



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NATHAN EACHUS :
: :
: : EHB Docket No. 2025-132-L
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COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and AMAZON DATA :
SERVICES, INC., Permittee : Issued: January 26, 2026
: :

OPINION AND ORDER ON
MOTION TO DISMISS PETITION FOR SUPERSEDEAS WITHOUT HEARING

By Bernard A. Labuskes, Jr., Board Member and Judge

Synopsis

The Board grants a joint motion filed by a permittee and the Department to dismiss an appellant's petition for supersedeas without a hearing where the appellant has not filed a petition meeting the requirements of our Rules. The petition fails to plead facts with particularity, is not supported by affidavits, fails to cite applicable legal authority, and does not state grounds sufficient for granting a supersedeas.

O P I N I O N

Nathan Eachus, proceeding *pro se*, has appealed the issuance of Storage Tank Site Specific Installation Permit No. 25-40-017, issued by the Department of Environmental Protection (the "Department") to Amazon Data Services, Inc. ("Amazon"). The permit authorizes the installation of 204 aboveground storage tanks to store diesel fuel at a site in Salem Township, Luzerne County. The permit was issued on October 17, 2025. (Joint Motion Ex. A.) Notice of the permit's issuance was published in the *Pennsylvania Bulletin* on November 1, 2025. 55 Pa.B. 7678 (Nov. 1, 2025). Mr. Eachus filed his appeal on December 1, 2025.

On December 21, 2025, Mr. Eachus filed an amendment to his notice of appeal, which also included a petition for supersedeas and various other filings, including a “Motion for Expedited Hearing and Administrative Record Production,” a “Sunshine Act Compliance Outline,” a “Consolidated Notice of Intervening Federal Non-Action,” and a “PA EHB Theory of Illegality.”¹ We have interpreted the “PA EHB Theory of Illegality” as the legal support for his petition for supersedeas. We issued an Order on December 22 scheduling a conference call with the parties for the next day to discuss how to move forward with the petition for supersedeas. Following the call, we issued an Order scheduling a supersedeas hearing on the petition for January 13 and 14, 2026.

In Mr. Eachus’s petition for supersedeas, he states that he seeks “an immediate supersedeas staying the effectiveness and operation of DEP approvals and permits issued to Amazon Data Services, Inc. at the Susquehanna Nuclear Campus in Salem Township, Luzerne County, Pennsylvania, pending resolution of this appeal.” (Petition at 1.) According to Mr. Eachus, Amazon’s storage tanks are in an area that is near the Susquehanna Steam Electric Station nuclear power plant. He explains that his petition arises from an October 28, 2025 explosion at the Caithness-Moxie/Talen Energy campus, which he says is within the ten-mile United States Nuclear Regulatory Commission (NRC) Emergency Planning Zone (EPZ) of the Susquehanna Steam Electric Station, along with “DEP’s admitted failure to evaluate explosion risk, cumulative hazard, or nuclear emergency-planning impacts” before issuing permits authorizing hydrogen storage, the storage tank permits under appeal here, “continuous methane-fueled turbine generation powering data centers,” and an underground liquified natural gas pipeline. (*Id.*)

Amazon and the Department have filed a joint motion to dismiss the petition for supersedeas without a hearing. In the motion, Amazon and the Department argue that Mr.

¹ None of the filings have any page numbers but we refer to each as they would have been individually paginated.

Eachus's petition rests on bare, speculative allegations that do not meet the minimum requirements for a supersedeas petition. They contend that the petition does not satisfy any of the requirements set forth in the Board's Rules on petitions for supersedeas and they seek dismissal of the petition pursuant to 25 Pa. Code § 1021.62(c). Mr. Eachus filed his response in opposition to the motion on January 8.² He asserts that the motion "is procedurally premature, legally deficient, and, if granted, would violate fundamental principles of administrative due process, undermine public safety, and eviscerate the very purpose of supersedeas review." (Resp. at 1.)³ On January 9, we issued an Order postponing the scheduled supersedeas hearing to provide the Board the opportunity to consider the joint motion to dismiss the petition. For the reasons explained below, we grant the motion and deny Mr. Eachus's petition for supersedeas.

Supersedeas Standard

The Environmental Hearing Board Act of 1988, 35 P.S. §§ 7511 – 7514, provides adversely affected parties with the right to file an appeal from a Department action. No appeal acts as an automatic supersedeas, but the Board may grant a supersedeas upon cause shown. 35 P.S. § 7514(d)(1). The Board's Rules define a supersedeas as "[a] suspension of the effect of an action of the Department pending proceedings before the Board." 25 Pa. Code § 1021.2. Among the factors to be considered are (1) irreparable harm to the petitioner, (2) the likelihood of the petitioner prevailing on the merits, and (3) the likelihood of injury to the public or other parties. 35 P.S. §

² On January 2, 2026, Amazon filed a letter asking that any response to the motion to dismiss the petition be filed by January 8. The letter stated that the Department and Mr. Eachus concurred in the request. On January 5, the Board issued an Order setting the response date of January 8. In his response to the motion and in a filing titled "Motion to Correct the Record," Mr. Eachus seems to claim that the Board stated in this Order that Mr. Eachus concurred in the motion to dismiss the petition. The Order does not say that. It simply states that he concurred with the request to have the response date set at January 8. Mr. Eachus has not indicated that he did not actually concur in the request to set the response date for January 8.

³ Mr. Eachus did not include any page numbers in his response to the motion, but we refer to the eight-page document as it would have been paginated.

