



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

SALVATORE PILEGGI

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

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EHB Docket No. 2022-068-BP

Issued: April 30, 2026

**OPINION AND ORDER ON APPELLANT’S  
PETITION FOR RECONSIDERATION**

By Paul J. Bruder, Jr., Judge

**Synopsis**

The Environmental Hearing Board (“Board”) denies Appellant’s Petition for Reconsideration of an Opinion and Order on Remand. Appellant Salvatore Pileggi (“Appellant” or “Mr. Pileggi”) has not provided any compelling and persuasive reason for the Board to grant reconsideration. The Board affirms the *status quo* of the case pursuant to Pa.R.A.P. 1701(b).

**OPINION**

**Background**

The issue before us is Appellant’s Petition for Reconsideration of the Board’s March 18, 2026 Opinion and Order on remand from the Commonwealth Court. *See Pileggi v. DEP*, EHB Docket No. 2022-068-BP (Opinion and Order, March 18, 2026).<sup>1</sup>

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<sup>1</sup> The limited matter on remand was whether the remedies specified in the Department’s August 11, 2022 Administrative Order were appropriate and reasonable based on the evidence, testimony, and legal arguments presented to the Board by the Department. *Pileggi, v. DEP*, \_\_\_ A.3d \_\_\_, 2026 Pa. Commw. LEXIS 2, \*17.

By way of background, on September 15, 2022, Mr. Pileggi appealed a Department August 11, 2022 Administrative Order (“Order”)<sup>2</sup> to the Board. The Board held a two-day merits hearing on February 21, 2024 and February 22, 2024. On October 2, 2024, the Board issued an Adjudication Opinion and Order finding that Mr. Pileggi conducted greater than one acre of earth disturbance activity, as part of a common plan of development and sale, and upheld the Department’s Administrative Order’s remedies. *Pileggi v. DEP*, 2024 EHB 634, 657. Mr. Pileggi appealed the decision to the Commonwealth Court.

On December 8, 2025, oral argument was held at the Commonwealth Court. On January 7, 2026, the Commonwealth Court affirmed the Board’s conclusion that Mr. Pileggi conducted greater than one acre of earth disturbance activity as a larger common plan of development or sale but vacated and remanded the issue of whether the Department’s administrative remedies were appropriate and reasonable, including the need for Mr. Pileggi to obtain an after-the-fact permit. *Pileggi, v. DEP*, \_\_\_ A.3d \_\_\_, 2026 Pa. Commw. LEXIS 2, \*15-17 (“We conclude the Board erred by accepting the remedies in the Administrative Order when the Board appeared to acknowledge it did not understand DEP’s reasons for imposing an after-the-fact permit requirement . . .”). The Commonwealth Court was clear that the Board should *only consider* the evidence and legal arguments presented to the Board by the Department and not consider any reasoning that came to light after the Board’s decision. *Id.* at \*17. (“We caution the Board that it

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<sup>2</sup> The administrative remedies outlined in the Order mandated that Mr. Pileggi do the following: (1) within seven (7) calendar days, implement Best Management Practices (“BMPs”) in accordance with the Department’s regulations and the Erosion and Sediment Pollution (“E&S”) Control Manual; (2) within thirty (30) days, submit an adequate E&S control plan that complies with 25 Pa. Code § 102.4(b)(5)(i)-(xv); (3) within one hundred twenty (120) days, submit an adequate NPDES Permit application as per 25 Pa. Code § 102.5; and (4) cease earth disturbance activities until the required permits and plans are approved. (August 11, 2022 Administrative Order).

should only consider the evidence and legal argument that DEP presented to the Board and may not accept any DEP reasoning that came to light after the Board’s decision.”).

After receiving the January 7, 2026 Commonwealth Court opinion, the Board began preparing its remand opinion by conducting a review and analysis of its electronic record. On or about February 9, 2026, Mr. Pileggi sought permission to appeal the Commonwealth Court decision to the Supreme Court of Pennsylvania. At that time, the Board stopped preparing the remand opinion based on that request. On February 26, 2026, the Department e-mailed Judge Bruder’s Assistant Counsel requesting an opportunity to cite evidence and arguments made in its post-hearing brief and the hearing transcripts to justify the remedies imposed in the Administrative Order. (*See* Appellant’s Petition for Reconsideration, Exhibit “A.”). However, due to the Commonwealth Court’s language cautioning the Board to *only consider* the evidence in the existing record, the Board found it best to deny any additional briefings on the matter and exclusively examine the existing record itself. *See id.*

On March 9, 2026, the Supreme Court of Pennsylvania discontinued Mr. Pileggi’s appeal request. Thereafter, the Board completed its remand opinion. On March 18, 2026, the Board issued its remand opinion and order concluding that the Department’s administrative remedies were appropriate and reasonable and that there was ample evidence in the record to support the need for an after-the-fact permit. *See Pileggi v. DEP*, EHB Docket No. 2022-068-BP, slip op. at 10-11 (Opinion and Order, March 18, 2026). On March 30, 2026, Appellant filed a Petition for Reconsideration of the remand opinion. The Department did not file a Response. On or about April 10, 2026, Mr. Pileggi appealed the March 18, 2026 remand decision to the Commonwealth Court.

