

US EPA ARCHIVE DOCUMENT

Pennsylvania
Selected Procedural Statutes
(Submitted as an Attachment to the Base
Program AG Statement)

ATTACHMENTS

AR190120

CHAPTER 3
PROMULGATION OF REGULATIONS
(Reserved)

Enactment. Chapter 3 (Reserved) was added April 28, 1978, P.L.202, No.53, effective in 60 days.

CHAPTER 5
PRACTICE AND PROCEDURE

Subchapter

- A. Practice and Procedure of Commonwealth Agencies
- B. Practice and Procedure of Local Agencies

Enactment. Chapter 5 was added April 28, 1978, P.L.202, No.53, effective in 60 days.

SUBCHAPTER A
PRACTICE AND PROCEDURE OF
COMMONWEALTH AGENCIES

Sec.

- 501. Scope of subchapter.
- 502. Representation.
- 503. Discipline.
- 504. Hearing and record.
- 505. Evidence and cross-examination.
- 505.1. Interpreters for the deaf.
- 506. Briefs and oral argument.
- 507. Contents and service of adjudications.
- 508. Notice to Department of Justice.

Cross References. Subchapter A is referred to in sections 103, 701, 704 of this title; section 762 of Title 42 (Judiciary and Judicial Procedure).

§ 501. Scope of subchapter.

(a) **General rule.**—Except as provided in subsection (b), this subchapter shall apply to all Commonwealth agencies.

(b) **Exception.**—None of the provisions of this subchapter shall apply to:

(1) Proceedings before the Department of Revenue, Auditor General or Board of Finance and Revenue, involving the original settlement, assessment or determination or resettlement, reassessment or redetermination, review or refund of taxes, interest or payments made into the Commonwealth treasury.

(2) Proceedings before the Secretary of the Commonwealth under the act of June 3, 1937 (P.L.:1333, No.320), known as the "Pennsylvania Election Code."

(3) Proceedings before the Department of Transportation involving matters reviewable under 42 Pa.C.S. § 933 (relating to appeals from government agencies).

AR190121

§ 502. Representation.

Any party may be represented before a Commonwealth agency.

§ 503. Discipline.

Any Commonwealth agency may, upon hearing and good cause shown, preclude any person from practice before it.

§ 504. Hearing and record.

No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings.

§ 505. Evidence and cross-examination.

Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination shall be permitted.

§ 505.1. Interpreters for the deaf.

(a) **Appointment.**—In any proceeding before a Commonwealth agency in which a party is deaf the agency shall appoint an interpreter to assist the party throughout the proceeding.

(b) **Oath.**—The interpreter shall swear or affirm that he will make a true interpretation to the deaf person and that he will repeat the statements of the deaf person to the best of his ability.

(c) **Definitions.**—As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Deaf." Persons who are deaf or whose hearing is so impaired that they are unable to understand or communicate the spoken English language.

"Interpreter." A person qualified and trained to translate for or communicate with deaf persons. Any person certified by the National or Local Registry of Interpreters for the Deaf or similar registry shall be considered qualified for the purposes of this section.

(Dec. 10, 1982, P. L. 1083, No. 253, eff. 60 days)

1982 Amendment. Act 253 added section 505.1.

§ 506. Briefs and oral argument.

All parties shall be afforded opportunity to submit briefs prior to adjudication by a Commonwealth agency. Oral argument upon substantial issues may be heard by the agency.

§ 507. Contents and service of adjudications.

All adjudications of a Commonwealth agency shall be in writing, shall contain findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail.

§ 508. Notice to Department of Justice.

Before notice of any hearing leading to an adjudication is given by a Commonwealth agency (except the Pennsylvania Public Utility Commission), the agency shall submit the matter to its representative in the Department of Justice who shall pass upon the legality of the proposed action or defense.

SUBCHAPTER A
JUDICIAL REVIEW OF COMMONWEALTH
AGENCY ACTION

Sec.

701. Scope of subchapter.
702. Appeals.
703. Scope of review.
704. Disposition of appeal.

Cross References. Subchapter A is referred to in section 103 of this title; . . . section 763 of Title 42 (Judiciary and Judicial Procedure).