7514(d); 25 Pa. Code § 1021.63(a). “The central purpose of a supersedeas is to prevent an appellant from suffering irreparable harm while the Board considers the appeal.” *Friends of High Point Lake v. DEP*, EHB Docket No. 2025-102-W, slip op. at 7 (Opinion and Order issued Oct. 30, 2025) (quoting *Center for Coalfield Justice v. DEP*, 2017 EHB 38, 55).

Our Rules spell out the detailed requirements that need to be contained in a petition for supersedeas, which include pleading facts with particularity, supported by affidavits or an explanation why affidavits have not been included, and citations to specific legal authority to support granting a supersedeas:

(a) A petition for supersedeas shall plead facts with particularity and shall be supported by one of the following:

(1) Affidavits, prepared as specified in Pa.R.C.P. 76 and 1035.4 (relating to definitions; and motion for summary judgment), setting forth facts upon which issuance of the supersedeas may depend.

(2) An explanation of why affidavits have not accompanied the petition if no supporting affidavits are submitted with the petition for supersedeas.

(b) A petition for supersedeas shall state with particularity the citations of legal authority the petitioner believes form the basis for the grant of supersedeas.

25 Pa. Code § 1021.62(a)-(b). These requirements are important because, as we have said many times before, “[a] supersedeas is an extraordinary remedy that places a heavy burden on the petitioners to make a clear showing of need.” *Liberty Twp. v. DEP*, 2023 EHB 158, 166 (quoting *Center for Coalfield Justice v. DEP*, 2018 EHB 758, 764 (citing *Emerald Contura, LLC v. DEP*, 2017 EHB 670, 672-73)). See also *Nicholas Meat, LLC v. DEP*, 2021 EHB 96, 100 (quoting *Erie Coke Corp. v. DEP*, 2019 EHB 481, 484) (supersedeas will not issue “absent a **clear demonstration of need**” (emphasis in original)); *Pa. Fish and Boat Comm’n v. DEP*, 2004 EHB 473, 476 (“we must keep in mind that superseding a Department action is an extraordinary remedy that may be granted only where the evidence indicates it is clearly warranted.”).

As we explained in *Dougherty v. DEP*, 2014 EHB 9, the extraordinary nature of a supersedeas demands that a petition for supersedeas essentially make out a *prima facie* case for granting a supersedeas:

Given the fact that a supersedeas is an extraordinary measure that is not to be taken lightly, it is critical that a petition for supersedeas plead facts and law with particularity and be supported by affidavits setting forth facts upon which issuance of the supersedeas may depend. 25 Pa. Code § 1021.62(a). The pleadings and affidavits must be such that, if the petitioner were able to prove the allegations set forth in its pleadings and affidavits at a hearing, and the Department and/or permittee did not put on a case, it would be apparent from the filings that the Board would be able, if it so chose, to issue a supersedeas. In other words, the petitioner's papers, on their face, must set forth what is essentially a *prima facie* case for the issuance of a supersedeas. *See Global Eco-Logical Servs. v. DEP*, 2000 EHB 829, 832; *A&M Composting v. DEP*, 1997 EHB 1093, 1098.

Id. at 12-13. Where a petition along with its supporting documents does not provide a basis for granting a supersedeas, it will be denied. *Id.* at 13 (citing *Mellinger v. DEP*, 2013 EHB 322).

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. 25 Pa. Code § 1021.62(c). Mr. Eachus's petition is deficient for each of these reasons and must be denied without a hearing.

Lack of Particularity in the Facts Pleaded and Failure to Provide Affidavits

Mr. Eachus has filed several exhibits in support of his petition for supersedeas, but none of them contain any verifiable facts that support the claims made in his petition or set forth a *prima facie* case for a supersedeas. The documents Mr. Eachus has submitted along with his petition mostly reflect the same concerns voiced before different forums. Identified in and attached to the petition for supersedeas are three exhibits. Exhibit A is an October 17, 2025 comment response

document prepared by the Department to address public comments from Mr. Eachus and one other individual on the storage tank permit. Mr. Eachus's comments address, among other things, air quality impacts, environmental justice, other permits required for data centers, and the Department's public engagement. (Petition Ex. A at 9-13.) Exhibit B is an October 17, 2025 letter from the Department enclosing the comment response document and stating that the permit was issued on October 17, 2025. Exhibit C is an October 28, 2025 letter from the Department to Mr. Eachus thanking Mr. Eachus for his comments, stating that the comment period had closed and the permit had been issued, and notifying Mr. Eachus that he could appeal the permit to the Board within 30 days of the forthcoming publication of notice in the *Pennsylvania Bulletin*.

Mr. Eachus then filed two additional exhibits on December 23 that are not discussed or referenced in his petition for supersedeas. Exhibit D is a July 15, 2024 email from Mr. Eachus to himself that seems to document a complaint made by Mr. Eachus to the Inspector General's Office concerning alleged violations of the Sunshine Act regarding the public notice and public hearings on Title V air quality permits for facilities in West Brunswick Township, Schuylkill County, and Hazle Township, Luzerne County that do not appear to be associated with Amazon or the storage tanks at issue in this appeal. Exhibit E is titled "CAC Testimony (11/12/2025)" and appears to be public comments Mr. Eachus gave to the Citizens Advisory Council that address the greater site where Amazon's storage tanks are located. In these comments, Mr. Eachus expresses concern of risks of explosion from the tanks and mentions a nearby hydrogen tank. He also addresses artificial intelligence (AI) data centers and water consumption, another Title V air quality permit, and criticizes the Department's fast-track review of certain permits.

