



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

JOSIAH LEISHER :
v. :
: EHB Docket No. 2025-120-W
: :
COMMONWEALTH OF PENNSYLVANIA, : Issued: December 31, 2025
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and ROCKWOOD STONE, :
LLC, Permittee :
:

**OPINION AND ORDER ON APPELLANT'S REQUEST FOR
SUPERSEDEAS AND PROMULGATION OF REGULATIONS AND
PERMITTEE'S MOTION TO DENY REQUEST FOR SUPERSEDEAS**

By MaryAnne Wesdock, Judge

Synopsis

The Board grants the permittee's motion and denies a petition for supersedeas in an appeal of the Department's approval of a permit to expand a quarry and related NPDES permit, where the petition does not meet the requirements for a supersedeas. The Board also denies that portion of the petition requesting the Board to promulgate regulations pursuant to the Surface Mining Act and Department technical guidance documents as being outside the scope of the Board's authority.

O P I N I O N

Introduction

This matter involves a notice of appeal filed with the Pennsylvania Environmental Hearing Board (Board) by Josiah Leisher (Mr. Leisher), *pro se*, challenging the Department of Environmental Protection's (Department) issuance of a noncoal surface mining permit and NPDES permit to Rockwood Stone, LLC (Rockwood) for its Rockwood Quarry in Black Township, Somerset County. The permits authorize the expansion of the current noncoal quarry operation.

Factual and Procedural Background

On October 8, 2025, the Department issued the following permits to Rockwood: Noncoal Surface Mining Permit No. 56250301 and National Pollutant Discharge Elimination System (NPDES) Permit No. PA0279935 (hereinafter referred to as “the quarry permits” or simply “the permits”). Notice of issuance of the permits was published in the *Pennsylvania Bulletin* on October 25, 2025. According to the Department, the permits enable Rockwood to expand the operational area of its current quarry and extract a higher volume of sandstone. (Department’s Response to Appellant’s Request for Supersedeas, p. 1.) Mr. Leisher filed a notice of appeal on November 7, 2025 challenging the issuance of the permits.

On November 26, 2025, Mr. Leisher electronically filed with the Board a letter which he labeled “request for supersedes [sic] and a promulgation of regulations.” (EHB Docket No. 2025-120-W, Docket Entry no. 4.) For identification purposes, we shall refer to this document as the “petition for supersedeas.” On December 9, 2025, the Board held a conference call with the parties to discuss Mr. Leisher’s petition. At that conference, the presiding judge explained that the Board would be treating Mr. Leisher’s filing as a petition for supersedeas and directed the Department and Rockwood to file responses on or before December 23, 2025. The presiding judge also explained the Board’s practice and procedure to Mr. Leisher and advised him that individuals appearing before the Board are strongly encouraged to be represented by an attorney. At that conference, the Department and Rockwood offered to make their technical staff available to Mr. Leisher to answer questions in an attempt to see if this matter could be resolved. The parties held a conference call on December 16 with no resolution of the matter. On December 23, 2025, the Department and Rockwood filed responses to the petition for supersedeas. Rockwood’s response also includes a motion to deny the petition for supersedeas without a hearing.

Standard of Review

The Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, *as amended*, 35 P.S. §§ 7511 – 7516, provides adversely affected parties with the right to file an appeal from a Department action. No appeal acts as an automatic supersedeas, but the Board may grant a supersedeas upon cause shown. 35 P.S. § 7514(d)(1). A supersedeas, as defined by the Board's regulations, is a “suspension of the effect of an action of the Department pending proceedings before the Board.” 25 Pa. Code § 1021.2. Among the factors to be considered in ruling on a petition for supersedeas are the following: (1) irreparable harm to the petitioner, (2) the likelihood of the petitioner prevailing on the merits, and (3) the likelihood of injury to the public or other parties. 35 P.S. § 7514(d); 25 Pa. Code § 1021.63(a); *Friends of High Point Lake v. DEP*, EHB Docket No. 2025-102-W, slip op. at 5 (Opinion Supporting Order Denying Petition for Supersedeas issued Oct. 30, 2025); *Delaware Riverkeeper Network v. DEP*, 2022 EHB 103, 110 (citing *Erie Coke Corp. v. DEP*, 2019 EHB 481, 485).

