge of the person being deposed. For more information, visit the Discovery section of this Guide, [linked here](#).

HOW TO FORMAT & FILE YOUR SUMMARY JUDGMENT MOTION

You should format a summary judgment motion like all other filings in your appeal, being sure to include each of the required sections (listed above). It should be:

1. **On letter-sized paper** that is 8 to 8 ½ inches by 10 ½ to 11 inches.
2. **Typed**. Photocopied documents are considered typewritten if the copies are readable.
3. **With page numbers** on all pages after the first page.
4. **Double-spaced**, except for exhibits.

NOTE: The version of the document you deliver to the Board becomes the official and final version that will be considered by the Board. Be sure to double-check that you send in the complete and correct version.

¹ <https://bit.ly/section4904>

You can file motions like all other filings in your appeal. Either send to the Board’s Harrisburg office by mail, hand-delivery, or fax, or submit by using the Board’s electronic filing system.

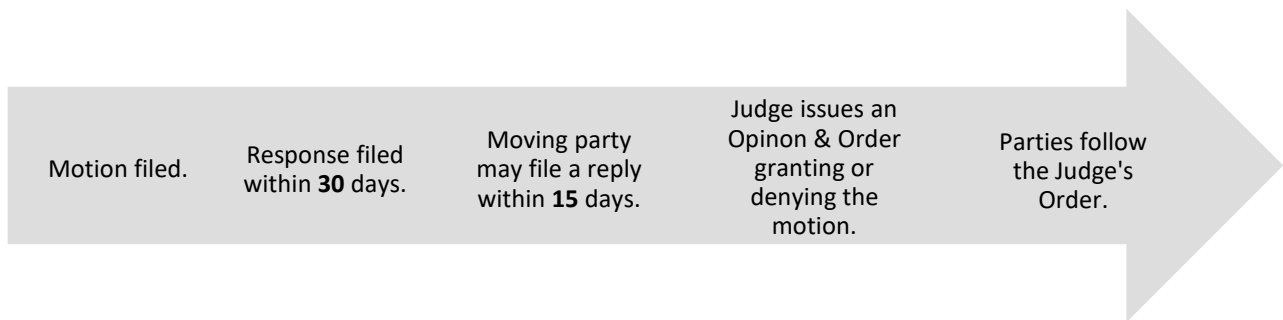
For more information on how to file, visit the Basic Filing Procedures section, [linked here](#), or the Electronic Filing section, [linked here](#).

WHEN TO FILE A SUMMARY JUDGMENT MOTION

A motion for summary judgment can be filed any time before the deadline for filing dispositive motions listed in Pre-Hearing Order No. 1 at the beginning of the case, or by any new deadline established by the Judge in another Order.

WHAT HAPPENS AFTER YOUR MOTION FOR SUMMARY JUDGMENT IS FILED

After a motion for summary judgment is filed, all parties in the appeal have a chance to respond to the issues raised in the motion before the Judge decides to grant or deny the motion.



YOU MUST FILE A RESPONSE TO ANOTHER PARTY'S MOTION FOR SUMMARY JUDGMENT

You must file your response within 30 days of being served a motion for summary judgment. Summary judgment may be entered against a party who fails to respond to a summary judgment motion.

In responding to a motion for summary judgment, you can't simply rely on the issues raised in your notice of appeal. Instead, you must provide specific proof—through affidavits or other supporting evidence—showing there are genuine issues of fact that still need to be heard.

WHAT TO INCLUDE IN YOUR RESPONSE:

1. **A response to the motion**, which must include:
 - **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number of your case.
 - **The title of your response**, which includes your party name and the specific request you are making.
 - For example: Appellant's Response in Opposition to [opposing party's] Motion for Summary Judgment.
 - **Your specific reasons why the motion should not be granted.**
 - **A signature block** on the last page of the document that includes your signature, mailing address, email address, and phone number.
 - **The response may not exceed 2 pages.**
2. **A response to the statement of undisputed material facts**, which must include:
 - **Your response to each fact listed in the original motion**, in correspondingly numbered paragraphs. For each fact you must either:
 - **Admit** that the fact in the paragraph is true; or
 - **Deny** that the fact in the paragraph is true and include the specific reasons you deny the fact; or
 - **Dispute** that the fact in the paragraph is agreed on by the parties or is established as fact and include the specific reasons you dispute the fact.
 - **If you deny or dispute a fact**, you must cite the part of the record that supports your denial or dispute by identifying:
 1. The **document** in the motion record, such as an exhibit or affidavit, that contradicts the fact or demonstrates that it is disputed; and
 2. The **specific portion** of the document relied on to dispute the fact, such as a specific paragraph, page, or line.

- **REMEMBER:** if you fail to deny or dispute material facts stated in a motion for summary judgment, the Judge may consider that fact undisputed for purposes of deciding the motion.
 - **Any additional facts you can demonstrate are material and genuinely remain in dispute**, listed in numbered paragraphs. You must cite the part of the record that supports these additional facts by identifying:
 1. The **document** in the motion record, such as an exhibit or affidavit, that establishes the fact or demonstrates that it is undisputed; and
 2. The **specific portion** of the document relied on to establish the fact, such as a specific paragraph, page, or line.
 - **The response to the statement of facts may not exceed 5 pages** unless the Board grants permission to file a longer document.
- 3. A supporting brief**, which must include:
 - **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number of your appeal.
 - **The legal arguments in opposition to the motion**, including the law you rely on to make your arguments, and your arguments for how the law should apply to the facts of your case. Be sure to refer to the specific section of the motion record, such as exhibits or affidavits, where the facts can be found.
 - For information on finding sources of law, visit the Basics of Legal Research section of this Guide, [linked here](#).
 - **The supporting brief may not exceed 30 pages** unless the Board grants permission to file a longer document.
- 4. The evidentiary materials relied on to establish your additional facts or dispute/deny the facts in the original motion**, which can be:
 - Affidavits, deposition transcripts, exhibits, or other documents relied on in your summary judgment motion, statement of facts, or brief in support.
 - **NOTE:** Statements made in your notice of appeal can't be used as evidence of facts.
 - To file these materials, either:
 - File them with the motion; or
 - File them separately and label them as exhibits.
- 5. A proposed order**, written as if the Judge denies the opposing party's motion. It must include:
 - **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number.
 - **A statement of the specific relief you are requesting**, worded as if the Judge is ruling in your favor and denying the opposing party's motion.

For an example, view a Template Order, [linked here](#).

6. **A certificate of service**, which tells the Board that you sent a copy of your document to the other parties of the appeal. It must include:
- **The date** when you sent a copy of the document to the other parties.
 - How – **by mail, fax, electronic filing, or hand-delivery** – you sent the copy.
 - The **name and mailing address** of each person you sent the copy to.
 - For an example, view a Template Certificate of Service, [linked here](#).

FILING A REPLY TO ANOTHER PARTY’S RESPONSE TO YOUR MOTION

If you have filed a motion for summary judgment, within 15 days of service of the opposing party’s response, you may file a reply brief. Your reply brief should address the issues raised in the other party’s response to your motion and should be formatted and filed like the original motion.

WHAT TO INCLUDE WHEN YOU FILE YOUR REPLY BRIEF:

1. **Your reply brief**, including:
 - **A caption**, which is a heading that identifies the parties, the court (in this case the Environmental Hearing Board), and the docket number of your case.
 - **Your responses to the issues raised in the opposing party’s response.**
 - **A signature block** on the last page of the document that includes your signature, mailing address, email address, and phone number.
 - **The supporting brief may not exceed 15 pages** unless the Board grants permission to file a longer document.
2. **A certificate of service.**

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CHECKLIST: FILING A SUMMARY JUDGMENT MOTION, RESPONSE, OR REPLY

- 1. Confirm you are within the deadline for filing your motion, response or reply. Check:
 - a. Deadlines set by the Judge in any orders.
 - b. File a **response to a summary judgment** motion within **30 days of service** of the motion.
 - c. File a **reply brief** within **15 days** of service of the response.
- 2. To file a **motion for summary judgment**, continue to **Step 3**.
To file a **response to a summary judgment motion**, continue to **Step 4**.
To file a **reply brief**, continue to **Step 5**.
- 3. **Filing a motion for summary judgment:**
 - a. Prepare the motion itself.
 - Page limit = 2 pages.
 - b. Prepare the statement of undisputed facts.
 - Page limit = 5 pages.
 - c. Prepare the supporting brief.
 - Page limit = 30 pages.
 - d. Prepare the evidentiary materials relied on to support your statement of undisputed facts.
 - e. Prepare the proposed order.
 - f. Prepare the certificate of service.
 - g. Continue to **Step 6** for your final steps.
- 4. **Filing a response to another party's motion for summary judgment within 30 days:**
 - a. Prepare the response.
 - Page limit = 2 pages.
 - b. Prepare responses to the statement of undisputed facts.
 - Either admit, deny, or dispute each fact and support your specific denial/dispute with a citation to the record.
 - Raise any additional material facts that genuinely remain in dispute and support the additional facts with a citation to the record.
 - Page limit = 5 pages.

