



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



HD HOLDINGS AND KIM HERMAN

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

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EHB Docket No. 2024-179-CS

Issued: September 30, 2025

**OPINION AND ORDER ON
DEPARTMENT’S MOTIONS TO DISMISS**

By Sarah L. Clark, Judge

Synopsis

The Board grants the Department’s Motions for partial dismissal due to untimeliness, dismissal of an LLC for failure to obtain counsel, and dismissal of an LLC member in her individual capacity for lack of standing where there is no dispute on the questions of timeliness and counsel and the Appellants provided no evidence of individual standing of the LLC member.

OPINION

Background

This matter concerns an appeal of the Department of Environmental Protection’s (“Department”) denials of two requests for waiver of certain monitoring requirements for a public water system. On December 9, 2024, the Board received a filing consisting only of the two denial letters at issue here, one dated October 2, 2024 (“October 2 Denial Letter”), and the other dated November 19, 2024 (“November 19 Denial Letter”). Both denial letters were addressed to HD Holdings LLC, the operator of the public water system, and Kim Herman, a member of the LLC (“HD Holdings” and “Ms. Herman” respectively or “Appellants” collectively). Because this filing lacked all required information other than the denial letters, on December 10, 2024 the Board

issued an Order to Perfect Appeal (“Order to Perfect”) along with its standard Pre-Hearing Order No. 1. When that Order went unanswered, the Board issued an Order to Comply with the Order to Perfect Appeal, and on February 12, 2025, the Appellants filed a Response that, while scant, did answer the Order to Perfect sufficiently to deem the Appeal perfected. This filing stated when notice of the Department’s action had been received (October 2, 2024 and November 19, 2024), objections to the Department’s action, and a statement that no outside counsel would be hired and members Kim and James Herman would be representing HD Holdings. Shortly thereafter, Board staff spoke with Ms. Herman by phone and explained that LLCs such as HD Holdings are required to be represented by counsel, as well as where to find information on obtaining counsel.

In May, the Appellants and the Department jointly requested a thirty day stay to allow HD Holdings and Ms. Herman to continue seeking counsel, as they had not yet succeeded in doing so and the lack of counsel was stymieing the parties’ attempts to meaningfully discuss settlement. The stay was granted, and upon its expiration, the parties filed a Joint Status Report indicating that no settlement had been reached and that no further stay was requested. The Joint Status Report included a proposed case management order setting new deadlines for discovery and the filing of dispositive motions, which the Board granted. While the Joint Status Report did not make mention one way or the other of the Appellants’ progress toward obtaining counsel, no attorney entered an appearance following the lifting of the stay, and so the Board Ordered HD Holdings to obtain counsel, requiring either that an attorney enter an appearance on its behalf, or, to the extent the Appellants were still seeking counsel, a filing detailing progress made toward that goal by July 18, 2025. The Board received no response to the Order.

On August 4, 2025, the Department concurrently made two filings: 1) a Motion for Partial Dismissal due to untimeliness, and 2) a Motion for Sanctions in the form of a Dismissal for Failure

to Obtain Counsel and Motion to Dismiss for Lack of Standing (“Motion for Partial Dismissal” and “Motion to Dismiss” respectively or “Department’s Motions” collectively). Under the Board’s rules, a response to a dispositive motion must be filed within 30 days of service, here September 3, 2025. 25 Pa. Code § 1021.94 (c). To date, the Appellants have not filed a response to the Department’s Motions.

Standard

The Board evaluates a motion to dismiss in the light most favorable to the non-moving party and only grants the motion where the matter is free from doubt and the moving party is entitled to judgment as a matter of law. *Protect PT v. DEP*, 2024 EHB 154, 155-156; *Ritsick v. DEP*, 2022 EHB 283, 284. When resolving a motion to dismiss, the Board accepts the non-moving party’s version of events as true. *Clean Air Council v. DEP*, 2023 EHB 203, 206 (citing *Pa. Fish and Boat Comm’n v. DEP*, 2019 EHB 740, 741); *Downingtown Area Regional Authority v. DEP*, 2022 EHB 153, 155. Where the non-moving party does not file a response to a motion to dismiss, the Board “will deem a party’s failure to respond to a motion to be an admission of all properly-pleaded facts contained in the motion.” 25 Pa. Code § 1021.91(f); *Ongaco v. DEP*, 2023 EHB 239, 241; *Burnside Twp. v. DEP*, 2002 EHB700, 701.

