COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

RES COAL LLC	:	
	:	
v.	:	**EHB Docket No. 2026-005-BP**
	:	**(Consolidated with 2026-010-BP)**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	**Issued: April 24, 2026**

OPINION AND ORDER ON APPELLANT'S PETITION FOR SUPERSEDEAS

By Paul J. Bruder, Jr., Judge

Synopsis

The Environmental Hearing Board ("Board") denies Appellant RES Coal, LLC's ("Appellant or RES") Petition for Supersedeas without a hearing because the underlying compliance deadlines have passed, Appellant has not made a showing of irreparable harm, and there is a risk of injury to the public if the supersedeas is granted.

O P I N I O N

Background

This consolidated appeal concerns Department Compliance Orders[1] directing RES to implement an interim short-term treatment plan to address a water discharge and to develop a plan for long-term, permanent treatment. A summary of the relevant background is as follows.

RES is the permittee of the Clearfield Refuse Operation, a coal refuse disposal facility located in Bradford and Boggs Townships, Clearfield County, PA. (Appellant's NOA, ¶ 6). The

[1] Compliance Order No. 254045 was amended to Compliance Order No. 254045A, and then subsequently amended to Compliance Order No. 254045A1.

operation consists of a coal refuse disposal area and related facilities, including an access road. (*Id*.). The facility operates pursuant to Coal Refuse Disposal Permit No. 17220701 and National Pollutant Discharge Elimination System ("NPDES") Permit No. PA0236616. (Appellant's NOA, ¶ 7). It is undisputed that an abandoned underground Clarion clay mine underlies portions of the Clearfield Refuse Operation. (RES's Petition for Supersedeas at pg. 4 & DEP's Brief in Resp. at pg. 2-3). It is likewise undisputed that discharges from this underground mine predate the issuance of permits for the Clearfield Refuse Operation. (DEP's Brief in Resp. at pg. 3 & RES's Petition for Supersedeas at pg. 4-5).

The water discharge subject to the Compliance Order originates from three discharge points associated with the underground mine, which RES has since channeled into a single flow. (DEP's Brief in Resp. at pg. 2-3). As part of grading and improving the haul road used to access the permitted coal refuse disposal area, RES installed two culverts (24-inch and 30-inch) to divert the pre-existing mine discharges away from the road and surrounding area. (RES's Petition for Supersedeas at pg. 5).

On September 17, 2025, Department Inspector Zachary I. McCloskey collected a water sample from a discharge location identified as "deep mine 'opening #2." On December 4, 2025, Inspector McCloskey collected a second sample from the same discharge location. (DEP's Brief in Resp. at pg. 5). Based on the results, the Moshannon District Mining Office[2] issued Compliance Order No. 254045 alleging that RES violated 25 Pa. Code § 90.102 by discharging water from an

[2] The Moshannon District Mining Office oversees inspections and general compliance of surface mining or mining-related facilities located in Clearfield County. (DEP's Brief in Resp. at pg. 5).

area disturbed by mining activities[3] that exceeded the effluent limit for manganese and alkalinity.[4] (*Id.*) The Compliance Order was subsequently amended. It was first amended to Compliance Order No. 254045A and later to Compliance Order No. 254045A1. All three Compliance Orders mandate that RES implement an interim short-term treatment plan to address the discharge and to develop a plan for long-term, permanent treatment. The Department asserts that, at RES's request, it extended the submission of a long-term treatment plan from January 27, 2026 to March 28, 2026, the maximum extension period permitted under the Department's regulations. (*Id.* at 5-6; 16). Thus, under Compliance Order No. 254045A1, RES was required to provide a schedule with long-term treatment plan by March 28, 2026.

On January 13, 2026, RES initiated the instant appeal at EHB docket No. 2026-005-BP. On February 17, 2026, RES filed a second appeal challenging Compliance Order No. 254045A1 at EHB docket No. 2026-010-BP.[5] On February 18, 2026, both appeals were consolidated under EHB docket No. 2026-005-BP. The parties dispute whether RES is liable for the treatment of the discharge, in addition to whether RES's diversion altered the historical drainage patterns and whether RES could have requested protection during its permitting process to avoid or limit permanent treatment liability. (RES's Petition for Supersedeas at pg. 6-7 & DEP's Brief in Resp. at pg. 3-6).

On March 17, 2026, RES filed a Petition for Supersedeas, eleven days prior to the March 28, 2026 deadline. On March 25, 2026, the Department filed its Response. On March 27, 2026,

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[3] Compliance Order No. 254045A1 amended this language to state "area disturbed by coal refuse activities." (*See* Compliance Order No. 254045A1).

