



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



DARIAN FLATLEY

v.

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

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EHB Docket No. 2024-139-B

Issued: September 8, 2025

**OPINION AND ORDER ON
MOTION FOR SANCTIONS IN THE FORM OF DISMISSAL**

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

The Board denies the Department’s motion to dismiss the appeal as a sanction for appellant’s failure to comply with a Board order compelling discovery but grants the Department’s request for discovery sanctions and precludes the appellant from presenting testimony of fact and expert witnesses, evidence or documents at the hearing on matters not disclosed in discovery.

OPINION

This matter involves an appeal filed by Darian Flatley (“Mr. Flatley”) of an Administrative Order issued on September 23, 2024, by the Department of Environmental Protection (“Department”). Mr. Flatley owns and operates a mobile home park located at 126 Kerr Road, Shenango Township, Lawrence County (the “Site”). The Site sits near Big Run, a stream, that borders a portion of the Site. The Administrative Order requires Mr. Flatley to take corrective actions in order for the Site to achieve compliance with The Clean Streams Law and the Dam Safety and Encroachments Act. During the course of this appeal, Mr. Flatley has repeatedly failed to comply with the Department's various discovery requests. On April 11, 2025, the Department filed a Motion to Compel for Mr. Flatley’s failure to respond to outstanding discovery requests

and for him to appear for a deposition. On April 18, 2025, the Board issued an Order (“April 18th Order”) that compelled Mr. Flatley to respond to the Department’s interrogatories and request for production of documents and to answer the request for admissions within ten days. The April 18th Order also compelled Mr. Flatley to appear for a deposition at a reasonable time and place noticed by the Department.

On April 23, 2025, the Department sent Mr. Flatley a second deposition notice, scheduling the deposition to take place on May 2, 2025, at 1:30 p.m. On April 28, 2025, the day of the deadline for Mr. Flatley to serve his discovery responses on the Department, Mr. Flatley filed a request to stay the proceedings in this matter which the Board denied. Mr. Flatley renewed his request for a stay with the Board on the day of his scheduled deposition. Mr. Flatley failed to appear for his deposition and the Board denied the renewed request for stay. On July 18, 2025, the Department filed its Motion for Sanctions in the Form of Dismissal (“Motion”), the matter currently before us. Mr. Flatley has not responded to the Motion.

In its Motion, the Department requests that the Board dismiss Mr. Flatley’s appeal or, in the alternative, preclude him from introducing fact and expert testimony and from presenting evidence or documents not disclosed in discovery at the hearing in this matter. The Department argues that Mr. Flatley has not complied with the requirements of the Board’s April 18th Order by failing to answer interrogatories, not responding to its request for production, and not providing answers its request for admissions. As a result, the Department asserts that Mr. Flatley has prejudiced the Department in its attempts to properly litigate this appeal to a resolution on its merits. Further, the Department asserts that Mr. Flatley has filed a related suit in the Lawrence County Court of Common Pleas and argues that by pursuing this matter in another tribunal, along with his failure to comply with the April 18th Order and his repeated requests to stay this

proceeding, all demonstrate a lack of intent to pursue his appeal, therefore, warranting the dismissal of it.

When evaluating a motion to dismiss, the Board has stated that it views the motion “in the light most favorable to the nonmoving party and will only grant the motion when the moving party is clearly entitled to judgment as a matter of law.” *Protect PT v. DEP*, 2024 EHB 154, 155 (citations omitted). It has further stated that, “the Board accepts the non-moving party’s version of events as true” and that “[m]otions to dismiss will be granted only when a matter is free from doubt.” *Id.*, at 156 (citations omitted). Under Section 1021.161 of the Board's Rules, sanctions may be imposed upon a party for failure to abide by a Board order or Board rule of practice and procedure, including those pertaining to discovery. 25 Pa. Code § 1021.161; *Robert Wilkinson d/b/a Wilkinson Contracting v. DEP*, 2024 EHB 401; *DEP v. Frank Colombo d/b/a/ Glenburn Services*, 2012 EHB 370; *Smith v DEP*, 2010 EHB 547; *DEP v. Tate*, 2009 EHB 295; *Swistock v. DEP*, 2006 EHB 398; *Kennedy v. DEP*, 2006 EHB 477. These sanctions may include dismissal of the appeal, entrance of adjudication against the offending party, disallowing introduction of evidence or documents not disclosed, precluding witnesses that were not identified as such, or other appropriate sanctions. 25 Pa. Code § 1021.161; *Schlafke v. DEP*, 2013 EHB 678, 680.

Review of the record in this case clearly shows Mr. Flatley’s repeated failure to comply with the Board's discovery rules and the April 18th Order. Due to his initial failure to respond to the discovery requests, the Department filed a motion for compel. His continued refusal to produce discovery in defiance of our April 18th has now prompted the Department to move for sanctions in the form of dismissal. Although the Board has dismissed an appeal as a sanction when an appellant has failed to respond to discovery and a Board Order granting a motion to compel, *Smith v. DEP*, 2010 EHB 547, we will not impose that sanction in this case, notwithstanding the Department's

request that we do so. We disagree with the Department's position that Mr. Flatley's other legal proceedings, his requests for stay, and his overall lack of cooperation in the discovery process shows he lacks any intent to pursue his appeal. While Mr. Flatley's actions certainly demonstrate his unwillingness to abide by the Board's rules and orders, we do not view his action, or in this case inaction, as an abandonment of all interest in pursuing his appeal. Over the course of these proceedings, Mr. Flatley has submitted multiple filings with the Board, albeit on his own timeline, that included, in part, requests for extensions and responses to Board orders. However, Mr. Flatley's refusal to produce the responses and answers responsive to the Department's discovery requests, including his failure to appear to a scheduled deposition, prejudices the Department's case. Pursuant to Section 1021.161 of the Board's Rules, we will preclude Mr. Flatley from introducing any evidence or documents not disclosed to the Department during discovery and further bar him from calling any witnesses other than himself at a hearing on the merits if such a hearing takes place.

Accordingly, we issue the following order.



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ORDER

AND NOW, this 8th day of September, 2025, it is hereby ordered that the Department's Motion for Sanctions is **granted in part** as follows:

1. The Appellant may not call any fact witnesses other than himself.
2. The Appellant may not call any expert witnesses.
3. The Appellant may not present any evidence or documents at the hearing unless produced to the Department during discovery.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman

STEVEN C. BECKMAN

Chief Judge and Chairperson

DATED: September 8, 2025

c: DEP, General Law Division:

Attention: Maria Tolentino
(via electronic mail)

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