



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

REP. TARAH PROBST :  
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:  
v. : EHB Docket No. 2025-114-L  
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COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and FIRST PENNSYLVANIA : Issued: December 30, 2025  
RESOURCE, LLC, Permittee :  
:

**OPINION AND ORDER ON  
MOTION TO AMEND NOTICE OF APPEAL**

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

**Synopsis**

The Board denies an appellant's motion to amend her notice of appeal to add additional appellants after the jurisdictional deadline for appealing the Department's action has passed.

**O P I N I O N**

Pennsylvania State Representative Tarah Probst ("Rep. Probst"), proceeding *pro se*, has appealed the issuance of Permit No. MB990264-0001 by the Department of Environmental Protection (the "Department") to First Pennsylvania Resource, LLC ("First Pennsylvania"). The permit is associated with the establishment of what is known as the Sunny Brook mitigation bank located in Damascus Township, Wayne County.<sup>1</sup> The appeal was filed on October 29, 2025. According to Rep. Probst, the mitigation bank is related to construction work for an expansion of the I-80 interstate highway. On December 5, 2025, Rep. Probst filed a motion to amend her notice

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<sup>1</sup> Rep. Probst's notice of appeal identifies Permit No. MB990264-0001 as a Section 401 Water Quality Certification. On November 5, 2025, Rep. Probst filed on the docket a copy of Permit No. MB990264-0001, which is a water obstruction and encroachment permit.

of appeal to add additional appellants.<sup>2</sup> The motion seeks to add Joseph Tortorelli and Lisa Wayland to the appeal because Rep. Probst contends that Mr. Tortorelli and Ms. Wayland have an interest that is directly and adversely affected by the permit under appeal and “would have had standing to appeal at the time the original Notice of Appeal was filed.” Rep. Probst asserts that allowing the amendment to her appeal will promote efficiency by permitting all affected parties to be part of one appeal instead of there being multiple appeals of the same permit.

First Pennsylvania and the Department oppose the motion. First Pennsylvania argues that a motion to amend an appeal is not an appropriate vehicle to add new appellants to an existing appeal, and that the Board does not have jurisdiction over the prospective appellants because the deadline for filing an appeal of its permit has already passed. The Department did not file its own response to the motion but instead filed a letter stating that it concurred in First Pennsylvania’s response.

An appeal may be amended as of right within 20 days of the appeal being filed. 25 Pa. Code § 1021.53(a). After 20 days, an appellant must seek leave of the Board to amend its appeal and show that no undue prejudice will result to the opposing parties. 25 Pa. Code § 1021.53(b); *Dengel v. DEP*, 2024 EHB 466, 469. However, it is well-settled that new appellants cannot be added to an appeal via an amendment to that appeal after the time for appealing a Department action has expired. This is because, under the Environmental Hearing Board Act and our regulatory Rules, the Board does not jurisdiction over an appeal from an action of the Department unless the appeal is timely filed with the Board. 35 P.S. § 7514(c); 25 Pa. Code § 1021.52(a); *Pickford v. Dep’t of Envtl. Prot.*, 967 A.2d 414, 418-19 (Pa. Cmwlth. 2008); *Rostosky v. Dep’t of*

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<sup>2</sup> On December 8, 2025, we granted in part an earlier unopposed petition filed by Rep. Probst to amend her notice of appeal to the extent that she identified new objections in her petition. We denied the petition in all other respects, including Rep. Probst’s request to “supplement the record” with comment letters from organizations and a consultant’s report.

*Envtl. Res.*, 364 A.2d 761, 763 (Pa. Cmwlth. 1976); *HD Holdings v. DEP*, EHB Docket No. 2024-179-CS, slip op. at 3 (Opinion and Order issued Sep. 30, 2025); *Arpino v. DEP*, 2009 EHB 579.

For actions of the Department where notice of the action is published in the *Pennsylvania Bulletin*, a third-party appellant has 30 days from the publication of notice to file a timely appeal unless a different period of time is provided by statute. 25 Pa. Code § 1021.52(a)(2)(i). The appeal period is jurisdictional and cannot be extended as a matter of grace. *Anspach v. DEP*, 2018 EHB 523, 525-26 (citing *Ametek, Inc. v. DEP*, 2014 EHB 65, 68).

In *Stedge v. DEP*, 2014 EHB 549, third-party appellants were appealing the Department's approval of coverage under a general permit. The appellants filed an amendment to their notice of appeal within the 20-day period to amend as of right, revising their objections and adding six new appellants to the nine existing appellants in the appeal. The permittee filed a motion to dismiss the newly added appellants. Notice of the Department's approval had been published in the *Pennsylvania Bulletin*, so any appeals needed to be filed within 30 days of the publication of the *Pennsylvania Bulletin* notice to be timely. We found that the appellants added via amendment of the appeal were added more than two weeks after the deadline for filing a timely appeal. Therefore, we dismissed the six new appellants from the appeal.

In *Weaver v. DEP*, 2013 EHB 381, we denied a motion for leave to amend an appeal that sought to add an appellant who had received the Department order under appeal but who did not file an appeal within 30 days. We held that the appellant's failure to file a timely appeal deprived the Board of jurisdiction and that "[t]his jurisdictional defect may not be overcome by way of an amendment to another party's timely appeal." *Weaver*, 2013 EHB at 382. *See also Gemstar Corp. v. DEP*, 1997 EHB 367 (striking appellants sought to be added to an appeal via amendment after the 30-day appeal period).

The permit under appeal here was issued on October 3, 2025. Notice of the permit's issuance was published in the *Pennsylvania Bulletin* on October 25, 2025. 55 Pa.B. 7464 (Oct. 25, 2025). Accordingly, under our Rules, the latest that someone could have appealed the permit was November 24, 2025, 30 days after publication of the notice. 25 Pa. Code § 1021.52(a)(2)(i). Rep. Probst's motion to amend was filed on December 5. At that point, it was too late to add new appellants, just as it would have been too late for a prospective appellant to appeal the permit. Rep. Probst has not identified any statute governing the permit under appeal that would extend the timeframe to appeal the permit. *See* 32 P.S. § 693.24 (Dam Safety and Encroachments Act providing 30 days from receipt of notice of Department action to appeal to the Board). “[N]ew appellants cannot circumvent the 30-day window by way of an amendment of another party’s appeal. Allowing an amendment to add one or more appellants after the 30-day appeal period has run to those prospective appellants would ‘effectively vitiate the 30-day jurisdictional requirement.’” *Stedge*, 2014 EHB at 551 (quoting *Weaver*, 2013 EHB at 382).

Accordingly, we issue the Order that follows.<sup>3</sup>

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<sup>3</sup> Although Rep. Probst filed a reply to First Pennsylvania's response, such replies are not permitted under our Rules for motions to amend an appeal. *See* 25 Pa. Code § 1021.91(g). Nevertheless, we have reviewed the reply and nothing therein changes our ruling.



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**O R D E R**

AND NOW, this 30<sup>th</sup> day of December, 2025, it is hereby ordered that the appellant's motion to amend her notice of appeal is **denied**.

**ENVIRONMENTAL HEARING BOARD**

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

**DATED: December 30, 2025**

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

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**For Appellant:**  
Rep. Tarah Probst, *Pro se*  
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**For Permittee:**

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