



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD



RES COAL LLC

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

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**EHB Docket No. 2026-005-BP  
(Consolidated with 2026-010-BP)**

**Issued: April 29, 2026**

**OPINION AND ORDER ON APPELLANT’S  
MOTION FOR EXPEDITED HEARING IN COORDINATION WITH THE PETITION  
FOR SUPERSEDEAS**

**By Paul J. Bruder, Jr., Judge**

**Synopsis**

The Environmental Hearing Board (“Board”) denies Appellant RES Coal, LLC’s (“Appellant or “RES”) Motion for Expedited Hearing in Coordination with the Petition for Supersedeas. RES’s Petition for Supersedeas was denied, and therefore, any request for a coordinated hearing is no longer feasible. While the Board does not oppose scheduling a hearing on the merits in fall 2026, an expedited hearing on an earlier timetable would prejudice the Department by restricting its ability to conduct adequate discovery and/or to file an appropriate dispositive motion.

**OPINION**

**Background**

This consolidated appeal concerns the Department of Environmental Protection’s (“Department”) Compliance Orders<sup>1</sup> directing RES to implement an interim short-term treatment

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<sup>1</sup> Compliance Order No. 254045 was amended to Compliance Order No. 254045A and then subsequently amended to Compliance Order No. 254045A1.

plan to address a water discharge from an underground abandoned Clarion clay mine and to develop a long-term, permanent treatment plan. 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.<sup>2</sup>

On January 13, 2026, RES initiated the instant appeal at EHB docket No. 2026-005-BP. On January 14, 2026, the Board issued Pre-Hearing Order No. 1, setting the discovery deadline to July 13, 2026 and the dispositive motion deadline to August 12, 2026. On February 17, 2026, RES filed a second appeal challenging Compliance Order No. 254045A1 at EHB docket No. 2026-010-BP.<sup>3</sup> On February 18, 2026, both appeals were consolidated under EHB docket No. 2026-005-BP.

On March 17, 2026, RES filed a Petition for Supersedeas. On March 25, 2026, the Department filed its Response. 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. Concurrently, on April 6, 2026, RES filed a Motion for an Expedited Hearing in Coordination with the Petition for Supersedeas. On April 16, 2026, the Department filed its Response in Opposition to the Motion for an Expedited Hearing.

On April 13, 2026, the parties participated in a conference call with Judge Bruder where a variety of issues were discussed, including RES's compliance with the Department's Order, discovery, the pending motions, and potential hearing dates. During that call, the parties confirmed RES timely submitted a long-term treatment plan in compliance with the Order and that the

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<sup>2</sup> A full summary of the relevant factual background can be found at the Board's Opinion and Order denying RES Coal, LLC's Petition for Supersedeas. *RES Coal, LLC v. DEP*, EHB Docket No. 2026-005-BP, slip. op. at 1-4 (April 24, 2026 Opinion and Order).

<sup>3</sup> RES amended its notice of appeal on February 24, 2026. RES subsequently filed a corrected amended notice of appeal on February 28, 2026.

Department was in the process of reviewing that plan. The Department also advised that it would send written discovery to RES within the week. When discussing the pending motions, RES's counsel 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. Additionally, potential realistic hearing timeframes were discussed during the conference, wherein RES's counsel advised that he would be out of the country from August 17, 2026 through October 31, 2026.

On April 24, 2026, the Board denied RES's Petition for a Supersedeas without a hearing as the underlying compliance deadline passed, RES had not made a showing of irreparable harm, and there was a risk of injury to the public if the supersedeas was granted. *RES Coal, LLC v. DEP*, EHB Docket No. 2026-005-BP, slip op. at 1 (April 24, 2026 Opinion and Order).

### **Standard of Review**

25 Pa. Code. § 1021.96a governs motions for expedited hearings. Pursuant to § 1021.96a, the Board may issue an order for an expedited hearing notwithstanding the time requirements contained in a previous order of the Board or the Board's Rules of Practice and Procedure. 25 Pa. Code. § 1021.96a(b). When deciding whether an expedited hearing should be held, the Board is guided by relevant judicial precedent. *Id.* at § 1021.96a(c). Additionally, the Board may consider the following nonexclusive list of factors:

- (1) Whether pollution or injury to the public health, safety or welfare exists or is threatened during the period ordinarily required to complete the proceedings.
- (2) Severity of prejudice to any party during the time period ordinarily required to complete the proceedings.
- (3) The status of discovery and the realistic need of the parties for extended discovery and for time to prepare for a hearing.