Mr. Eachus later filed three more exhibits to the supersedeas petition. Exhibit F appears to be a request submitted to Salem Township under the Right to Know Law, 65 P.S. §§ 67.101 –

67.3104. It seeks records related to Mr. Eachus's apparent removal from a township meeting by township police and the alleged October 28, 2025 hydrogen tank explosion. More specifically, it requests the following:

1. All police body camera video footage, incident reports, dispatch logs, and related records involving my removal from the Salem Township public meeting held on October 28, 2025, beginning at approximately 5:00 PM, including footage of my interaction with police officers in the township building lobby following my removal.
2. The official meeting minutes, draft minutes, audio recordings, video recordings, and any other documentation of the October 28, 2025 Salem Township public meeting, including records reflecting public comment, agenda items, or actions taken by the Township Supervisors.
3. All incident, emergency response, fire, police, EMS, and related video records concerning the hydrogen explosion reported at approximately 7:13 PM on October 28, 2025, including incident reports, call logs, after-action reports, and communications with county or state agencies.

(Petition Ex. F.) The request goes on to explain:

These records are requested because my removal from the October 28 meeting is relevant to how public participation was handled. I was present at the 5:00 PM meeting to inform Salem Township Supervisors about DEP's response to my public comments on the Amazon SSIP Permit regarding fire and nuclear explosion risks, yet I was forced to leave the meeting and spoke to police in the lobby for a couple minutes before exiting the facility.

(Id.)

Exhibit G consists of four documents. The first document is a complaint about the Climate Change Advisory Committee from Mr. Eachus addressed to the Citizens Advisory Committee [sic] dated October 14, 2025. In the complaint he says that he had testified at recent Climate Change Advisory Committee meetings but that the Committee had paraphrased his testimony down to one to three sentences and he contends that the Committee and its executive staff are violating Pennsylvania law by altering and distorting his testimony. The second document is an email dated October 20, 2025 in which Mr. Eachus submits testimony to the Climate Change Advisory Committee ahead of its October 21 meeting. The third document is Mr. Eachus's written testimony

for the October 21 Climate Change Advisory Committee meeting. The testimony addresses climate change concerns associated with an Amazon data center and the industrial activity occurring near Amazon's storage tanks, including the nuclear power plant and a natural gas plant. The fourth document is the meeting minutes from the October 21 meeting. The minutes summarize Mr. Eachus's testimony as follows: "Mr. Nathan Eachus of Luzerne County provided public comment regarding public health and safety impacts of the proposed Amazon data center and diesel storage in Salem Township." (Petition Ex. G.) The minutes also summarize the comments of another individual on a different topic.

Exhibit H is a December 12, 2025 email from Mr. Eachus to the Nuclear Regulatory Commission. The email submits an "allegation" to the NRC. In the email, Mr. Eachus says that "the Commonwealth of Pennsylvania, specifically the Department of Environmental Protection (DEP), PEMA, and the Department of Labor & Industry (L&I), have approved multiple explosive-risk energy development projects inside the NRC-regulated EPZ with *no explosion analysis, no cumulative hazard assessment, and no public disclosure*, despite mandatory public safety notification & requirements." (Petition Ex. H (emphasis in original).) The email asks NRC to (1) investigate the October 28 hydrogen tank explosion; (2) determine whether explosive and chemical risks adjacent to the Susquehanna Steam Electric Station nuclear plant constitute an unreviewed safety question; (3) "review state permitting failures that bypassed the 27 EPZ communities' safety requirements"; (4) "require full disclosure of all EPZ-related hazard assessments"; and (5) determine whether the memorandum of understanding between the NRC and the Pennsylvania Emergency Management Agency was violated. (Petition Ex. H.)⁴

⁴ Mr. Eachus complains that the Board initially prevented him from electronically filing Exhibits F, G, and H, and told him that the parties should bring any hearing exhibits to the supersedeas hearing. It was not initially clear that he was filing documents in support of or to supplement his previously filed petition for supersedeas. The docket description of the filings consisted of several sentences offering argument about

Based on Mr. Eachus's petition for supersedeas and exhibits, he appears to take issue with a wide variety of things, including hydrogen tanks, nuclear power, Title V permits, AI data centers, climate change, and the Department's review of various types of permits. While some of these issues might have some relevance to this appeal, our review is necessarily circumscribed by the action under appeal. *New Hope Crushed Stone & Lime Co. v. DEP*, 2016 EHB 666, 684 (citing *Love v. DEP*, 2010 EHB 523, 530; *Winegardner v. DEP*, 2002 EHB 790, 793). We must stay focused on the permit that is under appeal authorizing the installation of storage tanks. From what we can parse out, Mr. Eachus's concerns related to the storage tanks under appeal are over an alleged risk of explosion or fires that could potentially impact a nearby nuclear power plant and endanger local residents; a failure of the Department to cumulatively assess the storage tank permit in relation to the other industrial activity nearby; and a perceived lack of meaningful public participation. However, most if not all of Mr. Eachus's contentions are vague, general, and not substantiated by facts.

Mr. Eachus complains about safety risks, but he does not clearly articulate let alone quantify what the risks are. He complains about an alleged October 28 explosion of a hydrogen tank, but we have no idea where that tank is, what operation it is associated with, or anything about the circumstances of the explosion. Mr. Eachus has not provided any facts related to it. He does not explain how that explosion should factor into an analysis of whether or not the storage tanks

the content and purpose of the document instead of supplying a clear description as required by our Rules, 25 Pa. Code § 1021.32(c)(5). The exhibits were rejected on December 30 and 31 and later docketed on January 5. We do not believe that the filing delay has impacted Mr. Eachus's ability to make out his case or respond to the motion to dismiss the petition. He suggests that, if he had filed these exhibits before the motion to dismiss the petition was filed, the motion never would have been made. Amazon made it clear during the December 23, 2025 conference call that it intended to file a motion to dismiss the petition without a hearing. It is unlikely these exhibits would have changed Amazon's mind. To the extent Mr. Eachus believes he has been prejudiced, we note that the exhibits were docketed and relied on by Mr. Eachus in his response to the motion to dismiss the petition. We have reviewed and considered the exhibits in rendering our decision.