In order for the Board to grant a supersedeas, a petitioner generally must make a credible showing on each of the three criteria, with a strong showing of a likelihood of success on the merits. *Protect PT v. DEP*, 2024 EHB 154, 160 (citing *Teska v. DEP*, 2016 EHB 541, 544). With regard to irreparable harm, the first factor, mere speculation that a petitioner will suffer irreparable harm is not enough for a supersedeas. *Liberty Township v. DEP*, 2023 EHB 158, 160 (citing *Guerin v. DEP*, 2014 EHB 18, 24). “General assertions of irreparable harm without greater specificity are not sufficient to establish irreparable harm.” *Mellinger v. DEP*, 2013 EHB 322, 328.

Given the fact that a supersedeas is an extraordinary measure that is not to be taken lightly, we have held that it is critical for a petition for supersedeas to plead facts and law with particularity and to be supported by affidavits setting forth facts upon which the issuance of a supersedeas may

depend. *Dougherty v. DEP*, 2014 EHB 9, 12 (citing 25 Pa. Code § 1021.62(a)). Where a petition and its supporting documentation do not provide the Board with a basis for granting a supersedeas, it will be denied. *Mellinger, supra*.

Discussion

As the person seeking the supersedeas, Mr. Leisher has the burden of proving that it should be issued. *Erie Coke*, 2019 EHB at 484; *Center for Coalfield Justice v. DEP*, 2018 EHB 323, 327. Section 1021.62 of the Board's Rules of Practice and Procedure, 25 Pa. Code § 1021.62, explains what must be included in a petition for supersedeas. This section requires that a petition for supersedeas shall set forth the specific facts and legal authority the petitioner believes justify the grant of supersedeas. *Id.* at § 1021.62(a) and (b). The petition must make a credible showing on the following factors: 1) a likelihood that the petitioner will prevail on the merits; 2) irreparable harm if the petition is not granted; and 3) the likelihood of harm or injury to the public or other parties. 35 P.S. § 7514(d); 25 Pa. Code § 1021.63(a).

A petition for supersedeas may be denied without a hearing for any of the following reasons:

- (1) Lack of particularity in the facts pleaded.
- (2) Lack of particularity in the legal authority cited as the basis for the grant of the supersedeas.
- (3) An inadequately explained failure to support factual allegations by affidavits.
- (4) A failure to state grounds sufficient for the granting of a supersedeas.

25 Pa. Code § 1021.62(c); *Vanduzer v. DEP*, 2018 EHB 696, 699; *Morrison v. DEP*, 2016 EHB 149, 153.

The Department and Rockwood assert that the petition filed by Mr. Leisher should be denied for all the reasons set forth above.¹ As we explain below, we agree that the petition does not meet the requirements necessary for proceeding to a supersedeas hearing. While Mr. Leisher's petition makes broad assertions as to why he believes the permits should not have been granted, it does not set forth the grounds necessary for a supersedeas.

Initially, it is not apparent exactly what Mr. Leisher is asking for in his petition. He begins his petition by stating:

I request a motion for supersedeas and a motion to promulgate regulations. In respect for the rules established for these proceedings pertaining to the filing motions and requests of the board. Please excuse me of the formatting procedures.^[2] I believe that the substantive nature of my writing is in line with the guidance provided, however if I need correction or clarification please advise. Acts of blasting by the permittee have commenced, and disturbance has been witnessed in the waters, lands, and buildings surrounding the industrial mineral extraction site of Rockwood Stone LLC. **In accordance with 25 Pa. Code §§ 1021.71–1021.76a I hereby request the board to the review of the Acts of environmental contamination described and adjudicate nunc pro tunc.**

(Petition for Supersedeas, p. 1) (emphasis added).