- c. Prepare the supporting brief.
 - Page limit = 30 pages.
 - d. Prepare the evidentiary materials relied on to establish your additional facts or dispute/deny the facts in the original motion.
 - e. Prepare the proposed order.
 - f. Prepare the certificate of service.
 - g. Continue to **Step 6** for your final steps.
5. **Filing a reply to a response to your summary judgment motion within 15 days:**
- a. Prepare the reply brief.
 - Page limit = 15 pages.
 - b. Prepare the certificate of service.
 - e. Continue to **Step 6** for your final steps.
6. Format your motion/response/reply:
- a. Saved in Word or PDF format.
 - b. On letter-sized paper (8 - 8 ½ x 10 ½ - 11 inches).
 - c. Typed (or a readable photocopy).
 - d. Page numbers (except for 1st page).
 - e. Double-spaced (except for exhibits).
7. Double-check you are sending the correct & final version of your document.
8. To file **electronically** continue to **Step 9**.
To file by **mail, fax, or hand-delivery**, continue to **Step 10**.
9. **To file electronically:**
- a. Submit before midnight on the date you file & save the transaction receipt from the system as proof of filing.
 - b. Make sure the Board accepted your document.
 - If the Board accepted your document → Continue to **Step 9c**.
 - If the Board rejected your filing → You must resubmit, making any corrections the Board requires.
 - c. Make sure the system delivered a copy of your document to all parties in your appeal.
 - If the list of who was served includes every party → Continue to **Step 12**.

- If any party to your appeal was not served electronically → continue to **Step 9d.**
- d. Send a hard copy of your document to any party not registered for electronic filing and include:
 - One copy of the motion/response/reply.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - All other required documents and evidentiary materials (see above).
 - Draft order.
 - Certificate of service.
- 10. **To file your document by mail, fax, or hand-delivery:**
 - a. Mail, fax, or hand-deliver the document to the Board’s Harrisburg office and include:
 - One copy of the motion/response/reply.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - All other required documents and evidentiary materials (see above).
 - Draft order.
 - Certificate of service.
 - b. Send a copy of the document to **every other party to the appeal:**
 - Be sure the copy includes:
 - One copy of the motion/response/reply.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - All other required documents and evidentiary materials (see above).
 - Draft order.
 - Certificate of service.
 - Send the same day you file with the Board (or earlier).
 - Send to the attorney representing the party.
- 11. Keep a hard copy of your motion/reply/response and all exhibits or attachments available by request from the Board or another party.

QUICK LOOK: PRE-HEARING MEMORANDUM

Before your hearing, you must file a pre-hearing memorandum, which gives the Board and the other parties in the appeal a preview of the case you plan to present at the hearing. The Judge will issue an order setting the deadline to file your pre-hearing memorandum after or toward the end of discovery. Your pre-hearing memorandum must include a statement of the facts, the legal issues in dispute, a description of scientific tests, expert witnesses you plan to call, fact witnesses you plan to call, exhibits you plan to introduce, and any stipulations agreed upon by the parties. If you fail to include factual or legal issues or witnesses you plan to call, you may not be able to raise those issues or call those witnesses at the hearing.

PRE-HEARING MEMORANDUM

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**READ THE
RULE:
25 Pa. Code
§ [1021.104](#)**

[QUICK LINK: PRE-
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WHO MUST FILE A PRE-HEARING MEMORANDUM

Before proceeding to a hearing, every party to an appeal must file a pre-hearing memorandum according to the schedule set by the Judge in a pre-hearing order.

WHY YOU FILE A PRE-HEARING MEMORANDUM

Your pre-hearing memorandum gives the Board and the other parties in your appeal a preview of the case that you will present at the hearing.

Your pre-hearing memorandum is a summary of what you intend to present at the hearing. It gives you a chance to organize your case and focus your arguments to prepare for the hearing. The other parties' pre-hearing memoranda will give you a preview of the case they will present at the hearing and help you form responses to their arguments.

WHAT TO INCLUDE IN YOUR PRE-HEARING MEMORANDUM

The Board has very specific requirements of what must be included in your pre-hearing memorandum. If you fail to include a factual or legal issue in your pre-hearing memorandum you may lose the chance to raise it at the hearing. If you fail to list a witness, you may lose the chance to call that witness at the hearing.

You must include:

- 1. A statement of the facts important to your appeal, divided into a list of facts in dispute and a list of facts the parties agree upon.** A fact is in dispute if it is claimed to be true by one party and denied by the other, but not in dispute if both parties agree on it. If you are unsure whether a fact is in dispute but think it is important to your appeal, you should list it as a disputed fact.
 - These facts should have a reasonable basis and be directly connected to your objections to the Department's actions. These are the facts you plan on proving or relying on to prove other facts at the hearing.

To find these facts you can:

- Read the materials you located during discovery.
 - Read the motions, exhibits, and documents filed by other parties.
 - Make a list of the facts you have personal knowledge of or evidence of that are important to proving the objections you raised in your Notice of Appeal.
 - Hold a conference with the other parties in the appeal at the end of discovery to discuss what facts remain in dispute.
- 2. A list of the legal issues in dispute in your appeal, supported by statutes, regulations and court cases that agree with your position.** A legal issue in dispute is a

disagreement between the parties about how the law should apply to the facts of a case.

- Your list should contain summaries of the legal arguments that you expect to present at the hearing. These legal arguments should be important to proving the objections to the Department's actions you raised in your Notice of Appeal.

For more information, visit the Basics of Legal Research section of this guide, [linked here](#).

- 3. A list of any scientific tests you will rely on during the hearing.** You should briefly describe the tests and include a statement that tells the Board whether you expect another party will object to its use.
- 4. A list of any expert witnesses you plan to call during the hearing.** An expert witness is a person who has the qualifications, training, or education to be considered an expert on a particular topic.

For each expert witness you plan to call, you must include:

1. A summary of the expert's qualifications and testimony. Or include answers to expert interrogatories or an expert report attached as an exhibit.
 2. A statement that tells the Board whether you expect another party will object to the qualifications of the expert.
- 5. A list of all the witnesses you plan to call at the hearing in the order you plan on calling them, both expert witnesses and fact witnesses.** Fact witnesses give testimony based on their personal knowledge.
 - 6. A list of exhibits you plan to introduce into evidence.** You should number each exhibit.

For each exhibit listed you must include:

1. A short description of a few words of the exhibit. For example, the date a photograph was taken and what it shows.
2. A statement that tells the Board whether you expect another party will object to its introduction.
 - Note: If you do not know whether or not another party will object to one or more of your exhibits, you can state that.
3. A copy of each exhibit as an attachment. Large or lengthy exhibits may be sent to the Board and the other parties in a different format, like a flash drive.

7. **A statement of whether you and the other parties have reached any stipulations. If you reached any stipulations, attached signed copies as an exhibit.** A stipulation is an agreement between the parties to a lawsuit. Anything agreed upon in a stipulation, such as a fact, will not need to be proved during the hearing. The parties may also stipulate to the admissibility of certain exhibits or the qualifications of expert witnesses.
8. **Any other information the Board asks for in a pre-hearing order.**
9. **A signature block that includes your signature, mailing address, email address, and phone number.**
10. **A certificate of service.**
 - **If you electronically file,** include a statement that the document was filed electronically and list the parties in your appeal registered for electronic filing.
 - **If you file by hand, mail, or fax,** include the date you sent a copy of the document to the other parties, how you sent the copy to the other party(s), and the name and mailing address of each person you sent the copy to.