§ 701. Scope of subchapter.

(a) **General rule.**—Except as provided in subsection (b), this subchapter shall apply to all Commonwealth agencies regardless of the fact that a statute expressly provides that there shall be no appeal from an adjudication of an agency, or that the adjudication of an agency shall be final or conclusive, or shall not be subject to review.

(b) **Exceptions.**—None of the provisions of this subchapter shall apply to:

(1) Any matter which is exempt from Subchapter A of Chapter 5 (relating to practice and procedure of Commonwealth agencies).

(2) Any appeal from a Commonwealth agency which may be taken initially to the courts of common pleas under 42 Pa. C.S. § 933 (relating to appeals from government agencies).

§ 702. Appeals.

Any person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure).

§ 703. Scope of review.

(a) **General rule.**—A party who proceeded before a Commonwealth agency under the terms of a particular statute shall not be precluded from questioning the validity of the statute in the appeal, but such party may not raise upon appeal any other question not raised before the agency (notwithstanding the fact that the agency may not be competent to resolve such question) unless allowed by the court upon due cause shown.

(b) **Equitable relief.**—The remedy at law provided by subsection (a) shall not in any manner impair the right to equitable relief heretofore existing, and such right to equitable relief is hereby continued notwithstanding the provisions of subsection (a).

§ 704. Disposition of appeal.

The court shall hear the appeal without a jury on the record certified by the Commonwealth agency. After hearing, the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter A of Chapter 5 (relating to practice and procedure of Commonwealth agencies) have been violated in the proceedings before the

CHAPTER 11
 AUTHORIZED DISPOSITION OF OFFENDERS

Sec.

- 1101. Fines.
- 1102. Sentence for murder.
- 1103. Sentence of imprisonment for felony.
- 1104. Sentence of imprisonment for misdemeanors.
- 1105. Sentence of imprisonment for summary offenses.
- 1106. Restitution for injuries to person or property.

Enactment. Chapter 11 was added December 6, 1972, P.L.1482, No.334, effective in six months.

Cross References. Chapter 11 is referred to in section 305 of this title.

§ 1101. Fines.

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (1) \$25,000, when the conviction is of a felony of the first or second degree.
- (2) \$15,000, when the conviction is of a felony of the third degree.
- (3) \$10,000, when the conviction is of a misdemeanor of the first degree.
- (4) \$5,000, when the conviction is of a misdemeanor of the second degree.
- (5) \$2,500, when the conviction is of a misdemeanor of the third degree.
- (6) \$300, when the conviction is of a summary offense.
- (7) Any higher amount equal to double the pecuniary gain derived from the offense by the offender.
- (8) Any higher or lower amount specifically authorized by statute.

(Mar. 22, 1974, P.L.210, No.44, eff. imd.; Apr. 28, 1978, P.L.202, No.53, eff. 60 days)

Cross References. Section 1101 is referred to in section 3308 of this title.

§ 1102. Sentence for murder.

(a) **Murder of the first degree.**—A person who has been convicted of a murder of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with section 1311(d) of this title (relating to sentencing procedure for murder of the first degree).

(b) **Murder of the second degree.**—A person who has been convicted of murder of the second degree shall be sentenced to a term of life imprisonment.

(Mar. 26, 1974, P.L.213, No.46, eff. imd.)

References in Text. The reference to section 1311(d) should probably read section 1311 as a result of the 1978 amendment to section 1311. Section 1311 is now section 9711 of Title 42 (Judiciary and Judicial Procedure).

Cross References. Section 1102 is referred to in section 106 of this title.

§ 1103. Sentence of imprisonment for felony.

A person who has been convicted of a felony may be sentenced to imprisonment as follows:

- (1) In the case of a felony of the first degree, for a term which shall be fixed by the court at not more than 20 years.
- (2) In the case of a felony of the second degree, for a term which shall be fixed by the court at not more than ten years.
- (3) In the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven years.

§ 1104. Sentence of imprisonment for misdemeanors.

A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:

- (1) Five years in the case of a misdemeanor of the first degree.
- (2) Two years in the case of a misdemeanor of the second degree.
- (3) One year in the case of a misdemeanor of the third degree.

