



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

<p>A.W. LONG COAL COMPANY, INC.</p> <p style="text-align: center;">v.</p> <p>COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>EHB Docket No. 2025-137-L</p> <p>Issued: June 8, 2026</p>
---	--	--

**OPINION AND ORDER ON
MOTION FOR PARTIAL DISMISSAL AND TO LIMIT ISSUES
OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT**

By Bernard A. Labuskes, Jr., Board Member and Judge

Synopsis

The Board denies a motion for partial dismissal or partial summary judgment seeking to dismiss portions of a notice of appeal because it is essentially a motion for judgment on the pleadings, which the Board generally does not entertain.

OPINION

By a letter dated June 3, 2025, the Department of Environmental Protection (the “Department”) denied A.W. Long Coal Company, Inc’s (Long Coal’s”) application to renew Long Coal’s surface mining permit for its Long #1 Operation in Morris Township, Clearfield County. Long Coal did not appeal the permit renewal denial and that denial is now final and beyond challenge. It is now clear under the law that Long Coal must either reclaim the site or submit a new permit application. 25 Pa. Code § 87.158 (permanently ceased operations shall be backfilled, closed, or permanently reclaimed).¹

¹ We are told that Long Coal has opted not to submit a new application and is in the process of reclaiming the site.

Six months after the permit renewal denial, on December 1, 2025, the Department issued an order to Long Coal to cease all surface mining activities at the site and either submit a new permit application for the operation or commence reclamation. Long Coal filed this appeal from that order.² Our role in this appeal is to determine whether the Department’s *issuance of the order* was lawful and reasonable. *See Carey v. DEP*, 2019 EHB 722, 729; *Corsnitz v. DEP*, 2018 EHB 174, 187. This appeal does not afford an opportunity to look back and determine whether the now administratively final permit renewal denial was lawful and reasonable. *New Hope Crushed Stone & Lime Co. v. DEP*, 2017 EHB 1005, 1019-20; *Winegardner v. DEP*, 2002 EHB 790, 793. In this appeal we essentially take the permit denial as a given and assess whether, now that the permit has expired, the order under appeal is lawful and reasonable.³

The Department has now filed what it has styled as a ‘Motion for Partial Dismissal and to Limit Issues or, in the Alternative, Partial Summary Judgment.’” It argues that the vast majority of the averments in the amended notice of appeal actually challenge the permit renewal denial as opposed to the order under appeal and are, therefore, barred by administrative finality or otherwise irrelevant. When one focuses on the order itself, as one must, there is nothing to suggest that the order is unlawful or unreasonable now that the site is no longer permitted. Long Coal vigorously opposes the motion.

² Long Coal has also filed an appeal of a subsequent compliance order issued by the Department on February 3, 2026 alleging that Long Coal failed to comply with the December 1, 2025 order and requiring Long Coal to commence reclamation at the Long #1 Operation. *See* EHB Docket No. 2026-021-L.

³ Long Coal’s representative indicates that he does not recall receiving notice of the permit renewal denial when it was sent. However, Long Coal obviously had notice of the denial no later than December 31, 2025 when it filed this appeal. Whether Long Coal received notice in June or December of 2025 is something of a red herring because Long Coal has *never* filed an appeal from the denial. Of course, the 30-day appeal period for filing an appeal of the permit renewal denial has now long since expired. In apparent recognition of this fact, Long Coal only asks us to vacate the order in its notice of appeal, not to take any action with respect to the permit renewal denial itself.

The difficulty with the Department’s motion is that our notices of appeal are not a pleading. *Range Resources – Appalachia, LLC v. DEP*, 2020 EHB 364, 369; *Kopko v. DEP*, 2019 EHB 179, 185. *See also* 25 Pa. Code § 1021.2 (definition of “pleading” in Board’s Rules specifically excludes notices of appeal). Rather, an appellant’s obligations are spelled out in our Rules, 25 Pa. Code § 1021.51, and under our notice of appeal form. On the substance, the appellant need only list its specific objections to the Department’s action. 25 Pa. Code § 1021.51(e). We interpret notices of appeal liberally and construe them broadly. *Protect PT v. DEP*, 2025 EHB 595, 600; *Rhodes v. DEP*, 2009 EHB 325, 327. We generally do not entertain motions for judgments on the pleadings as one might see in the Courts of Common Pleas. *Milco Industries, Inc. v. DEP*, 2001 EHB 995, 996; *Allegro Oil & Gas, Inc. v. DEP*, 1998 EHB 790, 793-99.

This is not a case where the Board’s jurisdiction is at issue, where a motion to dismiss might have been more appropriate, because Long Coal has not attempted to file an appeal from the permit renewal denial. It has not asked for any relief with respect to that denial. To the contrary, it merely asks us to vacate the order, which is entirely consistent with the limit of our authority in this appeal.

It is true that the majority of the averments in the amended notice of appeal do not appear to be specific objections to the order. Instead, in Long Coal’s words they provide “context and motives.” (Long Brief at 24.) They constitute a detailed recitation of facts describing how Long Coal believes it has been treated unfairly over the last few years. It is not clear how those averments could support this Board ultimately ordering that Long Coal is not required to reclaim the site now that the permit for the site has expired, but neither is it required that a notice of appeal provide such clarity. It may be that Long Coal can explain as the appeal moves forward how its allegedly unfair treatment in the past justifies relief regarding the order that would leave an



unpermitted, unreclaimed site in place. Perhaps, for example, the specific terms of the order can be shown to be unreasonable in light of past dealings, but we are only speculating. It is not for us at this early juncture and in this context to suss out the relevancy of all 90 paragraphs in the amended notice of appeal.

Accordingly, we issue the Order that follows.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

A.W. LONG COAL COMPANY, INC. :
 :
v. : **EHB Docket No. 2025-137-L**
 :
COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION :
 :

ORDER

AND NOW, this 8th day of June, 2026, it is hereby ordered that the Department’s motion for partial dismissal and to limit issues or, in the alternative, partial summary judgment is **denied without prejudice.**

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Board Member and Judge

DATED: June 8, 2026

c: DEP, General Law Division:
Attention: Maria Tolentino
(via *electronic mail*)

For the Commonwealth of PA, DEP:
David N. Smith, Esquire
Daniel R. Schramm, Esquire
(via *electronic filing system*)

For Appellant:
David S. Gaines, Jr., Esquire
Eric C. Rusnak, Esquire
(via *electronic filing system*)