## **Discussion**

The Board's Rules of Practice and Procedure set forth the requirements for filing a petition for reconsideration of a final order issued by the Environmental Hearing Board. According to 25 Pa. Code § 1021.152(a):

Reconsideration is within the discretion of the Board and will be granted only for **compelling and persuasive reasons**. These reasons may include the following:

- (1) The final order rests on a legal ground or a factual finding which has not been proposed by any party.
- (2) The crucial facts set forth in the petition:
  - (i) Are inconsistent with the findings of the Board.
  - (ii) Are such as would justify a reversal of the Board's decision.
  - (iii) Could not have been presented earlier to the Board with the exercise of due diligence.

25 Pa. Code § 1021.152(a) (emphasis added).

In his Petition, Mr. Pileggi alleges that he is entitled to reconsideration because the Board's opinion rests on legal grounds or factual findings inconsistent with the record. He lists a variety of reasons he believes reconsideration is warranted including: (1) he was denied due process because the Board denied additional briefings on the matter and issued an opinion too quickly; (2) the Board repeated a legal error by relying on public policy considerations instead of the evidence in the record; (3) the Appellant has a legal and physical impossibility of obtaining a permit for land he does not own; (4) he is not proposing any earth disturbance activity and therefore should not be mandated to obtain a permit; and (5) there was no evidence of discharge; therefore, an after the fact permit is not necessary. (*See Appellant's Petition for Reconsideration*). The Board finds that Mr. Pileggi's listed arguments do not meet any of the compelling and persuasive reasons to grant reconsideration. *See* 25 Pa. Code § 1021.152(a). For the sake of clarity and diligence, we will address Mr. Pileggi's claims individually in this regard.

First, in regard to Mr. Pileggi’s due process claims, the Board did not permit additional briefing on the matter in order to comply with the Commonwealth Court’s directives. The Commonwealth Court was clear that the Board was to confine its review to “the evidence and legal argument that DEP presented to the Board,” *i.e.*, the existing record. *Pileggi, v. DEP*, \_\_\_ A.3d \_\_\_, 2026 Pa. Commw. LEXIS 2, \*17. We denied any supplemental submissions to ensure that no after-the-fact information or expanded-upon argument was submitted by either party and potentially relied upon by the Board in the remand opinion. The Board is certainly capable of reviewing the existing record to issue a remand decision. Moreover, in response to Mr. Pileggi’s claims that the Board issued its opinion too fast, we disagree. The Board acted in accordance with its internal guidelines, which prioritize issuing decisions within thirty days when feasible. Thus, we undertook an expedited review of the electronic record to ensure the remand opinion was issued promptly after receiving jurisdiction to provide a timely resolution of the matter.<sup>3</sup>

Next, Mr. Pileggi’s claims that the Board relied on public policy arguments instead of evidence in the record is simply not true. The Board will not re-hash its remand opinion herein. However, the Board will note that it provided ample citation and excerpts to testimony provided by Mr. Stiles and Mr. Mackowski as well as the Pennsylvania Code, 25 Pa. Code § 102.5(a), for its basis in upholding the Department’s administrative remedies, including the need for an after-the-fact permit.

Mr. Pileggi’s claim that he is not proposing any earth disturbance activity and therefore should not be mandated to obtain an after-the-fact permit has been addressed in detail in the March

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<sup>3</sup> Indeed, the Commonwealth Court’s January 7, 2026 opinion was issued less than a month after oral argument on the matter; thus, we believe the Commonwealth Court also prioritizes timely adjudication of cases.

18, 2026 remand opinion.<sup>4</sup> Mr. Pileggi’s mere disagreement with the Board’s holding is not a basis for reconsideration. *Consol Pa Coal Co. v. DEP*, 2015 EHB 117, 118 (citing *Earthmovers Unlimited, Inc. v. DEP*, 2003 EHB 577, 579). Likewise, Mr. Pileggi’s claim that there has been no discharge so he should not be required to obtain an after-the-fact permit is a red herring. The Board’s remand opinion outlines at length how Mr. Pileggi conducted more than an acre of earth disturbance activity (with observed un-stabilized areas existing at the Site) necessitating the need for an after-the-fact permit with an E&S plan and BMPs. *See Pileggi v. DEP*, EHB Docket No. 2022-068-BP, slip op. at 4-11 (Opinion and Order, March 18, 2026). To be clear, an after-the-fact permit may be necessary not only to address unauthorized discharges but also may be necessary: when someone changes cover type or conducts earth disturbance activity greater than once acre pursuant to a common plan of development; to remediate any unstable areas or areas inconsistent with BMPs; to ensure the site complies with applicable law; and to safeguard that the site has a proper E&S plan in accordance with BMPS, among other reasons. The remand opinion discusses this premise.<sup>5</sup>