§ 1105. Sentence of imprisonment for summary offenses.

A person who has been convicted of a summary offense may be sentenced to imprisonment for a term which shall be fixed by the court at not more than 90 days.

§ 1106. Restitution for injuries to person or property.

(a) **General rule.**—Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender may be sentenced to make restitution in addition to the punishment prescribed therefor.

(b) **Condition of probation or parole.**—Whenever restitution has been ordered pursuant to subsection (a) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole.

(c) **Authority of sentencing court.**—In determining whether to order restitution as a part of the sentence or as a condition of probation or parole, the court:

(1) Shall consider the extent of injury suffered by the victim and such other matters as it deems appropriate.

(2) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just, provided that the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted.

(3) May at any time alter or amend any order of restitution made pursuant to this section providing, however, that the court state its reasons and conclusions as a matter of record for any change or amendment to any previous order.

(d) **Limitations on district justices.**—Restitution ordered by a district justice shall be limited to the return of the actual property or its undisputed

printer designated by it, for publication as provided in this subchapter.

(c) **Effect of failure to file.** - Every agency, the Administrative Office of Pennsylvania Courts and the clerk or prothonotary of the Supreme Court shall cause to be transmitted to the bureau for deposit as herein provided two certified duplicate original copies of all documents issued, prescribed or promulgated by the agency or the unified judicial system which are required by this subchapter to be deposited or published, or both; in default of which any such document, except a document subject to 2 Pa.C.S. § 308 (relating to unfiled administrative regulations invalid), shall be effective only to the extent provided in section 903 of this title (relating to effective date of documents). If an agency and the bureau disagree concerning the form or format of a document required or authorized to be deposited with the bureau, the agency may refer the matter to the joint committee, which shall resolve the conflict pursuant to the standards and procedures provided by section 723 of this title (relating to processing of deposited documents).

(d) **Home rule charter documents and optional plans of government:**—

(1) The clerk of the city council of any city of the first class shall cause a certified copy of the full text of any home rule charter or amendment or repeal as approved by the electors to be filed in the Department of Community Affairs (and in the office of the secretary of the board of public education, in the case of a charter provision affecting the school district of the city) immediately following the final certification of the return of the votes cast on the question of the adoption, amendment or repeal of a home rule charter.

(2) In the case of any other political subdivision authorized to adopt a home rule charter or optional plan of government, the county board of elections shall file the documents relating thereto in the Department of Community Affairs and in other public offices as provided by the act of April 13, 1972 (P.L. 184, No. 62), known as the "Home Rule Charter and Optional Plans Law."

(3) The Department of Community Affairs shall, within ten days after receipt of any home rule charter or amendment or repeal or any optional plan of government as approved by the electors of any part of this Commonwealth, certify two duplicate original copies of the full text thereof and deposit such certified copies with the Legislative Reference Bureau.

§ 723. Processing of deposited documents.

(a) **Review of deposited text.**—The bureau, or a qualified contractor selected by the bureau with the approval of the joint committee, may review any or all documents deposited with the bureau before they are released for publication, and may prepare in active cooperation with an agency a revised text of any document relating to the administrative regulations of the agency which conforms fully to the format established for the code, which eliminates all obsolete, unnecessary or unauthorized material, which has

been prepared in such a manner as to lend to the published code as a whole uniformity of style and clarity of expression, and which does not effect any change in the substance of the deposited text of such regulations. Whenever any such revised text with respect to each agency is prepared, two duplicate original copies thereof, with proof of service of a third copy thereof upon the executive officer, chairman or secretary of such agency, shall be filed by the bureau with the joint committee, and shall immediately be made available by the bureau for public inspection and copying.

(b) **Status of revised text.**-- Such revised text shall become the agency text of such regulations for the purposes of this part ten days after such filing unless, within such ten-day period, the agency shall file with the joint committee written objections to such revised text. In that event, the joint committee shall consult with the agency, shall make such alterations, if any, in such revised text as may be necessary in order to retain the substance of the deposited text of such regulations in a manner consistent with the standards of the code, and shall by order prescribe the text of such regulations which shall become the agency text thereof for the purposes of this part.

