



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

DAVE RICKERT

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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EHB Docket No. 2025-117-BP

Issued: April 1, 2026

**OPINION AND ORDER ON
DAVE RICKERT’S MOTION TO AMEND HIS NOTICE OF APPEAL**

By Paul J. Bruder, Jr., Judge

Synopsis

The Environmental Hearing Board (“Board”) grants Appellant Dave Rickert’s (“Appellant” or “Mr. Rickert”) Motion to Amend his Notice of Appeal as the Board finds that the amendment will not result in undue prejudice to the Department of Environmental Protection (“Department”).

OPINION

Background

On November 4, 2025, Appellant Dave Rickert initiated the current appeal *pro se*. In his November 4th appeal documents, Mr. Rickert filed a variety of photographs (some with diagrams, arrows, and typograph), local ordinances, e-mails, Department inspection report excerpts, and selections from the Dam Safety and Encroachment Act. (*See* Nov. 4, 2025 Notice of Appeal documents, Docket Entry #1). Notably, there was no Notice of Appeal form filed.

On November 5, 2025, Pre-Hearing Order No. 1 was issued, setting the written discovery deadline to April 6, 2026, the discovery deadline to May 4, 2026, and the dispositive motion

deadline to June 3, 2026. (See Pre-Hearing Order No. 1, Docket Entry #2). On the same date, the Board issued an Order to Perfect the Appeal, advising Mr. Rickert of the website to locate a Notice of Appeal form and what specific information he was missing to perfect his appeal. (See Order to Perfect, Docket Entry #3). The Board provided Mr. Rickert until November 25, 2025 to perfect his appeal.¹ At some point in time before November 25, 2025, Mr. Rickert spoke with Judge Bruder’s Assistant Counsel (“Assistant Counsel”). She directed Mr. Rickert to the Notice of Appeal form on the Board website. She also explained to him how to sign up for electronic filing, and advised him that if he did so, he would receive all filings (including orders) through his email and not through U.S. mail. Mr. Rickert subsequently signed up for electronic filing. On or about November 25, 2025, Mr. Rickert filed his Notice of Appeal form.² (See Original Notice of Appeal form, Docket Entry #5).

On January 7, 2026, the Department filed a letter with the Board stating the Order to Perfect was not satisfied. On January 8, 2026, the Board issued an additional Order to Perfect on Mr. Rickert, specifically requesting Mr. Rickert advise of the “date Mr. Rickert received notice of the Department action” under appeal by January 22, 2026. The Order to Perfect states:

Specifically, question 2(a) of the Notice of Appeal form must be completed:
“What action of the Department do you seek to have the Board review (for example, a permit, license or order issued or denied by the Department, an assessment of a civil penalty or some other determination made by the Department)?

The action being appealed is documented by Appellant as his in-person meeting with DEP where “[he] was told to remove the material from the ditch of

¹ An appeal may be amended as of right within 20 days of the appeal being filed. 25 Pa. Code § 1021.53(a).

² Specifically, on or about November 25, 2025, Mr. Rickert emailed the Notice of Appeal form to Assistant Counsel for filing. Subsequently, he began emailing Assistant Counsel photographic evidence and other materials. On December 9, 2025, all parties attended a conference call with Judge Bruder. Judge Bruder advised Mr. Rickert he could not email filings or evidence to the Board and must electronically file all documents online and exchange all discovery with the Department.

[sic] get a permit and later on heard Michael Sames tell Michael Tarconish ever if Rickert files for a permit it will be denied. Even if Woodland Designs is involved it will be denied.” A date or approximate date must be provided on the Notice of Appeal form regarding this interaction.

There is no need for Appellant to re-file the entire Notice of Appeal form. Appellant may electronically file a letter with the Board advising of the date or approximate date of this interaction.

...

Failure to supply the missing information as ordered may result in dismissal of the appeal under 25 Pa. Code § 1021.161.

(See January 8, 2026 Order to Perfect, Docket Entry #9).

No response was received by Mr. Rickert. On February 2, 2026, a Rule to Show Cause was issued by the Board to Mr. Rickert advising him to provide the necessary information (quoted above) on or before February 9, 2026 or risk dismissal of his appeal pursuant to 25 Pa. Code § 1021.161. (See Rule to Show Cause, Docket Entry #11). No response was received by Mr. Rickert. On February 10, 2026, a second Rule to Show Cause was issued by the Board providing him until February 24, 2026 to provide the missing information. The second Rule to Show Cause provided the additional information:

Failure to supply the missing information as ordered WILL result in dismissal of the appeal under 25 Pa. Code § 1021.161. If Appellant has any questions concerning this Rule he may contact Assistant Counsel at [email omitted].