here should have been permitted. Mr. Eachus does not point out any component of Amazon's tanks that he believes would fail and lead to an explosion or fire. He does not provide any analysis or discussion of the flammability or combustibility of the diesel fuel that is housed in the tanks. Nor does he indicate that he would be qualified to do so. *See Dougherty, supra*, 2014 EHB at 14 (no indication that appellant qualified to aver in supersedeas petition that operations were "highly hazardous" or would cause "serious risk of death"). His claims are based entirely on supposition. He appears to believe that, because of an alleged hydrogen explosion somewhere nearby that Amazon's diesel tanks could explode and then cause "cascading explosions," but he never explains how that would happen. Simply repeating that there is a risk of fire and explosion without explaining it is not enough. *Mellinger, supra* at 325-26 ("Appellant asserts that Big Spring Creek, which is designated as Exception[al] Value, is threatened, but Appellant does not specify how it is threatened in any manner. Simply stating that something is 'threatened' without explanation is not sufficient.").

Much of Mr. Eachus's argument relates to an Emergency Planning Zone (EPZ) encompassing a 10-mile radius within which Mr. Eachus says he lives. He tells us that an Emergency Planning Zone "is a federally mandated safety boundary established by the Nuclear Regulatory Commission and FEMA because this is the zone where immediate radiological exposure is most likely, protective action decisions must be executed rapidly, evacuation routes, sheltering, and iodine distribution are critical." (Resp. at 3.) He adds that "evacuation must occur within minutes, emergency routes must remain viable, and cumulative hazard is legally relevant." (*Id.*) In his response to the joint motion, Mr. Eachus argues that his petition "documents specific, verifiable hazards such as fire propagation, explosion potential, interference with evacuation routes, and compromised EPZ integrity...." (Resp. at 7.)

However, the petition does not, in fact, document any specific or verifiable hazard. Mr. Eachus merely states generally that these hazards exist, but he does not specify what they are, how they could happen, or how likely or unlikely the risks are. He does not support his claims with any objective documentation. Mr. Eachus never clearly explains what the threats and risks are of Amazon's storage tanks in the context of the Emergency Planning Zone, or produces any facts to substantiate those risks. He seems to believe the risks are self-evident, but that is not enough for a petition for supersedeas. He does not identify any permit term or condition, or part of the permit application that is incorporated into the permit, that is deficient in light of the Emergency Planning Zone. He does not identify the proximity of the nuclear power plant to Amazon's tanks or how any fire or explosion would impact that plant or impede any evacuation routes within the Emergency Planning Zone. If Mr. Eachus fears that a fire or explosion associated with the storage tanks will trigger a nuclear or radiological emergency, he has fallen far short of substantiating that with any credible facts for purposes of a supersedeas. *Mellinger, supra*, 2013 EHB at 328 (general assertions of irreparable harm without greater specificity are not sufficient).

We must emphasize that nowhere in Mr. Eachus's petition for supersedeas or in his response to the motion to dismiss the petition is there any specific critique of the permit or the permit application incorporated therein. This appeal will likely turn on the requirements of the Storage Tank and Spill Prevention Act, 35 P.S. §§ 6021.101 – 6021.2104, the applicable regulations, and technical evidence about the tanks and the requirements of the permit. In order to ultimately prevail in the appeal, Mr. Eachus will need to prove by a preponderance of the evidence that the Department's issuance of the storage tank permit to Amazon was unlawful in that the Department violated a statutory, regulatory, or adjudicatory law or acted contrary to its duties under the Pennsylvania Constitution, or that the Department's action was otherwise

unreasonable or not supported by the facts. *Dougherty*, 2014 EHB at 13. Even if we accept all of Mr. Eachus's comments from his exhibits by way of our *de novo* review, there is nothing in them that justifies his request for supersedeas. *See Dickinson Twp. v. DEP*, 2002 EHB 267, 268 (even accepting all of the petitioner's allegations as true, there is no need for an evidentiary hearing where there is little likelihood of success on the merits). The lack of specific facts to support Mr. Eachus's claims renders the petition deficient under 25 Pa. Code § 1021.62(c)(1) and it must be denied.

Compounding the deficiencies in the petition, Mr. Eachus has also failed to supply any affidavits in support of his petition or explain why affidavits were not included. Mr. Eachus includes a verification with his petition and accompanying filings, asserting that the filings are true and correct to the best of his knowledge, information, and belief, and citing 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities. However, he attaches no factual affidavits in support of his petition. Nor has he filed any with his subsequent exhibits. This alone is enough to warrant denial of the petition without a hearing under 25 Pa. Code § 1021.62(c)(3). *VanDuzer v. DEP*, 2018 EHB 696, 703; *Timber River Dev. Corp. v. DEP*, 2008 EHB 635, 636 (denying supersedeas petition because of the failure to include any factual assertions supported by proper affidavits or to supply any explanation of why affidavits were not included).

Although not affidavits, Mr. Eachus has indicated his intent to subpoena individuals to testify at a supersedeas hearing. However, much like the exhibits in support of his petition, the subpoenas Mr. Eachus has filed on the docket do not suggest that any of the individuals would offer any relevant facts on the validity of the storage tank permit or any risks from the storage tanks. Instead, the subpoenas focus on how public comments made after the permit was issued

were handled by various Department advisory bodies and Salem Township.⁵ They do not propose to offer any testimony that would provide the basis for a supersedeas.