The First Denial Letter

The Department moves for partial dismissal of the appeal for lack of jurisdiction due to untimeliness as it relates to the October 2 Denial Letter. According to the Board’s rules, for jurisdiction to attach, the individual or entity appealing the Department’s action must file its appeal with the Board within 30 days of receipt of written notice of the action, unless otherwise provided by statute. 25 Pa. Code § 1021.52(a)(1); *Rostosky v. Dep’t of Env’tl. Res.*, 364 A.2d 761, 763 (Pa. Cmwlth. 1976); *Ongaco v. DEP*, 2023 EHB 239, 242 *Mon View Mining Corp. v. DEP*, 2003 EHB

542; *Burnside Twp. v. DEP*, 2002 EHB 700, 703; *Ziccardi v. DEP*, 1997 EHB 1, 3. The Safe Drinking Water Act does not contain language that extends the time period for appealing a denial of a request to waive monitoring requirements.

According to the Department, the October 2 Denial Letter was issued and emailed to Ms. Herman and Mr. Herman in their capacity as members of HD Holdings on October 2, 2024, and receipt of that email was acknowledged by return email on October 4, 2025. (DEP Ex. B.) The Appellants' Response to the Board's Order to Perfect also states that notice of the Department's action was received on October 2, 2024. Therefore, there is no dispute that the October 2 Denial Letter was received by Ms. Herman on behalf of HD Holdings on October 2, 2024.

The Appellants filed the present appeal challenging both the October 2 Denial Letter and the November 19 Denial Letter on December 9, 2024, or 68 days after receiving written notice of the October 2 Denial Letter. While both denial letters pertain to the same water system, they are separate actions that concern different monitoring requirements. Consequently, the appeal with respect to the October 2 Denial Letter was not timely filed and the Board therefore lacks jurisdiction to hear the appeal as it relates to the October 2 Denial Letter. For these reasons, the Department's Motion for Partial Dismissal is granted.

Failure to Obtain Counsel

The Department next seeks dismissal of HD Holdings from the appeal as a sanction for failure to comply with this Board's Rules and our Order to Obtain Counsel. The Board's Rules of Practice and Procedure require parties, other than individuals appearing on their own behalf, to be represented by an attorney in good standing at all stages of the appeal following the filing of a notice of appeal. 25 Pa. Code § 1021.21(a).

As detailed above, the Board issued an Order to Perfect requesting, among other things, contact information for counsel for HD Holdings. The Appellants' Response to the Order to Perfect stated that Ms. Herman and Mr. Herman, as members of HD Holdings, would represent HD Holdings in the appeal and no outside counsel would be engaged. The filing did not indicate that either Ms. or Mr. Herman is an attorney, and when Board staff spoke to Ms. Herman, she likewise did not identify herself or Mr. Herman as an attorney. During that conversation, Board staff explained that proceeding *pro se* following the filing of the notice of appeal is not an option for business entities such as LLCs, and Ms. Herman expressed understanding of the explanation, but no attorney entered an appearance on behalf of HD Holdings at that time.

On May 2, 2025, the Board granted a stay that was jointly requested by the parties for the purpose of allowing HD Holdings additional time to obtain counsel. The stay lifted on June 2, 2025, at which time no entry of appearance was filed on behalf of HD Holdings, nor did the parties request an additional stay or provide any update on Ms. Herman's search for an attorney to represent HD Holdings. As such, on June 18, 2025, the Board issued an Order to Obtain Counsel, which required HD Holdings to either have an attorney enter an appearance or file a statement addressing the Appellants' progress toward obtaining counsel by July 18, 2025. To date, no attorney has entered an appearance on behalf of HD Holdings, nor has HD Holdings responded to the Order.

The Board has held that entities such as LLCs that fail to obtain counsel risk dismissal of their appeals. *Lizabella Mining, LLC v. DEP*, 2024 EHB 783, 786-787; *Warquier Coal Co. v. DEP*, 2024 EHB 396, 397-398; *Earth First Recycling, LLC v. DEP*, 2018 EHB 819, 820-821; *Falcon Coal and Constr. Co. v. DEP*, 2009 EHB 209, 210. As we said in *River Hill Coal Company, Inc. v. DEP*, "[i]ndeed, we have regularly dismissed appeals filed by non-individuals

for failure to obtain counsel once such entities have been given a reasonable opportunity to secure representation and have not done so.” EHB Docket No. 2024-173-CS, *slip op.* at 3 (Opinion and Order on Motion to Dismiss issued May 16, 2025.)

HD Holdings has been given multiple opportunities to obtain counsel – including a thirty day stay that was requested specifically for the purpose of seeking counsel – and has declined to do so. Therefore, the Department’s Motion to Dismiss HD Holdings from this appeal for failure to obtain counsel is granted.

Standing

The Department further moves to dismiss Ms. Herman from the appeal for lack of standing, arguing that the injury alleged in the appeal would be suffered by HD Holdings alone, and not by Ms. Herman in her individual capacity as a member of HD Holdings.

