



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

<b>REP. TARAH PROBST</b>	:	
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<b>v.</b>	:	<b>EHB Docket No. 2025-114-L</b>
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<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
<b>DEPARTMENT OF ENVIRONMENTAL</b>	:	
<b>PROTECTION and FIRST PENNSYLVANIA</b>	:	<b>Issued: April 29, 2026</b>
<b>RESOURCE, LLC, Permittee</b>	:	

**OPINION AND ORDER ON  
PETITION FOR RECONSIDERATION**

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

**Synopsis**

The Board denies a petition for reconsideration of an Opinion and Order denying intervention where the petitioners have not met the standard for reconsideration.

**OPINION**

Pennsylvania State Representative Tarah Probst (“Rep. Probst”), proceeding *pro se*, has appealed the issuance of Water Obstruction and Encroachment Permit No. MB990264-0001 by the Department of Environmental Protection (the “Department”) to First Pennsylvania Resource, LLC (“First Pennsylvania”) for the Sunny Brook Mitigation Bank located in Damascus Township, Wayne County. Jessica Delfino, Lisa Wayland, and Joseph Tortorelli (the “Petitioners”) filed a petition to intervene in Rep. Probst’s appeal, which we denied. The Petitioners have now filed a “Petition for Reconsideration of the Order Dismissing Petitioners Jessica Delfino, Lisa Wayland, and Joseph Tortorelli.” We presume the Petitioners are seeking reconsideration of our April 7, 2026 Opinion and Order denying the Petitioners’ petition to intervene. We did not “dismiss” the Petitioners from the appeal because they were never parties in the first place. We denied the

petition to intervene in this appeal due to the Petitioners' material and repeated failure to comply with our rules, and because they did not demonstrate that they had a direct interest in the appeal. We found the connection between the Petitioners' stated interests in an I-80 construction project and any harm caused by the mitigation bank permit that is the subject of *this* appeal was simply too remote and speculative to establish the standing necessary for intervention. We also pointed out that there is no term, condition, or even mention of the I-80 project in the mitigation bank permit that would provide a basis for us granting the relief sought by the Petitioners.

With respect to reconsideration, it is not entirely clear whether our order denying a petition to intervene was a final order or an interlocutory order. For our current purposes, we will give the Petitioners the benefit of the doubt and treat the Order as a final order, which has a less stringent standard for reconsideration than an interlocutory order.<sup>1</sup> The Board's rule setting forth the criteria for reconsideration of final orders provides that reconsideration "is within the discretion of the Board and will be granted only for compelling and persuasive reasons," which may include:

- (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). Mere disagreement with the Board's decision is not an appropriate basis for reconsideration. *New Hope Crushed Stone & Lime Co. v. DEP*, 2016 EHB 741, 745.

Unfortunately, there is no reference to the applicable criteria justifying reconsideration in the Petitioners' petition. For example, they have not asserted that our Order "rests on a legal

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<sup>1</sup> Reconsideration of an interlocutory order requires a petitioner to meet the requirements for reconsideration of a final order but also demonstrate extraordinary circumstances. *See* 25 Pa. Code § 1021.151; *DEP v. Danfelt*, 2011 EHB 519, 520.

ground or a factual finding which has not been proposed by any party.” 25 Pa. Code § 1021.152(a)(1). There is no demonstration of any crucial facts in the petition that are inconsistent with our earlier ruling, that would justify reversal of our decision, and that could not have been presented earlier. 25 Pa. Code § 1021.152(a)(2). *See generally Consol Pa. Coal Co. v. DEP*, 2015 EHB 117, 120; *DEP v. Pecora*, 2007 EHB 156, 159. The Petitioners attach seven new exhibits to their petition never before presented to the Board, and then make far-ranging factual allegations that they believe are supported by the exhibits. The Petitioners make no attempt to explain why the exhibits could not have been presented earlier with the exercise of due diligence. 25 Pa. Code § 1021.152(a)(2)(iii).

In any event, none of the new allegations and exhibits in the petition are such as would justify a reversal of the Board’s decision as required by 25 Pa. Code § 1021.152(a)(2)(ii). The essence of our Opinion and Order denying the petition to intervene is that the Petitioners were attempting to intervene in an appeal from the wrong permit. The petition for reconsideration only confirms what we said when denying the petition to intervene by demonstrating once again that the Petitioners’ concerns have almost nothing to do with the mitigation bank itself and almost everything to do with the I-80 project, some 60 miles away from the mitigation bank.

Their latest argument seems to be that the mitigation bank and the I-80 project are linked together because, if it were not for the permitting of the mitigation bank, the I-80 project would not be able to go forward as purportedly designed (but not yet permitted to our knowledge) because it would not otherwise be able to satisfy the mitigation requirements for its impact on streams and wetlands. Again, the connection between the issuance of the mitigation bank permit and any harm to the Petitioners associated with the I-80 project is tenuous and speculative at best. *If* the I-80 project is permitted in the way the Petitioners think it will be, and *if* that permit affects wetlands

in the ways alleged by the Petitioners, and *if* those effects harm the Petitioners at such a level as to justify standing, and *if* the Sunny Brook Mitigation Bank is used for mitigation credits, and *if* the use of those credits can be tied back to any alleged harm to the Petitioners, there *might* be the beginnings of a case for intervention. Clearly that point has not been reached here.