Lack of Particularity in the Legal Authority Cited

In Mr. Eachus's petition and accompanying "PA EHB Theory of Illegality," other than citing one of our Rules on petitions for supersedeas, there is no legal authority cited. There is no cited provision of the Storage Tank Act or any of the storage tank regulations in Title 25, Chapter 245 of the Pennsylvania Code. There is no allegation that the Department or Amazon violated any provision of the Storage Tank Act or regulations. There are no cases cited in support of the requested relief in his petition or Theory of Illegality. He has not cited a single Environmental Hearing Board case in support of his petition or in opposition to the motion to dismiss the petition. By contrast, Amazon and the Department in their motion have cited a host of Environmental Hearing Board cases discussing supersedeas. Mr. Eachus does not address any of them in his response. He has not cited a single case that discusses a supersedeas at all. This provides another basis for denying the petition. 25 Pa. Code § 1021.62(c)(2); *VanDuzer*, 2018 EHB at 702.

⁵ On January 2, 2026, Mr. Eachus filed a Motion for Issuance of Subpoenas to Compel Testimony and Production of Documents, which identified as subjects of the subpoenas: the chair of the Department's Citizens Advisory Council, the chair of the Department's Climate Change Advisory Committee, the Department's "staff lead / program manager" for the Climate Change Advisory Committee, and the former chair of the Salem Township Board of Supervisors. On January 5, the Board issued an Order directing Mr. Eachus to the Board's Rule at 25 Pa. Code § 1021.103 addressing the appropriate procedures for subpoenas, and the Pennsylvania Rules of Civil Procedure identified therein, as well as to the subpoena forms located on the Board's website. Later that day, Mr. Eachus filed the filled-out subpoena forms for the four individuals previously identified in his motion. Among other things, the subpoenas seek testimony to establish the Citizens Advisory Council's procedures for conveying public comments to Department leadership, the Climate Change Advisory Committee's procedures for summarizing public comment and the exclusion of Mr. Eachus's testimony from "the official CCAC record," how Mr. Eachus's testimony before the Climate Change Advisory Committee was summarized to one sentence, and the actions by Salem Township officials to terminate Mr. Eachus's public comment. On January 13, Mr. Eachus then filed what he described as "Motion to Issue and Docket Subpoenas in Support of Supersedeas." The filing does not contain a motion. Instead, it contains two subpoena forms addressed to two Salem Township Supervisors seeking testimony to establish, among other things, "[t]he actions and decisions by Salem Township officials to terminate and prevent Appellant's public comment," and "[c]ommunications or directives issued to municipal police regarding removal of an EPZ resident raising nuclear-adjacent safety concerns."

There is more supposed legal authority cited in Mr. Eachus's response to the motion to dismiss the petition, mostly addressing Mr. Eachus's claims of prejudice in filing documents with the Board instead of any substantive issue in the appeal. However, those citations raise serious concerns because almost none of them exist or support the statements for which he cites the cases. For instance, Mr. Eachus cites *Chittister v. Department of Community and Economic Development*, 727 A.2d 236 (Pa. Cmwlth. 1999), stating that "the Commonwealth Court reversed the Civil Service Commission's dismissal of Chittister, holding that an agency may enforce procedural rules but cannot use technicalities to defeat substantive rights." (Resp. at 5.) However, 727 A.2d 236 is the Atlantic Reporter citation that leads to a page within a completely different case for an appeals court out of the state of Connecticut, *Kostrzewski v. Commissioner of Motor Vehicles*, 727 A.2d 233 (Conn. App. Ct. 1999), involving the suspension of a driver's license.

He cites the *Chittister* case name later with a different citation, *Chittister v. Department of Community and Economic Development*, 904 A.2d 24 (Pa. Cmwlth. 2006), in support of the proposition that "Pennsylvania courts and administrative law recognize that selective acceptance of filings, especially when only applied to a pro se party, supports denial of dismissal and warrants remedial action to ensure procedural fairness." (Resp. at 6.) However, once again, the citation does not lead to this case or any case remotely supporting the claimed proposition. Instead, the cite belongs to *Commonwealth v. Jones*, 904 A.2d 24 (Pa. Super. 2006), which is a case involving a criminal defendant tampering with evidence.

Mr. Eachus may have intended to refer to *Chittister v. State Civil Service Commission (DCED)*, 789 A.2d 814 (Pa. Cmwlth. 2002), which involved an employee challenging his employment termination over the use of approved sick leave. The Commonwealth Court found that the Department of Community and Economic Development did not have just cause

to terminate the employee for failing to return to work while he was on approved sick leave. However, the case does not discuss “procedural rules,” “procedural fairness,” “substantive rights,” “selective acceptance of filings,” or *pro se* parties.

Or Mr. Eachus may have intended to refer to a case from the United States Court of Appeals for the Third Circuit, *Chittister v. Department of Community & Economic Development*, 226 F.3d 223 (3rd Cir. 2000), which, apparently arising out of the same employment dispute, considered whether the federal Family and Medical Leave Act of 1993 abrogated the United States Constitution’s Eleventh Amendment immunity of states to be sued in federal court. Once again, the *Chittister* case from the Third Circuit does not support any of the statements for which Mr. Eachus cites the case, or otherwise address any issue relevant to this appeal.

Mr. Eachus cites *Stana v. Commonwealth*, 684 A.2d 1303 (Pa. Cmwlth. 1996 / Stana v. UCBR, 2002) [sic], in which he says that “the Commonwealth Court vacated and remanded the Unemployment Compensation Board of Review’s dismissal of Loretta Stana’s appeal because the Board failed to make critical credibility and factual findings regarding whether the claimant had been misled by the claims office.” (Resp. at 6.) However, 684 A.2d 1303 leads to a page within the case *Theberge v. Darbro, Inc.*, 684 A.2d 1298 (Me. 1996), from the Supreme Judicial Court in Maine involving piercing the corporate veil of a mortgage company.