- (4) Whether the issuance of such an order would promote judicial economy or would otherwise be in the public interest.
- (5) The effect of expedited proceedings on the nonrequesting party.

25 Pa. Code § 1021.96a(c).

The Board decides motions for expedited hearings on a case-by-case basis. “In deciding whether or not to grant an expedited hearing, the Board will balance the interests of the parties while considering the practical benefits and difficulties of expedited proceedings.” *Perano v. DEP*, 2010 EHB 91, 94 (citations omitted). “While the Board is generally very receptive to requests to expedite proceedings when there is agreement among all the parties, when such requests are opposed by one or more parties, as is the case here, we must carefully evaluate the competing interests and respective burdens involved in expedition.” *Clean Air Council v. DEP*, 2017 EHB 132, 137. “[T]he burden is upon the party requesting such proceedings to show that expedition is appropriate when the request is opposed by the other party.” *Perano*, 2010 EHB at 96.

### **Discussion**

In the instant matter, RES argues it is entitled to an expedited hearing on the merits because an ordinary schedule would require the Board and the parties to litigate substantially the same case twice - first in a supersedeas proceeding and then again later on the merits - while RES continues to incur ongoing expenses associated with the cost of interim treatment of the clay mine discharges. (RES Brief in Supp. of Motion for Expedited Hearing, at pg. 1). RES further contends that “[e]xpedition would mitigate prejudice, promote judicial economy, and can be structured in a way that preserves full fairness to the Department.” (*Id.*). At the same time, RES acknowledges that the “Board need not choose between an impossible sprint and ordinary delay.” (*Id.* at 7). In response, the Department argues that granting an expedited hearing would prejudice its ability to complete discovery, which remains ongoing, and to potentially file a dispositive motion. (DEP

Resp. to Motion for Expedited Hearing, at pg. 2). The Department further asserts that because no supersedeas hearing will occur, the issues will not be relitigated. (*Id.* at pg. 7).

Upon consideration of the factors listed in 25 Pa. Code § 1021.96a(c) as well as the unique facts and circumstances of this case, we find against granting an expedited hearing. As the Board has already determined that a supersedeas hearing is not warranted in this matter, a coordinated hearing addressing both the supersedeas and the merits is no longer appropriate. Thus, RES's concerns regarding duplicative litigation and/or waste in judicial economy are moot.

Additionally, there is no agreement among the parties on an expedited prehearing timeline or a hearing date. Although the Board is generally receptive to expedited hearing requests, we will ordinarily be disinclined to grant the request when there is no agreement among the parties. *Clean Air Council*, 2017 EHB at 137-38 (citing *Pa. Trout v. DEP*, 2002 EHB 968, 970). Here, the Department represents that it is in the process of conducting written discovery, which then affords RES a period to respond, followed by any necessary follow-up discovery. The Department further maintains that it wishes to retain the opportunity to file a dispositive motion based upon the results of that discovery. (DEP Resp. to Motion for Expedited Hearing, at pg. 5-6).

Given these practical considerations, the earliest feasible date for a merits hearing would be fall 2026. Even if the Department were to complete all its discovery by the end of May 2026, additional time would still be required for the briefing of dispositive motions as well as the Board's consideration and disposition of those motions. Accordingly, a hearing would not be realistic until September 2026, a timeframe during which RES's counsel is unavailable.

While we recognize RES's desire to bring this matter to a prompt resolution, we cannot ignore the prejudice that would occur to the Department from curtailing discovery and the dispositive motion period. Although we deny RES's request for an expedited hearing, this does

not foreclose the possibility of the parties reaching a mutually agreeable expedited hearing schedule at a later time. For example, the parties may agree to forego the filing of dispositive motions and request a merits hearing in late summer. The parties are encouraged to continue discussions regarding adjustments to the current case management deadlines and to keep the Board updated. However, at this juncture, there does not appear to be a realistic and non-prejudicial avenue to schedule an expedited merits hearing absent an agreement among the parties.

Accordingly, the deadlines established in Pre-Hearing Order No. 1 shall remain in effect, and we issue the following order.



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**ORDER**

AND NOW, this 29<sup>th</sup> day of April, 2026, it is ordered that the Appellant’s Motion for Expedited Hearing is **denied**.

**ENVIRONMENTAL HEARING BOARD**

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

**DATED: April 29, 2026**

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

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