The Petitioners point to emails from October 2025 between a staff person at the Department and Rep. Probst and Ms. Delfino<sup>2</sup> to allege the Department “admitted they bypassed a standalone public hearing for the Bank because they believed the I-80 hearing in Stroudsburg was ‘sufficient’ to address the Bank’s impacts.” But that is a complete mischaracterization of the emails. The emails appear to be responding to a request to hold a public hearing on the mitigation bank permit. The Department staff member states that the Department did not think a hearing on the mitigation bank permit was necessary because many of the comments submitted about the mitigation bank were actually about the I-80 project. The Department staffer then says that the concerns Rep. Probst and Ms. Delfino had with the I-80 permits were taken into consideration during the public hearing the Department held on the I-80 permits. The Department staff member reiterates that the concerns with the I-80 project are separate from the permit authorization for the mitigation bank because “the Department does not make a judgment on this authorization based on who is using it.” (Exhibit D.) The emails do not provide any crucial facts that are inconsistent with our previous findings. Instead, they show that the Department correctly differentiated between comments on the mitigation bank and comments on the I-80 project.

The Petitioners claim that the mitigation bank permit was “fast-tracked specifically to meet the immediate mitigation needs of the I-80 project” and that “its very existence was synchronized with the construction schedule of the highway project in the Petitioners’ community.” The

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<sup>2</sup> Also known as Jessica Smith.

Petitioners do not offer any credible evidence to support this claim. They reference an exhibit that appears to be a screenshot from a website operated by the United States Army Corps of Engineers that seems to show some information about the Sunny Brook Mitigation Bank. (Exhibit C.) They point to a date from that screenshot that says “Establishment Date: 11/04/2025” and say that this date was a month after the permit was issued, and therefore the timing confirms that the two projects are linked. We have no idea what the “Establishment Date” means or why the Petitioners believe it proves some synchronization between the mitigation bank and the I-80 project. It does not show any clear connection between the two projects, let alone demonstrate that they are somehow proceeding together as part of a common plan. Nothing in this exhibit supports reconsideration.

The Petitioners assert the Board committed “manifest errors of law.” It is not clear where this standard comes from. That standard is not in our rules. No law is cited, other than a reference to “Snyder v. DEP, 2004 EHB 914,” which is not a case that exists at the citation provided. The Petitioners also cite “Muth v. DEP (2024),” which we interpret to be the case of *Muth v. DEP*, 315 A.3d 185 (Pa. Cmwlth. 2024) that we cited in our Opinion on the petition to intervene. However, that case provides no support for reconsideration or for the Petitioners’ allegation that they have a direct interest in the mitigation bank permit because the “permit is the proximate cause that allows PennDOT to proceed with the eminent domain of Petitioners’ parcels.” On the contrary, *Muth* supports our conclusion that the connection between the Departmental action under appeal and the would-be parties’ potential harms must not be remote, speculative, and lacking a causal connection in order to support standing. *Muth*, 315 A.3d at 201.

The Petitioners focus on the directness issue. They do not address the independent procedural basis for the denial of their petition to intervene. More importantly, they also fail to

grasp the administrative reality that this Board's review is constrained by the Departmental action under review. *Sayreville Seaport Assocs. Acquisition Co. v. DEP*, 2011 EHB 815, 819-20; *Winegardner v. DEP*, 2002 EHB 790, 793. We cannot review the merits of one permit in the context of an appeal from an entirely separate permit. As we explained in our prior Opinion, the mitigation bank permit, which is the permit under review here, does not authorize any particular project or entity to use any credits generated by the bank:

In an appeal from a permit for the I-80 project that authorized the use of credits from the mitigation bank, we anticipate that we would be in a position to rule on whether the use of those credits is appropriate because that permit would address it. However, the opposite is not true. We are not in a position in ruling on the mitigation bank permit in this appeal to assess whether the use of credits from the mitigation bank is appropriate at the I-80 project. There is nothing upon which to predicate such a ruling in this case because there is nothing in the mitigation bank permit that addresses the use of its credits at the I-80 site, or any other construction site for that matter. The Department could not have erred in assigning credits in the mitigation bank permit because the Department made no such assignment. The Department has not made an appealable determination of where credits from the bank can be used in the permit that is currently under appeal, and we cannot presently envision a circumstance that would impel this Board to add a condition in this permit restricting the use of bank credits for the I-80 project. This permit is neither the proper time nor place for such a ruling. In short, there is no meaningful relief we can offer the Petitioners in this case.

(Opinion and Order on Petition for Leave to Intervene, slip op. at 8-9.)

All the Petitioners have offered are additional critiques of the I-80 project itself and whatever permits may be issued for that project that may affect the Petitioners' properties. The Petitioners still have not shown any interest related to the encroachments of streams and wetlands in Damascus Township, Wayne County covered by the Sunny Brook Mitigation Bank permit. We still cannot envision what kind of relief we could provide to the Petitioners in the context of ruling on the mitigation bank permit. That we would strike down the mitigation bank permit because it *might* be used in whole or in part in association with the I-80 project is inconceivable to us.



In short, the petition for reconsideration does not demonstrate any compelling and persuasive reasons that warrant reconsideration. Instead, it mostly rehashes arguments first made in the petition to intervene, only further proving that the Petitioners have no direct interest in the mitigation bank. When a petitioner’s request for reconsideration is “nothing more than a recitation of either arguments it should have made in its petition to intervene or arguments which have little to do with the standards for reconsideration,” the petition will be denied. *New Hanover Corp. v. DER*, 1990 EHB 1447, 1449.

Accordingly, we issue the Order that follows.



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**ORDER**

AND NOW, this 29<sup>th</sup> day of April, 2026, it is hereby ordered that the petition for reconsideration filed by Jessica Delfino, Lisa Wayland, and Joseph Tortorelli is **denied**.

**ENVIRONMENTAL HEARING BOARD**

s/ Bernard A. Labuskes, Jr.  
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**BERNARD A. LABUSKES, JR.**  
**Board Member and Judge**

**DATED: April 29, 2026**

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