(See Rule to Show Cause, Docket Entry #12).

Sometime around February 24, 2026, Assistant Counsel and Appellant Dave Rickert spoke on the telephone. Assistant Counsel informed him of the outstanding Order to Perfect and Rules to Show Cause, advised him of the consequences of failing to respond to the Board’s Orders, and urged him to secure legal representation. Mr. Rickert stated he never received any Orders or Rules

to Show Cause. Thereafter, Mr. Rickert secured counsel, and she entered her appearance on February 27, 2026.

On March 3, 2026, Appellant, through counsel, filed a Response to the Rule to Show Cause and a Motion for Leave to File an Amended Notice of Appeal. (*See* Response to Rule, Docket Entry #15 and Motion for Leave, Docket Entry #16). In the Motion, Appellant acknowledged that “[t]he *pro se* filings referenced prior interactions with Department personnel but did not clearly and precisely identify the specific Department action being appealed.” (*See* Motion for Leave at ¶ 3). Appellant clarified that the Department action he seeks to appeal is a Department Order issued on April 2, 2024. (*Id.* at ¶ 4). In further support of the Motion for Leave, Appellant claims he was unrepresented at the time of the initial filing and did not appreciate the procedural requirements governing appeals. (*Id.* at ¶ 5). Appellant further states that “[a]llowing amendment will not prejudice the Department and will promote adjudication of this matter on the merits, including clarification of any jurisdictional issues presently before the Board.” (*Id.* at ¶ 6). Mr. Rickert signed a verification form in support of the factual assertions in the Motion. (*Id.* at ¶ 9). Attached to the Motion for Leave was a new Notice of Appeal form that identified the April 2, 2024 Order as the Department action under appeal and included a list of objections to the Order. (*Id.* at Ex. “A” ¶ 2 (a)&(d)).

On March 18, 2026, the Department filed its Response to the Motion for Leave. (*See* DEP Brief in Response, Docket Entry #18). The Department argued that the Board should deny Appellant’s Motion for Leave because it was procedurally and substantively deficient. Specifically, the Department asserted that Appellant failed to attach a supporting affidavit to his motion and did not meet his burden of demonstrating that the requested amendment would not

result in undue prejudice to the Department. (*Id.* at pg. 1). The Department further argued that the appeal should be dismissed for lack of jurisdiction. (*Id.* at pg. 7-10).

Standard of Review

An appeal may be amended as of right within 20 days of the appeal being filed. 25 Pa. Code § 1021.53(a). After the 20-day amendment as of right period, the Board may grant leave for further amendment if it will not result in undue prejudice to the opposing parties. 25 Pa. Code § 1021.53(b). Motions for leave to amend must be “verified and supported by affidavits.” *Id.* at § 1021.53(c).

The decision of whether to allow a party to amend its appeal after the 20-day grace period has expired rests firmly within the Board’s discretion and involves an analysis into whether the opposing parties will suffer undue prejudice. *Dengal v. DEP*, 2024 EHB 466, 469 (citing *Tapler v. DEP*, 2006 EHB 463, 465). The right to amend one’s appeal is viewed liberally by the Board in efforts “to secure determination of cases on their merits.” *Williams v. DEP*, 2020 EHB 277, 281 (citing *Chester Water Authority v. DEP*, 2016 EHB 358, 362). In assessing whether the opposing parties will suffer undue prejudice, the Board considers the following factors: 1) the time when the amendment is requested relative to other developments in the litigation, including but not limited to the hearing schedule; 2) the scope and size of the amendment; 3) whether the opposing party had actual notice of the issue, including whether it was raised in other filings; 4) the reason for the amendment; and 5) the extent to which the amendment diverges from the original appeal. *See, e.g., Williams v. DEP*, 2020 EHB 277, 281; *Chester Water Authority v. DEP*, 2016 EHB 358, 362; *Borough of St. Clair v. DEP*, 2013 EHB 171, 173; *Rhodes v. DEP*, 2009 EHB 325, 328-29; *Upper Gwynedd Twp. v. DEP*, 2007 EHB 39, 42; *Angela Cres Trust v. DEP*, 2007 EHB 595, 601.

Discussion

Procedural Deficiency

First, the Department argues that Mr. Rickert’s Motion to Amend is procedurally deficient pursuant to Section 1021.53(c) of the Board’s Rules. We do not agree. The Department’s argument rests on form over substance. Mr. Rickert verified that the statements contained in his Motion to Amend were true and correct to the best of his knowledge and attached his signature to that attestation. The fact that the document was titled “Verification” rather than “Affidavit” does not sway our determination on the matter. We have previously deemed documents containing nearly identical language to be sufficient affidavits for motions to amend pursuant to Pa. R.C.P. 76. *See Ullom v. DEP, et. al.*, 2025 EHB 501, 503. Therefore, we do not believe this is reason to deny amendment.