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<sup>4</sup> An excerpt of the Board’s remand opinion states: “[i]n our October 2, 2024 Adjudication Opinion, the Board stated that one way to determine if Mr. Pileggi is “*proposing*” earth disturbance activity is by asking if he undertook any work pursuant to a common plan of development, and therefore, that work performed indicated his proposal. *Pileggi v. DEP*, 2024 EHB 634, 651. We stand by this statement and reassert it today. Likewise, we also find the explicit language of 25 Pa. Code § 102.5(a) supports the acquisition of an after-the-fact NPDES permit. Although a clear reading of the regulation states that a person must obtain a NPDES permit *before* starting any earth-disturbance activity, the regulation also states an NPDES permit shall be obtained “*during any stage of*, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance. . . .” 25 Pa. Code § 102.5(a)(emphasis added). We find that this phrasing of “*during any stage of*” indicates that an NPDES permit is still necessary and appropriate after the work has been started and even if the work is not finished or abandoned.” *Pileggi v. DEP*, EHB Docket No. 2022-068-BP, slip op. at 8 (Opinion and Order March 18, 2026).

<sup>5</sup> An excerpt of our remand opinion states: “[a]lthough we initially questioned the Department’s rationale for requiring Mr. Pileggi to apply for a permit rather than imposing a civil penalty, we conclude that the testimony presented at the hearing sufficiently establishes that an NPDES permit and E&S Plan are the appropriate remedies to: (1) ensure that the earth disturbance activities already performed comply with

Lastly, Mr. Pileggi’s claim of legal and physical impossibility, based on the fact that he does not own some of the site, is not a basis for reconsideration. We find this case to be analogous to *Becker v. DEP*, 2018 EHB 316.

In *Becker*, the Board denied a motion for reconsideration of an opinion and order following remand from the Commonwealth Court. There, the Commonwealth Court affirmed the Board’s conclusion that Mr. Becker unlawfully re-routed a stream channel and conducted earth disturbance activities without a permit. However, the Court remanded the matter back to the Board for the limited purpose of imposing a remedy that recognized Mr. Becker no longer owned the property where he had previously done the activities. *Id.* at 316-317. The directive on remand was to impose on Mr. Becker the cost of remediation of the site or to obtain permission from the current property owner to conduct the work required by the Department’s order. *Id.* Our Board affirmed the Department’s order and modified it to provide that Mr. Becker must negotiate an access agreement with the current property owner of the site. *Id.* at 317. In his motion for reconsideration, Mr. Becker argued the doctrine of impossibility because the current property owner would not negotiate an access agreement with him. *Id.* The Board found this was not a compelling or persuasive reason for reconsideration. *Id.* at 318. We stated:

We believe that our Opinion on remand complied with the directive of the Commonwealth Court. The issue that Mr. Becker raises is a matter concerning the Department’s *enforcement* of its order, as revised by the Board on remand, before the courts of competent jurisdiction. [citations omitted]. If Mr. Becker is unable to negotiate an access agreement with the current owner of the site, or comply with the Department’s order in any other respect, then it is up to the Department to decide how to proceed with achieving remediation of the site. [citations omitted]. This issue does not constitute a reason for reconsideration.

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applicable law; (2) remediate any work that is unstable or inconsistent with BMPs; and (3) address any future work Mr. Pileggi may undertake.” *Pileggi v. DEP*, EHB Docket No. 2022-068-BP, slip op. at 11 (Opinion and Order March 18, 2026).



*Id.* at 318-19.

As in *Becker*, the Board believes it has complied with the directive of the Commonwealth Court to determine the validity of the Administrative Order's remedies. Any enforcement issues must be dealt with by the Department, and it is up to the Department to determine how it wants to proceed.

Accordingly, for the above reasons, we issue the following order and affirm the *status quo* of the case pursuant to Pa.R.A.P. 1701(b).



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**ORDER**

AND NOW, this 30<sup>th</sup> day of April, 2026, it is ordered that the Appellant’s Petition for Reconsideration is **denied**.

**ENVIRONMENTAL HEARING BOARD**

s/ Steven Beckman  
**STEVEN 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: April 30, 2026**



**c: DEP, General Law Division:**  
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