As best we can tell, Mr. Eachus may have intended to cite *Stana v. Unemployment Compensation Board of Review*, 791 A.2d 1269 (Pa. Cmwlth. 2002), where the Commonwealth Court remanded a proceeding back to the Unemployment Compensation Board for that Board to make additional findings, including a credibility determination regarding whether the testimony of the claimant was sufficient to support *nunc pro tunc* relief for filing the claimant’s otherwise untimely appeal. In the paragraph where he cites *Stana*, Mr. Eachus asserts that “[a]dequate

findings are necessary for meaningful appellate review, and a showing of misrepresentation, fraud, or breakdown in the administrative process can justify a **nunc pro tunc appeal.**” (Resp. at 6 (emphasis in original).) We do not know how this relates to the motion to dismiss the petition for supersedeas. There is no *nunc pro tunc* issue before us. There has been no allegation in this appeal that Mr. Eachus’s appeal is untimely. To the extent Mr. Eachus asserts that the Commonwealth Court “emphasized that administrative agencies may not mechanically apply deadlines to defeat substantive rights” (*id.*), he does not identify any deadlines in this case that have affected any substantive rights.

Mr. Eachus also cites *Rehabilitation & Community Providers Association v. DHS*, No. 543 M.D. 2019 (Pa. Cmwlth. Oct. 24, 2024), for the notion that “[a]n agency violates due process when it restricts a party’s ability to develop the evidentiary record and then rules against that party for failing to meet its burden of proof.” (Resp. at 5.) He asserts that the “Commonwealth Court held that an agency may not curtail evidentiary development and subsequently penalize a party for an evidentiary deficiency of the agency’s own making.” (*Id.*) This case is an unpublished case of the Commonwealth Court, 2024 Pa. Commw. Unpub. LEXIS 573. However, the case does not discuss due process or “evidentiary development.” The Commonwealth Court did not make any holding about an agency penalizing a party “for an evidentiary deficiency of the agency’s own making.” Instead, the case addresses associational and individual standing in the context of a preliminary objection, finding that the petitioners lacked standing. Nothing in the case supports the arguments made by Mr. Eachus.

Under our Rules, a document signed and filed with the Board constitutes a certification that the document is filed in good faith.

The signature to a document described in subsection (a) constitutes a certification that the person signing, or otherwise presenting it to the Board, has read it, **that to**

the best of his knowledge or information and belief there is good ground to support it, and that it is submitted in good faith and not for any improper purpose such as to harass, cause unnecessary delay or needless increase in the cost of litigation. **There is good ground to support the document if the signer or presenter has a reasonable belief that existing law supports the document** or that there is a good faith argument for the extension, modification or reversal of existing law.

25 Pa. Code § 1021.31(b) (emphasis added). The Board is authorized to impose appropriate sanctions in accordance with 25 Pa. Code § 1021.161 for a bad faith violation of this requirement.

25 Pa. Code § 1021.31(c).

Filing a document replete with false case citations runs afoul of our Rule. While any party can be forgiven for having a typo in a case name or citation, the sheer number of inaccurate citations and baseless claims about what those cases stand for leads us to believe that this is not merely a product of typographical error. Rather, it reflects extreme carelessness or perhaps an effort to mislead the Board. We cannot be expected to search for cases and guess what a party might have been trying to cite or expend resources reading cases that have nothing to do with the issues before us. Clearly, at this point, Mr. Eachus's case citations cannot be relied upon to accurately support the statements for which he proffers them. Although we recognize that Mr. Eachus is proceeding in this matter *pro se*, "The right of self-representation is not a license...not to comply with relevant rules of procedure and substantive law." *Leisher v. DEP*, EHB Docket No. 2025-120-W, slip op. at 5 n.2 (Opinion and Order issued Dec. 31, 2025) (quoting *Goetz v. DEP*, 2002 EHB 976, 978).

We do not know why Mr. Eachus has not provided us with accurate case citations, but numerous courts in Pennsylvania have dealt with incorrect or fabricated case citations as the use of artificial intelligence has proliferated in legal filings. The courts have at times sanctioned offending parties. *See, e.g., Associated Builders & Contrs., Inc. v. Bucks Cnty. Cnty. Coll.*, No.

1172 C.D. 2025, 2025 Pa. Commw. LEXIS 195 at *4 n.2 (Pa. Cmwlth. Dec. 5, 2025) (denying application to file amended brief to correct artificial intelligence-generated case citations and factual representations, striking the initial brief, and refusing to consider the offending party's arguments); *Jakes v. Youngblood*, No. 2:24-cv-1608, 2025 U.S. Dist. LEXIS 160856 (W.D. Pa. June 26, 2025) (finding that counsel repeatedly submitted fabricated quotations and misrepresented case law to support his contentions; ordered a show cause hearing and later imposed a \$5,000 sanction and revoked counsel's pro hac vice status). We do not think sanctions are appropriate at this point, but Mr. Eachus is put on notice that the Board will not tolerate such abuses of the legal process going forward and may take appropriate action in response.