WHEN TO FILE YOUR PRE-HEARING MEMORANDUM

All parties to an appeal must file a pre-hearing memorandum according to the deadline set by the Judge, usually in an order (typically Pre-Hearing Order Number 2) issued toward the end of discovery or following any dispositive motions. The party bearing the burden of proof at the hearing usually files first. To change the deadline, you need permission from the Board. You can ask for a change of deadline by filing a motion for an extension of time. For more information, visit the Motions section of this Guide, [linked here](#).

HOW TO FORMAT & FILE YOUR PRE-HEARING MEMORANDUM

You should format your pre-hearing memorandum like all other filings in your appeal, being sure to include each of the required sections (listed above). It should be:

1. **On letter-sized paper** that is 8 to 8 ½ inches by 10 ½ to 11 inches.
2. **Typed.** Photocopied documents are considered typewritten if the copies are readable.
3. **With page numbers** on all pages after the first page.
4. **Double-spaced,** except for exhibits.

NOTE: The version of the document you deliver to the Board becomes the official and final version that will be considered by the Board. Be sure to double-check that you send in the complete and correct version.

You can file your pre-hearing memorandum like all other filings in your appeal. Either send to the Board’s Harrisburg office by mail, hand-delivery, or fax, or submit by using the Board’s electronic filing system.

For more information on how to file, visit the Basic Filing Procedures section, [linked here](#), or the Electronic Filing section, [linked here](#).

You must make sure that all other parties to your appeal are served a copy of your pre-hearing memorandum and all exhibits.

For more information on how to file, visit the Basic Filing Procedures section, [linked here](#), or the Electronic Filing section, [linked here](#).

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CHECKLIST: FILING YOUR PRE-HEARING MEMORANDUM

- 1. Confirm you are within the deadline set by the Judge.
- 2. Include the required sections of the pre-hearing memorandum:
 - a. Statement of disputed facts and undisputed facts.
 - b. List of disputed legal issues.
 - c. List of scientific tests relied on, with descriptions.
 - For each test, include a statement of whether you expect another party to object.
 - d. List of expert witnesses you plan to call at the hearing.
 - Include a summary of the testimony for each expert witness. Or attach as exhibits answers to interrogatories or an expert report for each expert witness.
 - For each expert witness, include a statement of whether you expect another party to object to their qualifications.
 - e. List of all witnesses (expert and fact) in the order you plan to call them at the hearing.
 - f. List of exhibits you plan to introduce at the hearing.
 - Attach a copy of each exhibit to the pre-hearing memorandum.
 - For each exhibit, include a statement of whether you expect another party to object.
 - g. Statement of whether you reached any stipulations with another party.
 - Attach as an exhibit a signed copy of any stipulations reached.
 - h. Signature block with your signature, mailing address, email address, and phone number.
 - i. Certificate of service.
 - j. All required exhibits. Any expert witness reports or answers to interrogatories, all exhibits, and any stipulations reached. If these are too large to upload electronically, you can send them in another form (like a flash drive) to the Board and all other parties.
- 3. Format your pre-hearing memorandum:
 - a. Saved in Word or PDF format.
 - b. On letter-sized paper (8 - 8 ½ x 10 ½ - 11 inches).

- c. Typed (or a readable photocopy).
 - d. Page numbers (except for 1st page).
 - e. Double-spaced (except for exhibits).
4. Double-check you are sending the correct & final version of your document.
5. To file your pre-hearing memorandum electronically:
- a. Submit before midnight on the date you file & save the transaction receipt from the system as proof of filing.
 - b. Make sure the Board accepted your document.
 - If the Board accepted your document → Continue to **step 5c**.
 - If the Board rejected your filing → You must resubmit, making any corrections the Board requires.
 - c. Make sure the system delivered a copy of your document to all parties in your appeal.
 - If the list of who was served includes every party → Continue to **step 7**.
 - If any party was not served electronically → Continue to **step 5d**.
 - d. Send a hard copy of your document to any party not registered for electronic filing:
 - Be sure your copy includes:
 - One copy of the document.
 - Signature block with your signature, mailing address, email address, and phone number.
 - Certificate of service.
 - All exhibits and attachments.
6. To file your pre-hearing memorandum by mail, fax, or hand-delivery:
- a. Mail, fax, or hand-deliver the document to the Board's Harrisburg office and include:
 - One copy of the document.
 - Signature block with your signature, mailing address, email address, and phone number.
 - Certificate of service.
 - All exhibits and attachments.
 - b. Send a copy of the document to **every other party to the appeal**:
 - Be sure the copy includes:

- One copy of the document.
- Signature block with your signature, mailing address, email address, and phone number.
- Certificate of service.
- All exhibits and attachments.
- Send the same day you file with the Board (or earlier).
- Send to the attorney representing the party.
- 7. Keep a hard copy of your pre-hearing memorandum and all its exhibits available by request from the Board or another party.

QUICK LOOK: THE HEARING

A hearing is a trial-like proceeding before a Judge of the Board, held to give parties the opportunity to be heard and to present evidence in their favor. Hearings are usually held in courtrooms at the Board office closest to the location of the action giving rise to the appeal. The Judge will schedule the hearing after discovery is complete and any dispositive motions are filed and decided. During the hearing, parties will give opening statements, present evidence through witness testimony and exhibits, and may deliver closing arguments. After the hearing, the parties must file Posthearing Briefs that utilize the evidence presented at the hearing to argue a party's position. Once the Posthearing Briefs are filed, the Board will issue an Adjudication. An Adjudication is an official opinion by all the Judges of the Board that makes findings of fact and conclusions of law and determines the outcome of the appeal.

THE HEARING

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1021.120

WHAT IS A HEARING BEFORE THE BOARD

A hearing is a trial-like proceeding before a Judge of the Board.

The Board's hearings are like a trial at a county courthouse: parties are required to appear and present evidence and testimony to prove their cases, and must follow the specialized rules of the Board. However, in a hearing before the Board there is no jury. Instead, the Board's Judges are the decisionmakers who will make findings of fact and conclusions of law to determine the outcome of the appeal.

WHY THE BOARD HOLDS HEARINGS

Hearings are opportunities for the parties to an appeal to be heard by the Board and to present their evidence to persuade the Board to find in their favor.

At hearings, parties call witnesses and introduce evidence to prove their cases. Opposing parties have the chance to question the other party's witnesses and to challenge the evidence presented.

WHO WILL BE AT THE HEARING

All parties to the appeal will be at the hearing, along with the Judge, the Judge's staff, and a court reporter who will transcribe the hearing.

Hearings are generally open to the public. Hearings that are conducted remotely via WebEx are livestreamed and can be accessed by the public at the Board's [YouTube Channel](#).¹ The court reporter will create a transcript of the hearing, which serves as the official record of the hearing. Parties can purchase a copy of the transcript from the court reporter for use in writing their posthearing brief or they can review the transcript at the Board's offices upon request.

WHERE THE HEARING WILL BE HELD

Hearings are usually held in courtrooms at the Environmental Hearing Board office closest to the location of the action giving rise to the appeal.

The Board has courtrooms in Harrisburg, Norristown, Pittsburgh, and Erie. The Judge will issue an order letting you know which Board courtroom the hearing will be held in.

WHEN THE HEARING WILL BE HELD

The Judge will schedule the hearing by issuing an order after discovery is complete

¹ <https://bit.ly/EHByoutube>

and any dispositive motions are filed and decided.

An order, usually **Pre-Hearing Order Number 2**, will provide the date, time, and location of the hearing. The order may also schedule a pre-hearing conference with the parties a few days before the hearing.

HOW LONG THE HEARING WILL LAST

The length of hearings depends on the complexity of the case and the number of witnesses the parties plan to call.

As an appellant you must be present for the entire hearing. The Judge will predict how long a hearing will last based on the number of witnesses, exhibits, disputed facts, and legal issues presented in the parties' Pre-Hearing Memoranda, and schedule the hearing for that timeframe.

WHAT HAPPENS LEADING UP TO THE HEARING

1. The Judge may hold a pre-hearing conference.

The Judge can order a pre-hearing conference, or a party may request one by filing a motion. The conference may be held in person or by telephone. The conference may be held to discuss settlement, to address issues with evidence that may arise at the hearing, or to address any other matter that will help the hearing go smoothly.

2. The Judge may view the site involved in the appeal.

Prior to or during the hearing, the Judge may visit a site related to the appeal. Parties can ask for a site view by filing a motion, but they are held at the discretion of the Judge. A site view itself is not evidence and is used to assist the Judge in understanding the record evidence presented at the hearing.