Previously Filed Regulations. Section 6 of Act 160 of 1976 provided that, notwithstanding section 723(b), an agency may file written objections with the joint committee within 60 days after receiving the revised text of any regulations not previously published in the Pennsylvania Code which were filed in the Legislative Reference Bureau prior to the enactment of Act 160.

Cross References. Section 723 is referred to in section 722 of this title.

§ 724. **Preliminary publication in Pennsylvania Bulletin.**

(a) **General rule.**-- Except as provided in subsection (c), all documents required or authorized by section 702 (relating to contents of Pennsylvania Code) to be codified in the code, and all other documents required or authorized by section 725 (relating to additional contents of Pennsylvania Bulletin) to be published, shall be published in the first available issue of an official gazette, known as the "Pennsylvania Bulletin," printed after the filing of such documents by the Legislative Reference Bureau.

(b) **Frequency and format of bulletin.**-- The bulletin shall be published at least once each week and shall contain all previously unpublished documents duly filed prior to the closing date and hour of the issue, which date and hour shall appear upon the first page of such issue. All issues of the bulletin shall contain a table of contents. A cumulative index shall be published at least once each three months. The joint committee may provide for more frequent publication of the bulletin and indices as circumstances may require. There shall be printed with each document a notation of the date of filing thereof.

(c) **Official synopsis.**-- The joint committee may provide for the publication of an official synopsis of a document in the bulletin in lieu of the full text thereof in any case where the full text of such document will be published pursuant to section 726 (relating to permanent supplements to Pennsylvania Code) within 120 days of the publication of such official synopsis.

CHAPTER 9
EFFECTIVENESS OF DOCUMENTS

- Sec.
901. Official text of published documents.
902. Certification of official text.
903. Effective date of documents.
904. Constructive notice.
905. Presumptions created.
906. Reasonable notice of hearing.
907. Additional notice unnecessary.

Enactment. Chapter 9 was added July 9, 1976, P.L.877, No.160, effective in 60 days.

§ 901. Official text of published documents.

(a) **General rule.**—The official text, as published as provided in Subchapter B of Chapter 7 (relating to publication of documents), of any document required or authorized to be published in the code, the permanent supplements thereto, or the bulletin, shall from the date of such publication be the only valid and enforceable text of such document regardless of any discrepancy between such official text and the agency text of such document. Thereafter any amendment to such document shall be drawn as an amendment to the official text thereof. If an agency discovers a discrepancy between the agency text and the official text of a document, the agency shall forthwith deposit, without regard to the requirements of 2 Pa.C.S. § 301 (relating to notice of proposed rule making) and 2 Pa.C.S. § 302 (relating to adoption of administrative regulations) with the Legislative Reference Bureau an appropriate corrective amendment to the official text, and the agency may specify that such amendment shall be effective as of the effective date of the defective official text, but only persons who have had actual knowledge of the discrepancy shall be affected by such amendment prior to the publication of the official text thereof in the manner prescribed in this part. The purpose of this section is to permit the public to rely absolutely upon the correctness of the text of a regulation, statement of policy or other document as published in the code, the supplements thereto, or the bulletin by declaring such published text to be the only legal evidence of the valid and enforceable text of such regulation, statement of policy or other document.

(b) **Home rule charter documents and optional plans of government.**—Notwithstanding subsection (a), the text of any home rule charter amendment or repeal or any optional plan of government, as published as provided in Subchapter B of Chapter 7, shall from the date of such publication be prima facie evidence of the text of the home rule charter, amendment or repeal, or of the plan of government approved by the electors.

Cross References. Section 901 is referred to in section 902 of this title.

INSPECTION AND COPYING OF RECORDS

Library References

P.L.E. Public Officers § 1 et seq.

§ 66.1. Definitions

In this act the following terms shall have the following meanings:

[See main volume for text of (1)]

(2) "Public Record." Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.

As amended 1971, June 17, P.L. 160, No. 9, § 1.

Cross References

Open meeting law, see § 261 et seq. of this title.