25 Pa. Code §§ 1021.71—1021.76a, cited by Mr. Leisher in his petition, deal with “special actions” such as complaints for civil penalty filed by the Department and complaints filed by other persons against the Department when authorized by statute. Mr. Leighsner has cited no statutes

¹ The Department and Rockwood also assert that the petition for supersedeas should be denied because it fails to contain any affidavits as required by 25 Pa. Code § 1021.62(a). While it is true that Mr. Leisher does not include an affidavit in support of his petition, as required by 25 Pa. Code § 1021.62(a), we need not address this deficiency since we find that the document filed by Mr. Leisher does not meet the substantive requirements of the rules governing supersedeas.

² While we appreciate Mr. Leisher’s qualification that he may not be familiar with the Board’s requirements, he is nonetheless expected to follow the applicable rules. “The right of self-representation is not a license . . . not to comply with relevant rules of procedure and substantive law.” *Goetz v. DEP*, 2002 EHB 976, 978 (quoting *Fareta v. California*, 422 U.S. 806, 834 n. 6, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975)).

authorizing the filing of a complaint against the Department in this matter, nor has any such complaint been filed.

The petition goes on to state:

Due to the inherent public risk that is associated with the disturbance of waters emanating from Abandoned mines associated with the ongoing activities of Rockwood Stone LLC, I petition the courts for Supersedeas. I believe that criteria on all 3 levels of this request are complete. **I request the board to promulgate regulations in accordance with the Surface Mining Conservation and Reclamation Act. Specifically, but not limited to the application of both Policy and Procedure outlined by the PA DEP document 562-4000-101 and its applicable laws.** The application of this document provides the framework for the bonding policy in accordance with the highly complex legal structure of laws that strongly discourage any industrial activity that could result in the contamination of public waters.

Id. at p. 4 (emphasis added). The petition further states: “I also request a **motion to promulgate regulations** in regard to 5600-PM-BMP0315-14 Rev. 1/2014 Modules 14 and 16, and the attached PNDI.” *Id.* at p. 6 (emphasis added).

Mr. Leisher appears to be asking the Board to promulgate regulations pursuant to the Surface Mining Conservation and Reclamation Act, Act of May 31, 1945, P.L. 1198, *as amended*, 52 P.S. §§ 1396.1 – 1396.19b (Surface Mining Act)³ and two unidentified documents referred to simply as “PA DEP document 562-4000-101” and “5600-PM-BMP0315-14.”⁴ We are aware of no authority that would allow the Board to take the action requested by Mr. Leisher, nor has he cited to any. The Environmental Hearing Board Act established the Board as a “quasi-judicial

³ Although the mining permit at issue here is a noncoal surface mining permit issued pursuant to the Noncoal Surface Mining Conservation and Reclamation Act, Act of Dec. 19, 1984, P.L. 1093, *as amended*, 52 P.S. §§ 3301 – 3326, the permit was also issued pursuant to the Surface Mining Act. (Attachment to Rockwood’s Memorandum of Law in Support of Motion to Deny Supersedeas.)

⁴ We believe Mr. Leisher may be referring to the Department’s Water Supply Replacement and Compliance Technical Guidance Document and Module 14: Streams/Wetlands of the Department’s Application for Large Noncoal Industrial Minerals Mine Permit, respectively.

agency” with “the power and duty to hold hearings and issue adjudications. . . .” 35 P.S. §§ 7513(a); 7514(a). Thus, we act in a judicial capacity – we review actions of the Department that have been challenged (here, the quarry permits), we hold hearings, and we issue opinions and, where applicable, adjudications (final decisions on the merits of an appeal). While Section 5(c) of the Environmental Hearing Board Act enables the Board to adopt regulations, such regulations must address *practice and procedure before the Board*. *Id.* at § 7515(c).⁵ In contrast, the power to promulgate regulations relating to statutes administered by the Department of Environmental Protection is held by the Environmental Quality Board (EQB), a separate and distinct entity from the Environmental Hearing Board. Pursuant to the Administrative Code:

The Environmental Quality Board shall have the power and its duties shall be to formulate, adopt and promulgate such rules and regulations as may be determined by the board for the proper performance of the work of the department, and such rules and regulations, when made by the board, shall become the rules and regulations of the department.