3. Parties may file motions to limit the issues of the hearing.

Known as "motions in limine," these motions ask the Judge to decide evidence disputes before the hearing, and are usually requests that certain evidence be excluded from the hearing. The Judge may rule on the motion prior to the hearing or during the hearing.

PREPARING YOUR CASE FOR THE HEARING

To win your appeal, you will need to convince the Judge to rule in your favor. It's not enough that you believe a fact is true or disagree with the Department's action. At the hearing, you must support your arguments with enough reliable evidence to convince the Judge that your position is more than 50% likely to be true, a burden of proof known as a "preponderance of

evidence.”

1. PREPARE YOUR ARGUMENTS & EVIDENCE

What facts and evidence should you present and which witnesses should you call? These are strategic decisions that only you can make. In general, your evidence and witnesses should be reliable, relevant, authentic, and persuasive. Some sources of arguments and evidence include:

- **Your notice of appeal and the original objections you raised**, considering the facts necessary to prove your objections, arguments that could persuade the Judge to believe those facts, and evidence or testimony that supports those arguments.
- Your personal knowledge or others with personal knowledge—who you can call as witnesses—of facts important to your appeal.
- **Discovered material** that supports your case, or the opposing party’s case.
- **Your Pre-hearing Memorandum.** You can only call witnesses listed in your Pre-hearing Memorandum.
- **The opposing party’s Pre-Hearing Memorandum.** Read the opposing party’s Pre-hearing Memorandum and other filed documents to understand the arguments they will present and the witnesses they will call, and prepare counterarguments to those points.

2. ORGANIZE YOUR CASE

You will need to choose the order in which to present your arguments, including when to call witnesses or introduce evidence to the Judge support those arguments. Unexpected issues can arise during the hearing. Be sure you are prepared and that you have organized your thoughts and arguments ahead of time. For example, you can prepare a written list of the questions you plan to ask a witness to help you stay focused, remember to ask important questions, and organize your questions in a logical order.

3. PRACTICE YOUR PRESENTATION

Practicing ahead of time can help calm your nerves if you are anxious leading up to the hearing or if you aren’t used to public speaking. Practicing can also help you organize your case.

THE HEARING

In an appeal, the party that has the burden of proof goes first during opening statements, the presentation of evidence, and closing arguments.

The burden of proof is generally determined by the Board’s rules. *See* [25 Pa. Code § 1021.122](#). The Judge may also decide which party has the burden of proof and notify the parties in a pre-hearing order. Having the burden of proof in a hearing before the Board requires a party to prove their case during their presentation of the evidence by offering enough reliable evidence

to convince the Judge that their position is more than 50% likely to be true.

1. Opening statements

At the start of the hearing, the parties deliver opening statements to the Judge.

Your opening statement should preview your case for the Judge. You should not exaggerate or testify during an opening statement, but instead give the Judge a roadmap of the case you plan to present.

2. Presentation of cases

After opening statements, the parties will present their cases to the Judge by offering evidence in the form of witness testimony or exhibits.

PRESENTING YOUR CASE:

Calling witnesses listed in your Pre-Hearing Memorandum (known as direct examination):

- Witnesses are sworn in before they give testimony.
- Witnesses must have personal knowledge of the subject matter they are testifying about. Expert witnesses must be qualified to give an expert opinion on a matter.
- You can ask questions that will establish facts that help prove your arguments.
- You don't have to call every witness you listed in your Pre-hearing Memorandum, but you can't call a witness you did not list.
- After you question your witness, the opposing party has the right to cross-examine the witness, which means they will ask your witness their own questions.
 - After cross-examination, you have another opportunity to ask your witness questions (known as redirect). You can use redirect questions to respond to or explain any unhelpful information raised during cross-examination.

Presenting evidence in the form of exhibits:

- An exhibit is a document, photograph, object, or other device formally introduced as evidence during the hearing.
- In general, for each exhibit you should be prepared to show:
 - That the evidence is what you claim it to be. A witness with personal knowledge can establish this. For example, you may question a witness from the Department about a document they reviewed or helped prepare (e.g., a permit, an order, a review memo).
 - That the evidence is relevant, meaning that the evidence is directly connected to

a fact in your appeal and the evidence could help prove or disprove that fact.

- Prepare and organize your exhibits ahead of time:
 - Label and number your evidentiary materials as exhibits. (For example: Exhibit 1, Exhibit 2, etc.)
 - The numbering of your exhibits should correspond to how they were numbered when you filed your Pre-Hearing Memorandum.
 - Bring enough copies of each exhibit for yourself, the Judge, the opposing party, and the witness (you will most likely need to use a witness to introduce the exhibit).
 - Organize your exhibits ahead of time in the order you expect to introduce them in, so you don't lose your place during the hearing or forget to introduce evidence.

The other party may make objections during your presentation of your case. You will be given the chance to respond to those objections. The Judge will rule on the objection, which may impact the questions you are able to ask or the evidence the Judge will consider.

OPPOSING PARTY'S PRESENTATION OF ITS CASE

The opposing party will also offer evidence in the form of testimony and exhibits. You can use the opposing party's Pre-Hearing Memorandum to anticipate the issues, witnesses, and exhibits it will present.

You will have the opportunity ask the opposing party's witnesses questions (known as cross-examination):

- In general, your questions should stay within the scope or subject matter of the testimony the witness gave during direct examination.
 - The Judge will not let you ask questions that harass or embarrass the witness.
 - You are not required to cross-examine every witness.
- The opposing party will have the opportunity to ask its witness questions on redirect after your cross-examination.

If you have a valid legal objection to the opposing party's questions or use of evidence, you may raise it. To object, state "objection" and briefly tell the Judge your reason for objecting. (For example: objecting to the opposing party's calling of a witness not disclosed ahead of time.) The Judge will allow the party to respond to your objection. The Judge will rule on the objection, and you must follow the Judge's ruling.

3. Closing arguments

Once all parties have finished presenting their evidence, the Judge may ask the parties to deliver closing arguments.

Closing arguments are persuasive summaries of the evidence presented to the Judge. The closing argument is a chance to tell your story of the appeal to the Judge, highlight the important evidence presented, and persuade the Judge to find in your favor. You cannot testify or present new evidence during your closing argument. The judge may decide to forego closing arguments since the parties will have the opportunity to persuade the judge in their post-hearing briefs.

TIPS FOR THE DAY OF THE HEARING

- **Arrive early.** Plan your route to the Board’s courtroom ahead of time and leave yourself enough time to park, find the courtroom, and get settled.
- **Dress neatly and respectfully.** Formal attire is not required but dressing in a neat or professional manner is encouraged.
- **Double check that you have all your materials—including copies of your exhibits—before you leave the house.** Organizing your materials and packing them the day before can save you time on the day of your hearing.
- During the hearing, always follow the Judge’s instructions; do not argue with the Judge.
- Treat the Judge, the opposing party, and all witnesses with respect before, during, and after the hearing.
 - If you have a valid objection, state your objection clearly and calmly, and follow the Judge’s ruling on the objection.

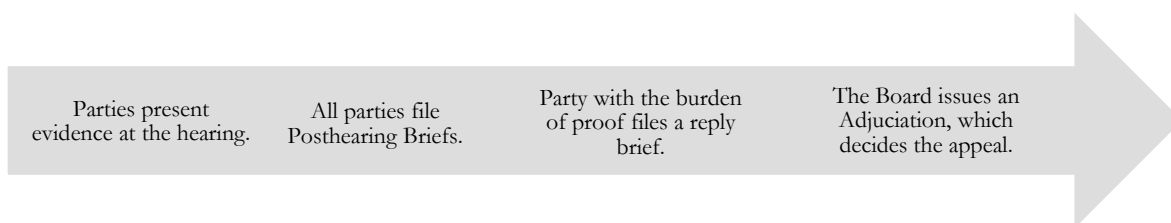
WHAT HAPPENS AFTER THE HEARING

The hearing is not the end of the appeal process, and the Judge does not issue an immediate ruling on the issues presented. After the hearing, all parties must file Posthearing Briefs according to deadlines set by the Judge in a posthearing order. For more information, visit the Posthearing Brief Section of this Guide, [linked here](#).

Once all Posthearing Briefs and replies are filed the Board will issue an Adjudication, which rules on the merits of the appeal.

The Adjudication is the final decision of the Board concerning the appeal. Litigants dissatisfied with the Adjudication can ask for reconsideration of the final order, a very high standard that can only be met under specific circumstances. (For more information, see [§ 1021.152](#).)