Failure to State Grounds Sufficient for Granting a Supersedeas

Largely because Mr. Eachus has failed to support his petition for supersedeas with facts or any applicable legal authority, he has similarly failed to establish grounds sufficient for granting a supersedeas in terms of irreparable harm, a likelihood of harm to the public, or a likelihood of success on the merits. In his petition for supersedeas, Mr. Eachus's entire assertion of irreparable harm consists of the following:

The absence of any Nuclear Regulatory Commission Unreviewed Safety Question determination regarding cumulative explosive hazards inside a nuclear Emergency Planning Zone constitutes irreparable harm per se. Pennsylvania courts consistently hold that threats to public safety and emergency preparedness cannot be remedied after the fact. Continued operation or expansion of explosive fuel infrastructure adjacent to an operating nuclear reactor, without cumulative hazard review, irreversibly undermines EPZ integrity, evacuation planning, and nuclear emergency readiness.

The record establishes non-speculative, ongoing risk of:

- Secondary or cascading explosions;
- Fire propagation toward nuclear safety systems;
- Compromise of EPZ evacuation routes;
- Undermining of NRC-mandated emergency planning.

Explosive risk inside a nuclear EPZ constitutes irreparable harm as a matter of law.

(Petition at 1.) However, as discussed above, there is nothing in the petition or the exhibits accompanying the petition that substantiates “secondary or cascading explosions,” “fire propagation toward nuclear safety systems,” the “compromise of EPZ evacuation routes,” or the “undermining of NRC-mandated emergency planning.”

There is also nothing supporting the claim that the “absence of any Nuclear Regulatory Commission Unreviewed Safety Question determination...constitutes irreparable harm per se.” Mr. Eachus asserts that “[t]he factual record establishes conditions that meet the threshold of an Unreviewed Safety Question, including the introduction of new hazards, increased accident consequences, and accident types not previously evaluated.” (Theory of Illegality at 3.) But there is no foundation for these claims or any citation to any law or regulation about an Unreviewed Safety Question or any explanation of how this relates to the storage tank permit.

In terms of likelihood of success on the merits, Mr. Eachus’s entire assertion in his petition is as follows:

DEP admits it conducted no explosion risk analysis, no cumulative hazard assessment, and no EPZ integration review, instead deflecting responsibility to other agencies that produced no record. Such decision-making violates settled Pennsylvania administrative law prohibiting arbitrary, capricious, or incomplete action where public safety is implicated, rendering the permits unlawful and subject to immediate supersedeas.

(Petition at 2.) However, Mr. Eachus does not point to any provision of the Storage Tank Act or regulations requiring the Department to conduct these analyses. He does not explain what an “explosion risk analysis,” “cumulative hazard assessment,” or “EPZ integration review” are and he has not shown that these analyses, if they had been performed, would have made a material difference in the permit. He also says that the Department should have coordinated with other agencies for emergency planning and disaster response but does not say how that coordination should have led to any changes in the permit.

Mr. Eachus also raises some issues in his papers that are beyond the scope of this proceeding or do not justify superseding Amazon's permit. One example is Mr. Eachus's complaints with respect to the Sunshine Act, 65 Pa.C.S. §§ 701 – 716. In the package of documents filed along with the petition for supersedeas, Mr. Eachus has filed a "Sunshine Act Complaint Outline." He says that "Respondents," who he identifies as the Department of Environmental Protection, the Pennsylvania Emergency Management Agency, and the Department of Labor and Industry "conducted no public meeting, no public deliberation, and no public disclosure addressing the nuclear safety implications of authorizing and expanding explosive fuel infrastructure within the EPZ." (Sunshine Act Complaint at 1.) Under the Relief Sought section of the Sunshine Act Complaint Mr. Eachus asks for:

- An order declaring all permitting actions taken without public deliberation of unresolved nuclear safety implications void pursuant to 65 Pa.C.S. § 713;
- A declaration that such permitting actions are void;
- Injunction against continued operation;
- Mandatory disclosure of the following:
 - Emergency deliberations;
 - Meeting minutes;
 - Inter-agency memoranda of understanding.

(Sunshine Act Complaint at 2.)

Our jurisdiction is limited to final Department actions. 35 P.S. § 7514; *Jake v. DEP*, 2014 EHB 38, 59. We have no jurisdiction over alleged violations of the Sunshine Act, let alone the authority to declare all permitting actions void pursuant to a provision of the Sunshine Act. Under 65 Pa.C.S. § 715, jurisdiction over Sunshine Act matters rests with the Commonwealth Court or the Courts of Common Pleas.⁶ We held recently in *Dengel v. DEP*, 2024 EHB 605, that, based

⁶ 65 Pa.C.S. § 715 provides:

upon a review of the case law and the language of the Sunshine Act, “it is clear that the Board is without jurisdiction to hear claims arising from the Sunshine Act.” *Id.* at 611. *See also Dep’t of Envtl. Res. v. Steward*, 357 A.2d 255, 257 (Pa. Cmwlth. 1976) (finding that an earlier version of the Sunshine Law was unequivocal that the Board lacked jurisdiction); *O’Hare v. County of Northampton*, 782 A.2d 7, 14 (Pa. Cmwlth. 2001) (citing *Steward* for the proposition that the Board lacks jurisdiction to resolve alleged violations of the Sunshine Act).

Mr. Eachus also spends a significant amount of time discussing perceived errors when providing public comments on the permit after it was issued. Mr. Eachus construes some of these as due process violations. He refers to the testimony he provided to the Department’s Climate Change Advisory Committee on October 21, 2025 addressing climate change concerns and the industrial activity near Amazon’s storage tanks, (Petition Ex. G), and complains that the minutes taken at that meeting summarized his testimony into one sentence instead of reprinting his full one and a half pages of testimony. (Resp. at 1-2.) He says “[t]his was a record-level suppression of nuclear, fire/explosion, and EPZ safety content.” (Resp. at 4.) It is unclear what authority, if any, the Climate Change Advisory Committee has over Department permitting decisions. Mr. Eachus never explains it. He also does not explain how the inclusion of his full testimony in meeting minutes of an advisory committee on climate change would have made any difference in a permit that had already been issued. To the extent he contends that the permit should be vacated or suspended because meeting minutes from a climate change committee did not reprint his testimony

§ 715. Jurisdiction and venue of judicial proceedings.