The purpose of the standing doctrine is simply to determine whether an appellant, in this case Ms. Herman, is an appropriate party to appeal the action of the Department at issue. *Hendryx v. DEP*, 2011 EHB 127, 141 *quoting Ziviello v. DEP*, 2000 EHB 999, 1005 *citing Valley Creek Coalition v. DEP*, 1999 EHB 935, 944. An appellant need not demonstrate or even allege standing in the notice of appeal. *Winner v. DEP*, 2014 EHB 135, 140; *Cooley v. DEP*, 2004 EHB 554, 559. The Board has held that when standing is challenged in a dispositive motion¹ the burden is on the moving party to show that there are no material facts in dispute that an opposing party lacks

¹ We have often stated that a motion to dismiss is typically not the appropriate vehicle in which to challenge standing as such motions are generally made prior to discovery being served, let alone completed. *Winner*, 2014 EHB at 140-141 *quoting Cooley*, 2004 EHB at 559; *Kelosky v. DEP*, 2024 EHB 662, 666 n. 1. However, here discovery concluded on July 9, 2025, making the Department’s choice to file motions to dismiss on August 4, 2025 rather than a motion for summary judgment – the more common instrument for a standing challenge – reasonable under the circumstances. And while the majority of our jurisprudence on the standards by which we analyze challenges to standing in dispositive motions has developed in the summary judgment context, applying those standards here is appropriate as the Department’s challenge was made following the completion of discovery.

standing. *Drummond v. DEP*, 2002 EHB 413, 423. In the context of a dispositive motion, a challenge to standing must be viewed in the light most favorable to the non-moving party. *Matthews Int'l Corp. v. DEP*, 2011 EHB 402, 404; *Greenfield Good Neighbors Group, Inc. v. DEP*, 2003 EHB 555, 563. Once standing is adequately challenged, appellants must provide evidence to support their standing. *Borough of Roaring Spring v. DEP*, 2004 EHB 889, 894.

As discussed above, responses to dispositive motions must be filed within thirty days of service. 25 Pa. Code § 1021.94 (c). To date, Ms. Herman has not filed a response to the Department's Motion to Dismiss challenging her individual standing. As the Board has previously held, "No response is clearly not an adequate response, and the Board may grant the motion 'if the adverse party fails to adequately respond.'" *Thomas v. DEP*, 2019 EHB 347, 349 quoting *RES Coal, LLC v. DEP*, 2017 EHB 1239, 1244. As the Department has challenged Ms. Herman's individual standing and provided evidence following the close of discovery in support of that challenge, and Ms. Herman has not provided evidence to support her standing², we grant the Department's Motion and dismiss Ms. Herman in her individual capacity from this appeal.

Conclusion

In addition to failing to respond to the Department's Motions, Ms. Herman – whether on her own behalf or on behalf of HD Holdings – has ceased responding to Orders of the Board, and all attempts to contact the Appellants have gone unanswered since June of 2025. When an appellant fails to respond to multiple Orders, to the motions of adverse parties, and generally stops

² In its Motion, the Department states that while the Appellants did provide responses to requests for documents and interrogatories on or about June 4, 2025, it served the Appellants with requests for admissions on May 22, 2025 and provided US Mail tracking showing those requests were received on May 30, 2025, but as of the filing of the Motions on August 4, 2025 had not received responses. The Department further states that on May 22, 2025 the request for admissions was also sent to the Appellants via email, and on May 28, 2025, after the Department emailed requesting acknowledgement of receipt of the May 22 email, the Appellants did respond, indicating that they had mailed responses to the Department's requests, but the Department states that it has yet to receive those responses.

participating in the appeal, it is reasonable to determine that such appellant has abandoned their appeal. *River Hill Coal Company, Inc. v. DEP*, EHB Docket No. 2024-173-CS, *slip op.* at 4 (Opinion and Order on Motion to Dismiss issued May 16, 2025); *Citizens Advocating a Clean Healthy Environment v. DEP*, 2017 EHB 1077, 1078; *KH Real Estate, LLC v. DEP*, 2012 EHB 155, 156-157; *R. J. Rhodes Transit, Inc. v. DEP*, 2007 EHB 260, 261. HD Holdings and Ms. Herman have been silent for more than three months, thus showing a lack of interest in pursuing this appeal. Therefore, we grant the Department's Motions and dismiss this appeal in its entirety.

Accordingly, we issue the following Order.



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DEPARTMENT OF ENVIRONMENTAL :
PROTECTION :

ORDER

AND NOW, this 30th day of September, 2025, it is hereby **ordered** that the Department's
Motions are **granted** and the appeal is **dismissed**.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman

STEVEN C. BECKMAN
Chief Judge and Chairperson

s/ Bernard A. Labuskes, Jr

BERNARD A. LABUSKES, JR.
Judge

s/ Sarah L. Clark

SARAH L. CLARK
Judge

s/ MaryAnne Wesdock

MARYANNE WESDOCK
Judge

s/ Paul J. Bruder, Jr.

PAUL J. BRUDER, JR.
Judge

DATED: September 30, 2025

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HD Holdings and Kim Herman
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