- Appellants dissatisfied with Board final orders have the right to appeal to the Commonwealth Court and from there, if allowed, to the Pennsylvania Supreme Court.



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CHECKLIST: PREPARING FOR THE HEARING

- 1. Prepare your case:
 - a. Prepare your arguments by gathering facts, evidence, and witness testimony in your favor.
 - b. Organize your case by choosing the order in which to present your evidence.

- 2. Prepare your presentation of your case:
 - a. Determine the witnesses you will call, the order in which you will call them, and the questions you will ask them.
 - b. Determine which evidence you will present as exhibits and the order in which you will present them.
 - Label and number your exhibits.
 - Make and bring copies of each exhibit for yourself, the Judge, the opposing party, and the witness.
 - c. Prepare and practice your opening statement.
 - d. Prepare and practice your closing argument.

- 4. The day before your hearing:
 - a. Organize and pack your materials.
 - b. Double check that you have all your materials for the hearing, including enough copies of each exhibit.

- 5. The day of your hearing:
 - a. Arrive early to the courtroom.
 - b. Dress neatly and respectfully.
 - c. Follow the Judge's instructions.
 - d. Treat the Judge, the opposing party, and all witnesses with respect before, during, and after the hearing.

QUICK LOOK: POSTHEARING BRIEF

All parties are required to file Posthearing Briefs according to the deadlines set by the Judge in a posthearing order. If you do not file a Posthearing Brief your appeal may be dismissed. If you do not include specific issues or arguments in your brief, the issues or arguments will be waived. Posthearing Briefs must include a caption, a title, proposed findings of facts, legal arguments, and proposed conclusions of law. If required by the Judge, you may need to file a reply brief in response to the opposing party's Posthearing Brief that can respond to the contentions raised in the opposing party's brief. Once the Posthearing Briefs are filed, the Board will issue an Adjudication. An Adjudication is an official opinion by all the Judges of the Board that makes findings of fact and conclusions of law and determines the outcome of the appeal.

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**READ THE
RULE:
25 Pa. Code
§ [1021.131](#)**

**[QUICK LINK:
POSTHEARING
BRIEF TEMPLATE](#)**

WHY FILE A POSTHEARING BRIEF

All parties are required to file Posthearing Briefs according to the deadlines set by the Judge in a posthearing order. If you do not file a Posthearing Brief your appeal may be dismissed. If you do not include specific issues or arguments in your brief, the issues or arguments will be deemed waived.

WHAT IS A POSTHEARING BRIEF

A Posthearing Brief is a mandatory document that all parties must file after a hearing, which contains proposed findings of fact, an argument section, and conclusions of law. The Posthearing Brief incorporates the evidence presented at the hearing into arguments advocating for your position. Your Posthearing Brief is your last opportunity to present your arguments to the Judge.

For an example, view a [Template Posthearing Brief](#), [linked here](#).

WHO MUST FILE POSTHEARING BRIEFS

All parties must file Posthearing Briefs according to the deadlines set by the Judge. The party with the burden of proof is typically given the opportunity to file a reply brief according to the deadline set by the Judge.

WHEN TO FILE YOUR POSTHEARING BRIEF

After the hearing is held, the Judge will issue an Order that sets deadlines for each party to file their Posthearing Briefs and replies. Typically, this Order is issued after the Board has received the transcripts of the hearing from the court reporter. You must file your Posthearing Brief—and, if applicable, your reply brief—by the deadlines set.

WHAT TO INCLUDE WHEN YOU FILE YOUR POSTHEARING BRIEF

Your Posthearing Brief must contain:

1. **A caption**, which is a heading that identifies the parties, the Environmental Hearing Board, and the docket number of your case.
2. **The title of the brief**, which includes your party name.
 - For example: Appellant's Posthearing Brief.
3. **Proposed findings of fact:**
 - List in numbered paragraphs the facts that:
 1. Are important to the resolution of the appeal; and
 2. You believe in good faith were proven during the hearing.
 - For each fact, you must refer to the specific section of the appropriate exhibit(s) or page(s) of the transcript where the fact is established.

- To refer to a transcript: T. [page number(s)].
- To refer to an exhibit: [Party] Exhibit [number].

4. An argument section that:

- Fully presents your position on every legal argument or issue important to resolving the appeal.
- Is written in paragraph form. You can use headings to separate your arguments.
- Includes citations to the legal authorities that support your positions and incorporates the facts and evidence presented at the hearing.

For more information, visit the Basic Legal Research section of this Guide, [linked here](#).

5. Proposed conclusions of law that:

- Include proposed conclusions of law for each of the legal arguments you presented in the argument section.
- Are listed in numbered paragraphs.

6. A signature block that includes your signature, mailing address, email address, and phone number.

7. A certificate of service, which tells the Board that you sent a copy of your document to the other parties of the appeal. It must include:

- **The date** when you sent a copy of the document to the other parties.
- How – **by mail, fax, electronic filing, or hand-delivery** – you sent the copy.
- The **name and mailing address** of each person you sent the copy to.
- For an example, view a Template Certificate of Service, [linked here](#).

HOW TO FORMAT & FILE YOUR POSTHEARING BRIEF

You should format your Posthearing Brief like all other filings in your appeal, being sure to include each of the required sections (listed above). It should be:

1. **On letter-sized paper** that is 8 to 8 ½ inches by 10 ½ to 11 inches.
2. **Typed.** Photocopied documents are considered typewritten if the copies are readable.
3. **With page numbers** on all pages after the first page.
4. **Double-spaced.**

NOTE: The version of the document you deliver to the Board becomes the official and final version that will be considered by the Board. Be sure to double-check that you send in the complete and correct version.

You can file your Posthearing Brief like all other filings in your appeal. Either send to the Board’s Harrisburg office by mail, hand-delivery, or fax, or submit by using the Board’s electronic filing system.

For more information on how to file, visit the Basic Filing Procedures section, [linked here](#), or the Electronic Filing section, [linked here](#).

You must make sure that all other parties to your appeal are served a copy of your Posthearing Brief.

For more information on how to serve the other parties in your appeal, visit the Basic Filing Procedures section, [linked here](#), or the Electronic Filing section, [linked here](#).

FILING A REPLY TO ANOTHER PARTY’S POSTHEARING BRIEF

If you have the burden of proof you may file a reply to another party’s Posthearing Brief according to the deadline set by the Judge. Your reply brief is an opportunity to reply to the arguments raised in the opposing party’s Posthearing Brief.

WHAT TO INCLUDE WHEN YOU FILE YOUR REPLY BRIEF:

- 1. Your reply brief, including:**
 - **A caption**, which is a heading that identifies the parties, the court (in this case the Environmental Hearing Board), and the docket number of your case.
 - **Your reply to the arguments raised in the opposing party’s Posthearing Brief.**
 - **A signature block** on the last page of the document that includes your signature, mailing address, email address, and phone number.
 - **The reply brief may not exceed 25 pages** unless the Board grants permission to file a longer document.
- 2. A certificate of service.**

You must make sure that all other parties to your appeal are served a copy of your reply brief.

For more information on how to serve the other parties in your appeal, visit the Basic Filing Procedures section, [linked here](#), or the Electronic Filing section, [linked here](#).

[RETURN TO TABLE OF CONTENTS](#)

CHECKLIST: FILING A POSTHEARING BRIEF OR REPLY BRIEF

- 1. Confirm you are within the deadline set by the Judge.
- 2. To file a **Posthearing Brief**, continue to **Step 3**.
To file a **reply brief**, continue to **Step 4**.
- 3. **Filing a Posthearing Brief:**
 - a. Caption and title.
 - b. Proposed findings of fact, listed in numbered paragraphs.
 - c. Argument section, in paragraph form.
 - d. Proposed conclusions of law, listed in numbered paragraphs.
 - e. Signature block with your signature, mailing address, email address, and phone number.
 - f. Certificate of service.
 - g. Continue to **Step 5** for your final steps.
- 4. **Filing a reply brief to a Posthearing Brief:**
 - a. Prepare the reply brief.
 - Page limit = 25 pages.
 - b. Prepare the certificate of service.
 - g. Continue to **Step 5** for your final steps.
- 5. **Format your brief or reply:**
 - a. Saved in Word or PDF format.
 - b. On letter-sized paper (8 - 8 ½ x 10 ½ - 11 inches).
 - c. Typed (or a readable photocopy).
 - d. Page numbers (except for 1st page).
 - e. Double-spaced.
- 6. Double-check you are sending the correct & final version of your document.
- 7. To file **electronically** continue to **Step 8**.
To file by **mail, fax, or hand-delivery**, continue to **Step 9**.
- 8. **To file electronically:**
 - a. Submit before midnight on the date you file & save the transaction receipt from the system as proof of filing.