Notes of Decisions

Agency 2
Public record 3

1. Construction and application

Where newspaper did not initiate request for information but merely followed up on public employee's voluntary submission of such information, classified as confidential, the Right to Know Act was inapplicable. *Elliott v. Com., Unemployment Compensation Bd. of Review*, 474 A.2d 735, Cmwlth. 1984.

That city through its personnel department had provided information to Bureau of Employment Security did not change status of information which was otherwise confidential, as bearing upon applicability of the Right to Know Act. *Elliott v. Com., Unemployment Compensation Bd. of Review*, 474 A.2d 735, Cmwlth. 1984.

While township might not have actual possession of public records consisting of its cancelled checks, it could be ordered to authorize bank to make copies of the checks in question available to petitioners under the Right-to-Know Law, as township had control of any production of such records. *Carbondale Tp. v. Murray*, 440 A.2d 1273, 64 Pa.Cmwlth. 465, 1982.

Within definition of "public records" in the Right-to-Know Law, "account" may be defined as a record of business dealings between parties,

while "voucher" can be described as a documentary record of a business transaction. *Id.*

Police officer was not entitled to disclosure under this act of investigative file compiled by law enforcement officer as part of his official duties as member of internal affairs unit of city police department where investigation resulted in conclusion that accusation of receiving stolen property against officer was unfounded. *Barton v. Penco*, 436 A.2d 1222, 292 Pa.Super. 202, 1981.

Allegation that matter is confidential under Right to Know Act is clearly sufficient to prevent discovery of such matter until after issue of confidentiality is resolved. *Mellin v. City of Allentown*, 430 A.2d 1048, 60 Pa.Cmwlth. 114, 1981.

Provisions in Third Class City Code requiring meetings of city council to be open to public and journal of its proceedings open for public inspection, which related to same class of persons and events as open meeting and right to know laws, stood in pari materia with such laws, and this incorporated by implication exclusions found in such laws. *Id.*

The Right to Know Act, which affords judicial relief only to a citizen who is denied a right of access to a public record, could not form basis of order granting public access to lists of delinquent real estate taxpayers where city, as keeper of the records, initiated the action by way of declaratory judgment seeking only interpretation of provisions of city's charter, ordinances and regulation. *City of Philadelphia v. Doe*, 405 A.2d 1317, 45 Pa.Cmwlth. 225, 1979.

Documents, including requested rating sheets completed by members of civil service commission of township pertaining to promotional examination for sergeant in connection with oral examina-

1. Construction and application

Evidence, in proceeding to hold power company in contempt for failure to comply with court order requiring submission of pollution control plan complying with particulate matter and sulfur dioxide emission standards, showing, inter alia, that power company made complete investigation but did not discover any fuels that could be used to comply with standards, that desulfurization operations were experimental and had not been demonstrated as workable for company and that power company had submitted alternative application setting forth methods of complying with emission regulations supported trial court's finding that power company made good-faith attempt to comply with order but that full compliance was impossible. (Per Jones, C.J., with two Judges concurring and four Judges concurring in the result.) *Com., Dept. of Environmental Resources v. Pennsylvania Power Co.*, 337 A.2d 823, 461 Pa. 675, 1975.

If the environmental quality board establishes a regulation whereby a specific requirement or prohibition is set, the department of environmental resources is obligated to enforce such regulation literally. *East Pennshoro Tp. Authority v. Com., Dept. of Environmental Resources*, 334 A.2d 798, 18 Pa.Cmwlth. 58, 1975.

Rules and regulations of environmental quality board when formally adopted by board become rules and regulations of the department of envi-

ronmental resources. *Rushion Min. Co. v. Com.*, 328 A.2d 185, 16 Pa.Cmwlth. 135, 1974.

2. Presumptions

Because regulations implementing the Air Pollution Control Act are promulgated pursuant to grant of legislative power, they enjoy presumption of reasonableness. *Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc.*, 396 A.2d 1205, 483 Pa. 350, 1979.