The Commonwealth Court shall have original jurisdiction of actions involving State agencies and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this chapter by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

in full or document it with sufficient detail, this is not the sort of argument that supports the issuance of a supersedeas.

Even further removed, Mr. Eachus notes that he appeared at a meeting in Salem Township on October 28, 2025 to discuss fire and explosion hazards associated with Amazon's fuel storage and "nuclear-adjacent infrastructure," but was removed from the meeting by township supervisors and township police. (Resp. at 2.) Mr. Eachus asserts that his removal from the meeting "unlawfully curtailed public participation and suppressed discussion of safety risks." (*Id.*) Mr. Eachus does not explain what authority Salem Township has over a Department permit, or how a Right to Know Law request submitted to Salem Township seeking police bodycam footage from when Mr. Eachus was removed from a meeting is relevant to this proceeding or helps us decide whether or not to suspend the storage tank permit while this appeal proceeds.

We do not see any due process violations with respect to the public comment and permitting process. It does not appear that Mr. Eachus was deprived of the opportunity to provide public comment to the Department on the permit. One of Mr. Eachus's exhibits is the Department's comment response document that responds to comments Mr. Eachus made regarding the permit. (Petition Ex. A. at 9-13.) He was personally notified by the Department of the permit issuance and provided a copy of the comment response document. (Petition Ex. B.) He was personally notified by the Department of when notice of the permit would be published in the *Pennsylvania Bulletin*, how to appeal the permit to the Board, and the 30-day timeframe in which to file an appeal. (Petition Ex. C.)

Furthermore, "it is well-established that 'a party's right to due process is met by the opportunity to appeal a Department decision to the Board.'" *Scott v. DEP*, 2024 EHB 318, 333 (quoting *U.S. Trinity Services, LLC d/b/a Trinity Energy Services v. DEP*, 2023 EHB 128, 135

(citing *Kiskadden v. DEP*, 2015 EHB 377, 427-28; *Brockway Borough Municipal Authority v. DEP*, 2015 EHB 221, 247; *Kiskadden v. DEP*, 2014 EHB 642, 643-44)). However, the due process afforded by an appeal to the Board does not guarantee that there will be a hearing, or in this case a supersedeas hearing.

The Appellants argue that they have a constitutional right to be heard. However, a party has no constitutional right to a hearing before the Environmental Hearing Board; rather, as explained by our Commonwealth Court, a party's right to due process is protected by virtue of his or her right to *appeal* an adverse determination to the Board. *Fiore v. Department of Environmental Resources*, 655 A.2d 1081, 1086 (Pa. Cmwlth. 1995) (citing *Morcoal Co. v. Department of Environmental Resources*, 459 A.2d 1303 (Pa. Cmwlth. 1983), and *Commonwealth v. Derry Township*, 314 A.2d 868 (Pa. Cmwlth. 1973), *modified in part*, 351 A.2d 606 (Pa. 1976), *overruled in part on other grounds*, *Chalkey v. Roush*, 805 A.491 (Pa. 2002)). If the appeal does not successfully survive a dispositive motion prior to reaching a hearing on the merits, there has been no violation of the appellant's right to due process. *Id.*; *Fiore v. DEP*, 1995 EHB 1298, 1304-06.

Glahn v. DEP, 2021 EHB 347, 352 (quoting *United Envtl. Grp. v. DEP*, 2019 EHB 283, 285-86).

Accordingly, we issue the Order that follows.⁷

⁷ On January 14, Mr. Eachus filed a Motion to Compel Prompt Supersedeas Action or Grant Interim Relief. The motion criticizes the Board for the perceived delay in ruling on the petition for supersedeas, asserts that the Board has no authority or discretion to deviate from the requirement in 25 Pa. Code § 1021.61(c) stating that a hearing on a supersedeas, if necessary, shall be held expeditiously and within two weeks if feasible. He also asserts that the Board has no authority or discretion to postpone or cancel a supersedeas hearing. The motion asks that the Board immediately reschedule the supersedeas hearing, grant a temporary supersedeas pursuant to 25 Pa. Code § 1021.64, or decide the petition for supersedeas on the existing record. In light of the foregoing Opinion and Order, this motion is moot.



E-FILED
01/26/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NATHAN EACHUS :
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: EHB Docket No. 2025-132-L
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COMMONWEALTH OF PENNSYLVANIA, :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION and AMAZON DATA :
SERVICES, INC., Permittee :
:

O R D E R

AND NOW, this 26th day of January, 2026, it is hereby ordered that the Permittee and the Department's joint motion to dismiss the Appellant's petition for supersedeas without a hearing is **granted** and the Appellant's petition for supersedeas is **denied**. The supersedeas hearing previously scheduled and later postponed is **cancelled**. The Appellant's motion seeking to compel prompt action on his petition for supersedeas is moot.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.

BERNARD A. LABUSKES, JR.
Board Member and Judge

DATED: January 26, 2026

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

For the Commonwealth of PA, DEP:
Michael T. Ferrence, Esquire
(*via electronic filing system*)



For Appellant, *Pro Se*:

Nathan Eachus
(*via electronic filing system*)

For Permittee:

Martin R. Siegel, Esquire
Alice Solomon, Esquire
Andrew C. Silton, Esquire
Timothy M. Sullivan, Esquire
(*via electronic filing system*)