- b. Make sure the Board accepted your document.
 - If the Board accepted your document → Continue to **Step 8c**.
 - If the Board rejected your filing → You must resubmit, making any corrections the Board requires.
 - c. Make sure the system delivered a copy of your document to all parties in your appeal.
 - If the list of who was served includes every party → Continue to **Step 10**.
 - If any party to your appeal was not served electronically → continue to **Step 8d**.
 - d. Send a hard copy of your document to any party not registered for electronic filing and include:
 - One copy of the document.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - Certificate of service.
9. **To file your document by mail, fax, or hand-delivery:**
- a. Mail, fax, or hand-deliver the document to the Board's Harrisburg office and include:
 - One copy of the document.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - Certificate of service.
 - b. Send a copy of the document to **every other party to the appeal:**
 - Be sure the copy includes:
 - One copy of the document.
 - With signature block on the last page with your signature, mailing address, email address, and phone number.
 - Certificate of service.
 - Send the same day you file with the Board (or earlier).
 - Send to the attorney representing the party.
10. Keep a hard copy of your Posthearing Brief or reply brief available by request from the Board or another party.

BASICS OF LEGAL RESEARCH

To find laws and regulations related to your appeal:

- Read the documents the Department sent you notifying you of the action that you are appealing for reference to laws or regulations that authorized the action.
- Search for regulations in the PA Code: Pennsylvania Code & Bulletin¹
- Search Pennsylvania laws: Unofficial Purdon's Pennsylvania Statutes²

To find cases related to your appeal:

- Board Opinions: Opinion Search,³ Opinion and Adjudication Volumes,⁴ Practice Manual⁵
- The best cases to use are opinions by the Board. You may use cases from PA's Commonwealth Court or Supreme Court. You can cite other courts if the cases are relevant.

To cite the sources of law you find:

- Your citations should contain enough information so that another person can track down that exact source. Citations should directly follow the sentences that they support.
- **Cite cases** by including the case name, the name of the court that issued the opinion, the year it was issued, and the specific pages in the opinion upon which you relied.
 - For example, a Board case should be cited as:
Camp v. DEP, 2012 EHB 343.
[Case Name], [year of opinion] EHB [first page of opinion], [page of citation].
- **Cite laws** by including the name of the law, its title, and the section number.
 - For example, the Clean Streams Law can be cited as:
Clean Streams Law, 35 P.S. §§ 691.1–691.1001. [Law], [title no.] P.S. § [section].
- **Cite regulations** by including the title, code, and section number.
 - For example, the Board's Rules of Practice and Procedure can be cited as:
25 Pa. Code §§ 1021.1–1021.201. [Title no.] Pa. Code § [section].

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¹ <http://www.pacodeandbulletin.gov>

² <https://bit.ly/pastatutes>

³ https://ehb.courtapps.com/public/opinion_search.php

⁴ <https://ehb.courtapps.com/public/opinionAndAdjudicationVolumes.php>

⁵ https://ehb.courtapps.com/content/practice_procedure.pdf

RESOURCES

1. **The Board’s Rules of Practice and Procedure**, [linked here](#).¹
 - The Rules of Practice and Procedure govern the procedure for bringing appeals before the Board and can be found at 25 Pa. Code §§ 1021.1–1021.201.
2. **Practice and Procedure Manual**, [linked here](#).²
 - The Practice and Procedure Manual is an attorney’s guide to practicing before the Board, and contains detailed information about the issues that arise over the course of an appeal before the Board, complete with references to relevant Rules, Board case law, and Commonwealth Court case law.
3. **Decisions of the Board**, [linked here](#).³
 - The Board maintains full text PDF versions of the Board’s Opinion and Adjudication Volumes, which are yearly compilations of opinions and adjudications from 1972 to present.
4. **The Board’s online opinion search**, [linked here](#).⁴
 - Keyword and query search of the Board’s database of opinions since 1997.
5. **The Environmental Hearing Board Act**, [linked here](#).⁵
 - This statute changed the Board’s status to an independent quasi-judicial agency and can be found at 35 P.S. §§ 7511–7516.
6. **The Pennsylvania Code & Bulletin**, [linked here](#).⁶
 - The Pennsylvania Code is the official codification of rules and regulations issued by Pennsylvania agencies and other statutorily authorized documents.
 - The Pennsylvania Bulletin is the official gazette of Pennsylvania and is the temporary supplement to the Pennsylvania Code.
7. **The Pennsylvania Unified Judicial System Web Portal**, [linked here](#).⁷
 - The Portal provides the public with access to Pennsylvania court information, including docket sheets and calendars for appellate courts.
8. **Free legal dictionary, from Cornell’s Legal Information Institute**, [linked here](#).⁸

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¹ <https://bit.ly/ehbpracticeandprocedure>

² <https://bit.ly/ehbpracticemanual>

³ <https://ehb.courtapps.com/public/opinionAndAdjudicationVolumes.php>

⁴ https://ehb.courtapps.com/public/opinion_search.php

⁵ <https://bit.ly/ehbact>

⁶ <https://www.pacodeandbulletin.gov>

⁷ <https://ujportal.pacourts.us/default.aspx>

⁸ <https://www.law.cornell.edu/wex>

APPENDIX A: TEMPLATE AFFIDAVIT

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**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	
v.	:	Docket No. [your docket number]
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION [and PERMITEE]	:	
	:	
Appellant	:	
	:	
Appellee[s].	:	

AFFIDAVIT OF [NAME]

I, [Name], hereby state as follows:

1. [In numbered paragraphs, list the specific facts (not legal arguments) that your motion relies upon, which you have personal knowledge are true.]

2.

3.

I, [Name], verify that the foregoing statements made in this affidavit are true and correct based upon my personal knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: [date]

[Signature] _____
[Name]

**APPENDIX B:
TEMPLATE
CERTIFICATE OF SERVICE**

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APPENDIX C: TEMPLATE CERTIFICATION

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**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	
v.	:	Docket No. [your docket number]
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION [and PERMITEE]	:	
	:	
Appellee[s].	:	

CERTIFICATION

I hereby certify that, pursuant to 25 Pa. Code § 1021.93(b), [party name] has in good faith conferred or attempted to confer with [party the motion is directed against] to resolve the [discovery dispute] prior to filing its [discovery motion]. The meet and confer discussions [were unsuccessful/did not resolve the issue/etc.].

Date: [date]

[Signature] _____
[Name]

APPENDIX D:
TEMPLATE
MEMORANDUM OF LAW

[RETURN TO TABLE OF CONTENTS](#)

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT’S NAME	:		
	:	Appellant	
v.	:		Docket No. [your docket number]
	:		
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION [and PERMITEE]	:		
	:	Appellee[s].	

**APPELLANT [NAME]’S
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO [SPECIFIC REQUEST]**

Appellant [Name] files this Memorandum of Law in Support of its Motion to [Specific Request].

I. Statement of Facts

[In paragraph form, briefly state the relevant background facts of your case that give context to your motion and memorandum.]

II. Legal Standard

[In paragraph form, recount the relevant law and/or legal standards you rely on to make your arguments.]

III. Argument

[In paragraph form, apply the legal standard and relevant law to the facts in your case. Refer to specific sections (such as paragraph numbers) of any affidavits or exhibits that have been filed along with your motion.]

IV. Conclusion

[In paragraph form, briefly conclude your argument and restate the relief you are asking the Board to grant.]

Date: [date]

Respectfully submitted,

[Your Signature]

[Your Name]

[Your Address, Line 1]

[Your Address, Line 2]

[Your Email Address]

[Your Phone Number]

APPENDIX E: TEMPLATE MOTION

[RETURN TO TABLE OF CONTENTS](#)

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	
v.	:	Docket No. [your docket number]
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION [and PERMITEE]	:	
	:	
Appellee[s].	:	

**APPELLANT [NAME]'S
MOTION TO [SPECIFIC REQUEST]**

Appellant [Name] moves the Environmental Hearing Board to [take the requested action].