[4] The Description of Violation also states: "Operator has disrupted the hydrologic balance by encountering seeps, exposing them to the atmosphere, and altering natural drainage patterns, resulting in increased flow." (*See* Compliance Order No. 254045).

[5] RES amended its notice of appeal on February 24, 2026. RES subsequently filed a corrected amended notice of appeal on February 28, 2026.

Judge Bruder held a conference call with all parties to discuss the pending Petition. At that time, RES indicated that it would submit its long-term treatment plan to the Department on March 30, 2026[6] in accordance with Compliance Order No. 254045A1. At RES's request, the Board issued a modified briefing schedule allowing RES to file a reply brief by April 6, 2026 and permitting the Department to file a sur-reply brief by April 15, 2026.

The parties participated in a second conference call with Judge Bruder on April 13, 2026. During that call, the parties confirmed RES timely submitted a long-term treatment plan in compliance with the Order and that the Department was in the process of reviewing that plan. Counsel for RES acknowledged that the issues raised in the Petition for Supersedeas substantially overlapped with those that would be addressed at a merits hearing. In light of considerations including cost, witness availability, and the legal issues present, RES's counsel expressed agreement that one single consolidated hearing or one hearing alone would be preferential to holding a supersedeas hearing now followed by a later merits hearing.

Standard of Review

The standard for granting or denying a petition for supersedeas is set forth in the Environmental Hearing Board Act and by the regulations promulgated thereunder. 35 P.S. § 7514(d); 25 Pa. Code § 1021.63. Notably, a supersedeas is an extraordinary remedy and will not be granted absent a clear demonstration of need. *See Weaver v. DEP*, 2013 EHB 486; *Global Eco-Logical Servs., Inc. v. DEP*, 2000 EHB 829.

The issuance of a supersedeas is up to the Board's discretion. In ruling on a supersedeas request, the Board is guided by relevant precedent, and an analysis of three regulatory factors,

[6] Because March 28, 2026 fell on a Saturday, the parties agreed that Monday March 30, 2026 was a proper compliance date.

including: 1) irreparable harm to the petitioner; 2) likelihood of the petitioner's success on the merits; and 3) likelihood of injury to the public or other parties, such as the permittee in third party appeals. 35 P.S. § 7514(d)(1); 25 Pa. Code § 1021.63(a); *see also Lananger v. DEP*, 2025 EHB 1, 4 (citing *Erie Coke Corp.*, 2019 EHB 481, 485; *Center for Coalfield Justice v. DEP*, 2017 EHB 38, 43, *appeal dismissed*, 2017 Pa. Commw. Unpub. LEXIS 565, 174 A.3d 1204 (Pa. Cmwlth. Aug. 2, 2017)). Importantly, "[a] supersedeas shall not be issued in cases where pollution or injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect." 35 P.S. § 7514(d)(2); *see also* 25 Pa. Code § 1021.63(b).

The petitioner bears the burden of proof to show that a supersedeas should be issued and generally must make a credible showing on each of the three regulatory factors, with a strong showing of a likelihood of success on the merits. *Hudson v DEP*, 2015 EHB 719, 726; *Mountain Watershed Ass'n v. DEP*, 2011 EHB 689, 690-91; *Tinicum Twp. v. DEP*, 2008 EHB 123, 126; *Neubert v. DEP*, 2005 EHB 598, 601. Success on the merits must be more than speculative. *Global Eco-logical Servs., Inc. v. DEP*, 2000 EHB 829, 831-32. Where a petitioner fails to satisfy any one of the supersedeas criteria, the Board is not obligated to consider the remaining criteria. *Liberty Township v. DEP*, 2023 EHB 170, 172; *Liberty Township v. DEP*, 2023 EHB 158, 160–62 (citing *Spencer v. DEP*, 2019 EHB 756, 760); *M.C. Resource Development v. DEP*, 2015 EHB 261, 265 (citing *Dickinson Twp. v. DEP*, 2002 EHB 267, 268; *Oley Twp. v. DEP*, 1996 EHB 1359, 1369).

"Under our Rules, a petition for supersedeas may be denied upon motion or *sua sponte* without a hearing for one 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; or (4) a failure to

state grounds sufficient for the granting of a supersedeas." *Eachus v. DEP*, 2026 EHB Docket No. 2025-132-L, slip op. 5 (Opinion and Order January 26, 2026) (citing 25 Pa. Code § 1021.62(c)).