71 P.S. § 510-20. *See also, Tire Jockey Service, Inc. v. Department of Environmental Protection*, 915 A.2d 1165, 1185 (Pa. 2007) (The EQB is the administrative “legislative branch” responsible for promulgating rules and regulations for the Department, while the Board is the administrative “judicial branch” empowered to hold hearings and issue adjudications); *Northampton, Bucks County Municipal Authority v. DER*, 1986 EHB 638, 643 (“The regulations of [the Department] are promulgated by the EQB”); *Candela v. DEP*, 2001 EHB 263, 266 (“The authority to promulgate regulations lies exclusively with the EQB.”)

While the Board has the power to review the validity of a Department regulation in the context of an appeal from a Department action, we do not have the authority to promulgate such

⁵ Indeed, the Board has an extensive and comprehensive set of Rules of Practice and Procedure located at 25 Pa. Code Chapter 1021.

regulations unless authorized to do so by statute. *Northampton, supra*. Mr. Leisher has directed us to no provision in the Surface Mining Act that would authorize the Board to promulgate regulations thereunder.

As the Board explained in *Eagle Environmental, L.P. v. DEP*, 1997 EHB 733, 741:

The overall legislative design of environmental regulation in Pennsylvania is for the Environmental Quality Board (EQB) to promulgate regulations for the guidance of the Department in administering the various environmental statutes enacted by the General Assembly. The Department's exercise of discretion in administering those statutes is controlled by both the standards set forth in the regulations by the EQB and this Board's determination of whether the Department has properly applied the standard set forth by the EQB.

Thus, while the Board has the authority to review regulations of the Department adopted pursuant to the Surface Mining Act, we do not have the authority to *promulgate* regulations as requested here by Mr. Leisher.

The petition goes on to state:

My second request of the board is about the acts of blasting within the permitted area. **If it pleases the board to clarify whether the threshold for presumptive liability of any contamination to the surrounding waters in relation to the use of explosives for the act of Industrial Mineral Extraction can be assessed nunc pro tunc.** Issuance of the large permit has transferred liability for actions and environmental damages of the small operation to the larger permit. Abandoned mine entrances match the SMCRA definition for point source pollution and acts by the permit are associated with recognized Acts of Disturbance. If Acts of Disturbance have commenced and there are barriers in procuring satisfactory water quality data as defined in § 88.491. “Minimum requirements for information on environmental resources.”. The Baseline Pollution Load calculation pertaining to bonding is not satisfactory, and even the alternative financial assurance Mechanisms appear incongruous. How would the board direct Financial Assurance Mechanisms for the point source pollution areas surrounding the three abandoned mines, as well as the other point source pollution areas affected by this Surface Mining activity?

(Petition for Supersedeas, p. 4-5) (emphasis added).

It is unclear what Mr. Leisher is asking. Given Mr. Leisher's use of the term "nunc pro tunc," to the extent that Mr. Leisher is asking the Board to review previous permits issued by the Department to Rockwood, those actions are administratively final and not subject to review at this time. *See DEP v. Angino*, 2005 EHB 905, 909 (quoting *Department of Environmental Resources v. Wheeling-Pittsburgh Steel Corp.*, 348 A.2d 765 (Pa. Cmwlth. 1975), *aff'd*, 375 A.2d 320 (Pa. 1977), *cert. denied*, 434 U.S. 969 (1977)) ("Under the doctrine of administrative finality, 'one who fails to exhaust his [or her] statutory remedies may not thereafter raise an issue which could have and should have been raised in the proceeding afforded by his [or her] statutory remedy.'") Accordingly, if Mr. Leisher wished to challenge previous permits issued to Rockwood, the time to do so was when those permits were issued.