In support of this motion, Appellant states:

1. [In numbered paragraphs, tell the Board the facts and arguments that support granting your motion.]
- 2.
- 3.

WHEREFORE, Appellant respectfully requests that the Environmental Hearing Board issue an order [taking the requested action].

Respectfully submitted,

Date: [date]

[Your Signature] _____
[Your Name]
[Your Address, Line 1]
[Your Address, Line 2]
[Your Email Address]
[Your Phone Number]

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	
v.	:	Docket No. [your docket number]
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION [and PERMITEE]	:	
Appellee[s].	:	

ORDER

AND NOW, this __ day of ____, [year], it is hereby ordered that Appellant's motion is GRANTED.

ENVIRONMENTAL HEARING BOARD

[JUDGE'S NAME]
[Judge's Title]

APPENDIX F: TEMPLATE ORDER

[RETURN TO TABLE OF CONTENTS](#)

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	
	:	Appellant
	:	
v.	:	Docket No. [your docket number]
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION [and PERMITEE]	:	
	:	
	:	Appellee[s].

ORDER

AND NOW, this __ day of ____, [year], it is hereby ordered that Appellant's [specific request] is GRANTED.

ENVIRONMENTAL HEARING BOARD

[JUDGE'S NAME]
[Judge's Title]

APPENDIX G: TEMPLATE PRE-HEARING MEMORANDUM

[RETURN TO TABLE OF CONTENTS](#)

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

[APPELLANT’S NAME]	:		
	Appellant	:	
v.		:	Docket No. [your docket number]
		:	
COMMONWEALTH OF PENNSYLVANIA,	:		
DEPARTMENT OF ENVIRONMENTAL	:		
PROTECTION [and PERMITEE]	:		
	Appellee[s].	:	

**APPELLANT [NAME]’S
PRE-HEARING MEMORANDUM**

Appellant [Name] submits this Pre-hearing Memorandum under 25 Pa. Code § 1021.104.

I. STATEMENT OF THE FACTS

A. Appellant believes the following facts are not in dispute:

1. [Include in numbered paragraphs the facts that are agreed upon by all the parties.

For example, the location of the property that is subject to the current appeal.]

2.

3.

4.

5.

B. Appellant believes the following facts are in dispute:

1. [Include in numbered paragraphs the facts the parties do not agree on and that you plan on proving or relying on to prove other facts at the hearing. These facts should have a reasonable basis and be directly connected to your appeal. For example, your personal observations of the effects of the Department’s action.]

2.

3.

4.

5.

II. LEGAL ISSUES

A. Appellant believes the following legal issues are in dispute:

1. [List summaries of the legal arguments you expect to present at the hearing, and include support from laws, regulations, or cases that agree with your position. For example, your interpretation of a regulation at issue that, if adopted, would require a different result than the Department action you are challenging.]

2.

3.

4.

5.

III. DESCRIPTION OF SCIENTIFIC TESTS

1. [List any scientific tests you will rely on during the hearing, with a brief description of the test. For each test, include a statement of whether you expect another party will object to its use.] Appellant [does/does not] expect another party will object to the use of this test.

2.

3.

4.

5.

IV. EXPERT WITNESSES

Appellant plans to call the following individuals as expert witnesses:

1. [List the names, professional titles and current employment of your expert witnesses.] Appellant [does/does not] expect another party to challenge the qualifications of this expert.

Summary of expert testimony: [Include a summary of the qualifications of the expert witness and the expected testimony. You can also attach as an exhibit answers to expert interrogatories or an expert report, if you have it, instead of the summary.]

2.

3.

V. WITNESSES

Appellant plans to call the following individuals as witnesses in the order listed:

1. [List every witness you plan to call, both expert and fact witnesses, in the order you expect to call them.]

2.

3.

VI. EXHIBITS

Appellant plans to introduce the following exhibits:

1. [List all exhibits you plan to introduce into evidence during the hearing. Include a short description of a few words of the exhibit and a statement of whether you expect another party to object to it. Attach a copy of each exhibit to your pre-hearing memorandum. Large or lengthy exhibits can be sent in a different format, like a flash drive.] Appellant [does/does not] expect another party to object to this exhibit.

2.

3.

4.

VII. STIPULATIONS

The parties [have/have not] entered into stipulations. [Attach signed copies of any stipulations reached.]

Date: [date]

Respectfully submitted,

[Your Signature]
[Your Name]
[Your Address, Line 1]
[Your Address, Line 2]
[Your Email Address]
[Your Phone Number]

APPENDIX H: TEMPLATE POSTHEARING BRIEF

[RETURN TO TABLE OF CONTENTS](#)

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

[APPELLANT’S NAME]	:		
	Appellant	:	
v.		:	Docket No. [your docket number]
		:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION [and PERMITEE]	:		
	:		
	Appellee[s].	:	

**APPELLANT [NAME]’S
POSTHEARING BRIEF**

Appellant [Name] submits this Posthearing Brief under Rule No. 131 of the Board’s Rules of Practice and Procedure, 25 Pa. Code § 1021.131.

I. PROPOSED FINDINGS OF FACT

1. [Include in numbered paragraphs the facts that are important to the resolution of the appeal and that you believe in good faith were proven during the hearing. For each fact, you must refer to the specific section of the appropriate exhibit or page(s) of the transcript where the fact is established. If the parties have stipulated to any facts before the hearing, you may also cite to the stipulations.]

3.

4.

5.

II. ARGUMENT

[In paragraph form, present your position on every legal argument or issue important to resolving the appeal. Include citations to the legal authorities that support your positions.]

III. PROPOSED CONCLUSIONS OF LAW

1. [List in numbered paragraphs your proposed conclusions of law for each of the legal arguments you presented in the argument section.]

2.

3.

4.

5.

Respectfully submitted,

Date: [date]

[Your Signature] _____
[Your Name]
[Your Address, Line 1]
[Your Address, Line 2]
[Your Email Address]
[Your Phone Number]

APPENDIX I: TEMPLATE MOTION FOR SUMMARY JUDGMENT

[RETURN TO TABLE OF CONTENTS](#)

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	Appellant
v.	:	Docket No. [your docket number]
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION [and PERMITEE]	:	
	:	Appellee[s].

**APPELLANT [NAME]'S
MOTION FOR SUMMARY JUDGMENT**

Appellant [Name] respectfully submits this Motion for Summary Judgment in the above-captioned matter.

[In paragraphs, tell the Board your reasons in support of granting your motion for summary judgment, without reciting the facts.]

WHEREFORE, Appellant respectfully requests that the Environmental Hearing Board issue an order granting summary judgment.

Respectfully submitted,

Date: [date]

[Your Signature] _____
[Your Name]
[Your Address, Line 1]
[Your Address, Line 2]
[Your Email Address]
[Your Phone Number]

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	Appellant
v.	:	Docket No. [your docket number]
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION [and PERMITEE]	:	
	:	Appellee[s].

**APPELLANT [NAME]'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Appellant [Name] files this Memorandum of Law in Support of [Motion or Response].

I. Introduction

[Briefly state the relief you are requesting.]

II. Summary of the Case

[In paragraph form, briefly recount the history of your appeal to this point.]

III. Argument

[In paragraph form, present the legal arguments in support of your motion. Refer to specific sections (such as paragraph numbers) of the evidentiary materials filed along with your motion.]

IV. Conclusion

[In paragraph form, briefly conclude your argument and restate the relief you are asking the Board to grant.]

Date: [date]

Respectfully submitted,

[Your Signature]

[Your Name]

[Your Address, Line 1]

[Your Address, Line 2]

[Your Email Address]

[Your Phone Number]

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:	
	:	
	:	Appellant
	:	
v.	:	Docket No. [your docket number]
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION [and PERMITEE]	:	
	:	
	:	Appellee[s].

ORDER

AND NOW, this __ day of ____, [year], it is hereby ordered that Appellant's motion for summary judgment is GRANTED.