Discussion

In the instant matter, we conclude that a supersedeas is not appropriate because the relevant compliance deadlines have passed. Compliance Order No. 254045A1 mandated RES to begin interim treatment of the discharges in January 2026 and to submit a long-term, permanent treatment plan by March 28, 2026. There is no dispute that RES has complied with these requirements and is currently placed in "satisfactory progress" with the Order. (DEP's Sur-Reply Brief at pg. 1-2; Affidavit of Paul Kephart at ¶ 7). Because a supersedeas functions to stay the enforcement of an order, and the deadlines for compliance have expired, there is no prospective obligation to stay or suspend. Thus, the requested relief is no longer available.

RES argues that even though the compliance deadlines have passed, it will still suffer irreparable harm as "[it] will be forced to expend substantial funds to design, construct, operate, and maintain collection and treatment facilities for the Clay Mine Discharges before the Board resolves whether the Department lawfully imposed that obligation in the first place." (RES's Reply Brief at pg. 12). RES's arguments of irreparable harm are based solely on financial concerns, which in large part are both speculative and prospective in nature.[7]

RES asserts, through the affidavit of Easton Elkin, President of RES Coal, LLC, that it may incur costs including approximately $135,000 to comply with corrective action requirements,

[7] The Board understands that RES has already expended approximately $20,000 for interim treatment costs and approximately $15,000 to prepare and submit a permanent abatement plan. (RES's Petition for Supersedeas at pg. 23; Declaration of Easton Elkin at ¶ 9). However, we believe these incurred costs can be properly characterized as ordinary and foreseeable business expenses for the largest surface bituminous coal producer in the Commonwealth of Pennsylvania. (*See* Declaration of Easton Elkin at ¶ 2).

$100,000 for construction of permanent treatment facilities, annual treatment costs of approximately $30,000 to $50,000, $75,000 in professional fees (already expended), and more than $1 million in security for a perpetual mine-drainage treatment trust. (RES's Petition for Supersedeas at pg. 23 & Declaration of Easton Elkin at ¶ 9). However, the Department "has agreed to allow RES to continue interim treatment and wait for the implementation and construction of a permanent treatment system following approval of the plan, until the Boad can render a decision on RES's appeal." (DEP's Sur-Reply Brief at pg. 3 & 8). As such, RES's projected permanent treatment costs will not be potentially incurred until *after* a merits hearing, negating the claim of any immediate harm. Thus, this type of speculative, future expenditure does not constitute the type of immediate injury necessary to justify the extraordinary remedy of a supersedeas.

Moreover, the Board concludes that granting a supersedeas, and thereby potentially halting the interim treatment currently in place, could result in harm to the public. The governing statute is explicit: "[a] supersedeas shall not be issued in cases where pollution or injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect." 35 P.S. § 7514(d)(2); *see also* 25 Pa. Code § 1021.63(b).

RES argues that a supersedeas would not create a new discharge, worsen existing water quality, or introduce a new harm to the public because the Clearfield Creek is heavily polluted and has long been impaired by acid mine drainage. (RES Reply Brief at pg. 13). RES states that in fact, clay mine discharges themselves have flowed untreated since 1914. (*Id*.). In response, the Department argues that granting a supersedeas would ultimately result in RES's cessation of interim treatment; thus, allowing untreated discharges from the Clearfield Refuse Operation to enter Clearfield Creek at a higher, now-consolidated flow rate, exacerbating existing pollution. (DEP Sur-Reply Brief at pg. 8-9).

Upon clear reading of the statute and the arguments presented, we agree with the Department. We find that absent interim treatment, mine discharges will enter Clearfield Creek posing a potential threat to the health, safety, or welfare of the public. The fact that the creek is already polluted or that similar discharges occurred historically does not justify RES to cease interim treatment and to continually allow discharges into the waters of the Commonwealth. Therefore, a supersedeas is not appropriate in this matter.

Accordingly, Appellant has failed to state grounds sufficient for the granting of a supersedeas; therefore, we issue the following order.

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O R D E R

AND NOW, this 24th day of April, 2026, it is ordered that the Appellant's Petition for Supersedeas is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Paul J. Bruder, Jr.
PAUL J. BRUDER, JR.
Judge

DATED: April 24, 2026

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

For the Commonwealth of PA, DEP:
David N. Smith, Esquire
Daniel R. Schramm, Esquire
(via electronic filing system)

For Appellant:
Gregg M. Rosen, Esquire
(via electronic filing system)