We turn now to Mr. Leisher's request for a supersedeas. As noted, a petition for supersedeas may be denied without a hearing for a lack of particularity in the facts pleaded (§ 1021.62(c)(1)) and the legal authority cited (§ 1021.62(c)(2)). *Vanduzer*, 2018 EHB at 699. As to § 1021.62(c)(1), while there are a number of facts pleaded in Mr. Leisher's petition, there are gaps in the information provided. As to § 1021.62(c)(2), while there are a few legal provisions cited, many are inapplicable and there is no explanation or analysis as to how they serve as the basis for granting a supersedeas. While the petition quotes sections of the Surface Mining Act and surface mining regulations and sets forth what Mr. Leisher believes to be deficiencies in the permit application materials submitted by Rockwood and approved by the Department, there is no discussion of why Mr. Leisher believes a supersedeas is warranted.

A supersedeas petition may also be denied for failure to state grounds sufficient for the granting of a supersedeas. 25 Pa. Code § 1021.62(c)(4). Mr. Leisher does not make a credible

showing of irreparable harm, nor does he even allege it. While he alludes to “disturbances” to nearby waters, land and buildings due to blasting, he does not indicate what those disturbances are, much less that they are irreparable. Although Mr. Leisher raises a number of environmental concerns – such as risk of water pollution, abandoned mines, and PCB contamination from a nearby power substation – it is unclear from his petition how these concerns relate to the quarry permits at issue in this appeal, or whether they are related at all. While he provides a picture of a foamy substance in Rhoades Creek, he does not say how he thinks the quarry and the foam are related. Importantly, he offers no clear analysis of how specific activities at the quarry, undertaken pursuant to the permits at issue in this appeal, will cause irreparable harm or a likelihood of injury to the public.

The petition also does not demonstrate a likelihood of success on the merits. While Mr. Leisher outlines what he believes are a number of deficiencies with the permit application for the quarry, he does not adequately explain why the deficiencies are relevant, nor does he allege that the Department would have come to a different outcome if the application had contained additional or different information. While everything he raises could be a valid point, there is simply not enough information provided here to fully understand Mr. Leisher’s argument. As we stated earlier, a request for a supersedeas carries a heavy burden. Here, Mr. Leisher’s petition simply has not met that burden.

Before concluding, we again caution Mr. Leisher that proceeding in this matter without an attorney presents challenges. “We have repeatedly held that appellants opting to appear before this Board [without an attorney] assume the risk that their lack of legal expertise may be their undoing.” *Kilmer v. DEP*, 1999 EHB 846, 852 (citing *Santus v. DER*, 1995 EHB 897, 923; *Taylor v. DER*, 1991 EHB 1926; *Welteroth v. DER*, 1989 EHB 1017). As stated in *Dellinger v. DEP*, 2000 EHB

976, "The Board is a legal forum which follows legal procedure and precedent. [Practice before] the Board is governed by legal doctrines and proscriptions which can be difficult for persons not trained in the law. [Therefore], competent and experienced legal counsel is highly recommended." 2000 EHB at 977, n. 1.

Because the petition for supersedeas fails to meet the requirements outlined in 25 Pa. Code § 1021.62 and because Mr. Leisher has not made a showing that he should be granted supersedeas relief under § 1021.63, we enter the following order denying the request for supersedeas without a hearing pursuant to 25 Pa. Code § 1021.62(c).



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:

O R D E R

AND NOW, this 31st day of December, 2025, it is hereby ordered that the Motion to Deny Appellant's Request for Supersedeas, filed by Rockwood, is **granted**, and the Request for Supersedeas and Request to Promulgate Regulations, filed by Mr. Leisher, is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ MaryAnne Wesdock
MARYANNE WESDOCK
Judge

DATED: December 31, 2025

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