Environmental Quality Board's determination that fugitive emissions cause air pollution is presumed to be reasonable, and thus Commonwealth did not have to prove that quarry's fugitive dust emissions caused or contributed to air pollution in order for quarry to be guilty of violating rules and regulations of the Department of Environmental Resources. *Id.*

3. Regulations

Commonwealth Court had equity jurisdiction to resolve preenforcement challenge to validity of regulatory scheme promulgated by Environmental Quality Board applicable to anthracite coal industry to determine whether regulations were promulgated in excess of statutory authority empowering board to enact such regulations; review upon piecemeal application and enforcement of challenged regulations was not an adequate remedy. *Arsenal Coal Co. v. Com., Dept. of Environmental Resources*, 477 A.2d 1333, Sup. 1984.

§ 510-21. (Adm. Code § 1921-A). Environmental Hearing Board

(a) The Environmental Hearing Board shall have the power and its duties shall be to hold hearings and issue adjudications under the provisions of the act of June 4, 1945 (P.L. 1388), known as the "Administrative Agency Law,"¹ on any order, permit, license or decision of the Department of Environmental Resources.

(b) The Environmental Hearing Board shall continue to exercise any power to hold hearings and issue adjudications heretofore vested in the several persons, departments, boards and commissions set forth in section 1901-A of this act.²

(c) Anything in any law to the contrary notwithstanding, any action of the Department of Environmental Resources may be taken initially without regard to the Administrative Agency Law, but no such action of the department adversely affecting any person shall be final as to such person until such person has had the opportunity to appeal such action to the Environmental Hearing Board; provided, however, that any such action shall be final as to any person who has not perfected his appeal in the manner hereinafter specified.

(d) An appeal taken to the Environmental Hearing Board from a decision of the Department of Environmental Resources shall not act as a supersedeas, but, upon cause shown and where the circumstances require it, the department and/or the board shall have the power to grant a supersedeas.

(e) Hearings of the Environmental Hearing Board shall be conducted in accordance with rules and regulations adopted by the Environmental Quality Board and such rules and regulations shall include time limits for the taking of appeals, procedures for the taking of appeals, locations at which hearings shall be held and such other rules and regulations as may be determined advisable by the Environmental Quality Board.

(f) The board may employ, with the concurrence of the Secretary of Environmental Resources, hearing examiners and such other personnel as are necessary in the exercise of its functions.

For Title 71, Consolidated Statutes, see Appendix following this Title

(g) The board shall have the power to subpoena witnesses, records and papers and upon certification to it of failure to obey any such subpoena, the Commonwealth Court is empowered after hearing to enter, when proper, an adjudication of contempt and such other order as the circumstances require.

1929, April 9, P.L. 177, art. XIX-A, § 1921-A, added 1970, Dec. 3, P.L. 834, No. 275, § 20, effective Jan. 19, 1971.

¹ Section 1710.1 et seq. of this title.

² Section 501 of this title.

Administrative Code References

Environmental hearing board, see 25 Pa. Code § 21.1 et seq.

Law Review Commentaries

Defenses to orders and actions of Pennsylvania department of environmental resources. (1976) 89 Dick.L.Rev. 265.

Notes of Decisions

Construction and application 1

Discretion 2

Due process 1.5

Evidence 3

Notice 2.5

Review 4

1. Construction and application

Commonwealth Court had no jurisdiction to entertain suit, in which township and others, by means of complaint in equity, had in effect, collaterally challenged department of environmental resources' order compelling township to participate in construction of regional sewage facility and challenged department's issuance of permit authorizing construction of a regional facility, where plaintiffs had failed to appeal to environmental hearing board from such order and permit and, thus, had failed to exhaust their statutory remedies. (Per Larsen, J., with two Justices concurring.) *Interstate Traveller Services, Inc. v. Com., Dept. of Environmental Resources*, 406 A.2d 1020, 486 Pa. 536, 1979.