ENVIRONMENTAL HEARING BOARD

[JUDGE'S NAME]
[Judge's Title]

**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

APPELLANT'S NAME	:		
	Appellant	:	
v.	:	Docket No. [your docket number]	
	:		
COMMONWEALTH OF PENNSYLVANIA,	:		
DEPARTMENT OF ENVIRONMENTAL	:		
PROTECTION [and PERMITEE]	:		
	Appellee[s].	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Appellant [Name]'s Motion to [Requested Action] were served upon the following counsel of record by [electronic filing, hand-delivery, fax, or mail]:

Counsel for Department of Environmental Protection:

[Name]
[Office]
[Address Line 1]
[Address Line 2]

Counsel for Permittee (if applicable):

[Name]
[Address Line 1]
[Address Line 2]

Date: [date]

[Your Signature] _____
[Your Name]
[Your Address, Line 1]
[Your Address, Line 2]
[Your Email Address]
[Your Phone Number]

APPENDIX J: TEMPLATE VERIFICATION

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VERIFICATION

I verify that the statements made in this pleading are true and correct to the best of my knowledge, information and belief. I understand that statements therein are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

[Your Signature]
[Your Name]

APPENDIX K: NOTICE OF APPEAL FORM

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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 4 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

**ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at <https://ehb.courtapps.com/>



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NOTICE OF APPEAL FORM
APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

2. Describe the subject of your appeal:
 - (a) What action of the Department do you seek to have the Board review (for example, a permit, license or order issued or denied by the Department, an assessment of a civil penalty or some other determination made by the Department)?

 - (b) Which Department official took the action (usually the person identified on any written notice that you received)?

 - (c) What is the location of the operation or activity which is the subject of the Department's action (the municipality and/or county where the activity takes place or will take place)?

 - (d) How, and on what date, did you receive notice of the Department's action? Please specify whether through public notice, a letter or email from the Department, or some other source.

 - (e) Did you receive written notification of the Department's action (for example, letter, order or permit that you are appealing)? If yes, you **must** attach a copy of the notification to this Notice of Appeal. If you are appealing a permit, you may attach the first page rather than the entire document. In lieu of attaching the document, you may provide a link to notice of the action in the *Pennsylvania Bulletin*. See filing instructions for further instruction.

3. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

NOTICE OF APPEAL FORM
APPEAL INFORMATION, CONT.

4. Describe your objections to the Department's action in separate, numbered paragraphs. Rather than use the space on this form, you may type your objections on separate paper if you require more space. **NOTE:** The objections may be factual or legal and must be specific. It is important that you include **ALL** your objections in this section. Although you may be able to amend your appeal to add new objections, you may require permission of the Board to do so, and you may not be able to raise omitted objections later in the appeal process.

NOTICE OF APPEAL FORM
SIGNATURE PAGE

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 3 of this form on the following date: _____.

Signature of Appellant or Appellant's Counsel

Date: _____

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Attorney Name (Type or Print)

Address

Telephone No.: _____

Email: _____

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.

FILING INSTRUCTIONS

Please read and follow these instructions in their entirety. If you fail to follow the requirements outlined below (including submitting a copy of the action you are appealing and serving process to other parties), the Board may dismiss your appeal.

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate *legal proceedings*, which ask the Board to review an action of the Department of Environmental Protection. The proceedings will require you to file documents, participate in discovery, and may ultimately require you to participate in a hearing before the Board. In addition to the Board, the proceedings will also involve interaction with, including you being required to send copies of your filings to, the Department of Environmental Protection and possibly other parties, such as those who have received a permit from the Department.

How to File a Notice of Appeal

Your Notice of Appeal, along with any required documents and information, shall be filed either by facsimile or by mail, hand or other delivery service at the following address:

Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738

Attorneys also have the option to file a Notice of Appeal electronically at <https://ehb.courtapps.com/content/efiling.php>

A Notice of Appeal filed by *mail, hand, or other delivery service* that is 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. A Notice of Appeal filed by *facsimile* shall be deemed filed on the day it is received by the Board. A notice of appeal filed by facsimile should be followed up with a hard copy. A Notice of Appeal filed *electronically* before midnight EST will be considered to be filed on that date.

Filling out the Notice of Appeal Form—Appeal Information

1. When filing a new appeal, provide your name (or name of the business, where applicable), address, telephone number, and an email address.
2. (a) You must specify the action of the Department that you seek to have the Board review, for example, a permit, determination, or other act.
(b) You must identify the Department official that took the action.
(c) You must identify the location (the municipality and county) of the operation or activity that is the subject of the action.

(d) You must describe when and how you were notified of the Department's action.

(e) If you have received written notification of an action of the Department, you must attach a copy of that notification and any documents received with the notification to the Notice of Appeal. If the documents include a permit, you only need attach the first page of the permit. Instead of attaching a copy of the notification of the action or related documents, you may provide a link to the publication of the action in the *Pennsylvania Bulletin*.

3. You must specify any related appeal already pending before the Board of which you are aware.
4. When describing your objections to the Department's action, you must do so in separate, numbered paragraphs for each objection. The objections must be specific and may be factual or legal.

Rather than use the space on the Notice of Appeal form, you may type your objections on separate paper if you require more space. Note that if you fail to state an objection to the action in your Notice of Appeal, you may be barred from raising that objection later.

Filling out the Notice of Appeal Form—Proof of Service

You must provide proof of service of the Notice of Appeal to the agency taking the action (typically the Department of Environmental Protection), as well as certain other individuals that may be affected by the appeal.

This means that a copy of the Notice of Appeal must be delivered to each the following:

- (1) The Environmental Hearing Board at:

Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

- (2) The Department of Environmental Protection Office of Chief Counsel at:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

- (3) The officer of the Department of Environmental Protection (or other agency) that took the action being challenged. If you do not know the correct address for the agency office involved in the appeal, you should contact that agency directly, or you may contact the Secretary to the Environmental Hearing Board to obtain the appropriate address.

- (4) If you are appealing an action by the Department that involves someone else (for example, if you want to appeal a permit issued to another person or business), you must also send that person or business a copy of your Notice of Appeal. This is required by the Environmental Hearing Board's rules at 25 Pa. Code § 1021.51.
- (5) For certain claims, you must notify the person, municipality, or operator of your Notice of Appeal because their rights may be affected. This may include:
- ❑ In appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7, any affected municipality, its municipal authority, and the proponent of the request, when applicable, and any municipality or municipal authority whose official plan may be affected by a decision of the Board in the appeal.
 - ❑ The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. §§ 1406.5a, 1406.5b, 1406.5d, and 1406.5e.
 - ❑ The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218.
 - ❑ The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.

Note: For Attorneys who file an appeal electronically, only the persons listed in (4) and (5) above must be served where applicable. Electronically filed Notices of Appeal are automatically served on the Department's Office of Chief Counsel and officer who took the action. There is no need to independently serve the Department.

Additional Information on Appeals Involving a Penalty Assessment

In the case of a penalty assessment, many environmental statutes require the amount of the penalty or a bond in that amount to be submitted within the 30-day period required for the filing of the appeal.

Where the statute requires that prepayment be made to the Board, the appellant shall submit to the Board with the Notice of Appeal a check in the amount of the penalty, or an appropriate bond securing payment of the penalty as required by statute. A check shall be made payable to the *Commonwealth of Pennsylvania*; a bond shall be in favor of the Board, and these shall be sent to the following address:

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

Where the statute requires that prepayment be made to the Department of Environmental Protection, the appellant shall submit the prepayment to the Department at the following address in accordance with the Department's instructions:

Department of Environmental Protection
Office of Chief Counsel

Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

If the appellant claims an inability to prepay, that claim must be submitted within the 30-day period by a verified statement either with the Notice of Appeal or in a supplementary document.

Pro Bono Information

Individuals filing an appeal on their own behalf before the Environmental Hearing Board do not need a lawyer. However, important legal rights may be at stake, and proceedings before the Environmental Hearing Board are legal and technical in nature. Therefore, it is strongly recommended that you seek legal counsel. If you cannot afford a lawyer, you may qualify for free legal representation. If your household income is less than 200% of the federal poverty level, then, within fifteen calendar days of filing the Notice of Appeal, you may submit a written request for pro bono representation to the Pro Bono Committee of the Pennsylvania Bar Association's Environmental & Energy Law Section at the following address:

Thomas M. Duncan, Esq.
PBA Environmental & Energy Law Section
Chair, Pro Bono Committee
c/o Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Phone: 484-430-2358
Fax: 484-430-5711
tduncan@mankogold.com

Please also mail a copy of your request to the Environmental Hearing Board. Even if you are deemed financially eligible, a pro bono referral is not guaranteed and is instead based on the availability of volunteers. In addition, you may contact your local or county bar association for more information.

Small corporations owned by no more than three (3) individuals may also be eligible for a pro bono referral if each of the owners' household income is less than 300% of the federal poverty level.