A plaintiff, in action involving collateral challenge to department of environmental resources' order compelling township to participate in construction of regional sewage facility and challenge to department's issuance of permit authorizing construction of regional facility, was not permitted to maintain such action on basis of contention that such plaintiff should not be held accountable for failure to exhaust administrative remedies consisting of an appeal to environmental hearing board from such order and permit because plaintiff's standing to appeal the department's action was not free from doubt. (Per Larsen, J., with two Justices concurring.) *Id.*

Local governmental entities and contractor, which alleged that the department of environmental resources and regional agency had embarked on course of conduct designed to interfere with and abrogate their agreement to build local sewage treatment facility, had remedy available under this section by appealing department's orders to

the environmental hearing board. *Interstate Traveller Services, Inc. v. Com., Dept. of Environmental Resources*, 391 A.2d 1112, 38 Pa.Cmwlth. 9, 1978, affirmed 406 A.2d 1020, 486 Pa. 536.

Oil company could not avoid obligation to pursue administrative appeal by putting its standing into question before court when it did not attempt to appeal orders of the department of environmental resources to the environmental hearing board. *Id.*

Action of department of environmental resources in denying application seeking an exemption from Air Pollution Control Act (35 P.S. § 4001 et seq.) regulations governing emissions from draw furnaces operated at steel plant on ground that emissions were of minor significance was a "decision" appealable to the environmental hearing board. *Bethlehem Steel Corp. v. Com., Dept. of Environmental Resources*, 390 A.2d 1383, 37 Pa.Cmwlth. 479, 1978.

Though required balancing of social and economic benefits against environmental harm was not conducted in connection with issuance of water quality management permit to private developer for construction and operation of a sewage treatment plant, it was unnecessary to remand case to the environmental hearing board where record revealed that environmental impact would be negligible, while social and economic benefits appeared to be significant. *Concerned Citizens For Orderly Progress v. Com., Dept. of Environmental Resources*, 387 A.2d 989, 36 Pa.Cmwlth. 192, 1978.

An appeal to the environmental hearing board from an order of the department of environmental resources requiring a municipality to join in a regional sewage treatment system for purpose of eliminating sewage pollution in streams, lakes and rivers serves only to determine validity of content of order, that is, whether the Department had an actual factual basis for issuing the order. *Summerhill Borough v. Com., Dept. of Environmental Resources*, 383 A.2d 1320, 34 Pa.Cmwlth. 574, 1978.

Where no final action was taken by environmental hearing board's presiding officer alone, board was not required to conduct hearing before dismissing appeal from denial of application for reimbursement of expenses incurred by county sewage council in administering Sewage Facilities Act (35 P.S. § 750.1 et seq.) for untimeliness. *Lebanon County Sewage Council v. Com., Dept. of Environmental Resources*, 382 A.2d 1310, 34 Pa.Cmwlth. 244, 1978.

Failure to perfect appeal within 30-day period prescribed by the environmental hearing board from denial of application for reimbursement of

For Title 71, Consolidated Statutes, see Appendix following this Title

INTERVENTION

§21.62. Intervention.

(a) Petitions for leave to intervene in any proceeding before the Board shall be filed prior to the initial presentation of evidence in such proceeding and shall set forth the specific grounds for the proposed intervention, the position and interest of the petitioner in the proceeding and a statement of the reasons why said interest is or may be inadequately represented in such proceeding.

(b) Intervention is discretionary with the Board and shall be subject to such terms and conditions as the Board may prescribe.

(c) The Board shall not deny the right to intervene on the basis that the proposed intervenor does not have a proprietary interest affected by the action appealed.

(d) The petition for leave to intervene shall be in substantially the following form:

Petition to Intervene

1. Petitioner is (State name and address).
2. Petitioner believes it is entitled to intervene in the above matter for the following reasons: (List reasons.)
3. Petitioner is an organization, the members of which have an interest in the above matter for the following reasons: (List reasons.)
4. Petitioner will present the following kind of evidence at a hearing on the merits of the matter: (Describe evidence Petitioner will offer at the time of hearing.)
5. Petitioner believes that its interest is or may be inadequately represented in the proceeding by the current parties of record because: (List reasons.)
6. Petitioner hereby certifies that a copy of this petition has been served upon all parties to the above proceeding.

Respectfully submitted:

Name of

Attorney for Petitioner

(e) The provisions of subsections (a) through (d) of this section supplement the provisions of 1 Pa. Code §§ 35.27, 35.28, 35.29, 35.30, 35.31, 35.32, and 35.36 (relating to intervention).