Five Factors of Undue Prejudice

Additionally, after examining the five factors governing undue prejudice, we conclude the Department will not suffer undue prejudice if Mr. Rickert is permitted to amend. *See Ullom v DEP, et. al.*, 2025 EHB 501; *Angela Cres Trust, et. al., v. DEP*, 2025 EHB 652.

With respect to timing, we find that the amendment sought was early enough in the proceedings such that no undue prejudice will occur. Our Board has permitted amendments at similar stages, or even later phases, in the litigation process. *See, e.g., Borough of St. Clair v. DEP*, 2013 EHB 171, 173 (permitting amendment where the hearing was months away); *Williams v. DEP*, 2020 EHB 277, 282-83 (granting amendment filed on the eve of hearing); *Baker v. DEP*, 2015 EHB 535, 539 (allowing amendment six and a half weeks prior to hearing). In the instant matter, discovery remains ongoing, dispositive motions have not been filed, and a hearing on the merits has not been scheduled. Notably, neither party has stated that any written discovery has been served to date. Under these circumstances, any potential prejudice may be mitigated by a

reasonable extension of the discovery period to allow the parties to conduct any necessary written discovery or depositions, as there have been no extensions sought in this case thus far.

Additionally, we find the new objections to be within the scope, and merely an expansion of, the arguments contained within the original Notice of Appeal form filed on November 25, 2025. Upon comparison of the amended objections submitted by counsel and the original objections submitted by Mr. Rickert, the Board concludes that the new objections do not introduce wholly new theories of liability but rather expand upon and clarify the objections raised in the original Notice of Appeal. Mr. Rickert's November 25, 2025 Notice of Appeal objections state:

Removing any material from my Storm Damage Restoration / Preservation Project will cause Irreversible Property Damage & Uncontrollable Erosion into the Lackawaxen River. The Massive Sycamore TREES on my Property will be Unearthed, Die Falling over into the River making Dangerous Water Obstructions Down Stream causing Flooding By Doing So the Significant Effects upon the Safety and Protection of Life, Health, Property and the Environment will be Overwhelming Down Stream.

They, DEP could have given Me from the Beginning a EMERGENCY PERMIT 3150- PM-BWEW0023 But were Too Busy with these 2 Storms, thus Verbal Permission Was Given to Me. Ask Michael Sames & Carl DeLuca what they Say about it.

“ SEE WHO COMPLAINED I JUST WONDER “

“ It's the STATE'S WATER that Caused this Problem to My Property “ this is all for SPITE against Me Not Wanting a Public River Trail from Honesdale To Hawley on or Along OUR Private Land's Orchestrated by the Wayne County Commissioner's, Conservation office with DEP, Woodland Designs in Honesdale. it's Blatant Local Government Corruption what they are Allowed by DEP Doing in the Floodway and Waterway Corridor of Our Historic Lackawaxen River, But I Dave Rickert Can't Fix a Storm Damage Ditch on My Property, Really.

(See Original Notice of Appeal Form, Docket Entry #5).

In comparison, on March 3, 2026, Mr. Rickert's counsel filed the following objections in the Amended Notice of Appeal form:

1. The Department erred in determining that Appellant’s activities constituted unauthorized water obstruction or encroachment under the Dam Safety and Encroachments Act and applicable regulations.
2. The Department failed to properly consider that the activities at issue were undertaken in response to significant storm-related damage caused by severe weather events (Hurricanes Henri and Ida) in August and September 2021.
3. The Department failed to properly consider the restorative, stabilizing, and erosion-control nature of the work performed.
4. The Department’s factual findings regarding the location, scope, and extent of the alleged disturbance are inaccurate.
5. The Department’s determination regarding floodway designation and regulatory applicability is factually and legally incorrect.
6. The Department improperly required removal, restoration, or permitting under the circumstances presented.
7. The Department’s conclusions regarding environmental impact are unsupported by the evidence.
8. The Administrative Order is unreasonable, arbitrary, and contrary to law.

(See Motion for Leave at Ex. “A”).

Indeed, both filings challenge the Department’s directives concerning removal, restoration, and permitting requirements on Mr. Rickert’s property, as well as contentions that the underlying conditions were caused by storm-related events. As such, the amended objections constitute a more concise and clearer “iteration of legal issues that [have] been in dispute since the inception of the appeal.” *Pruden v. DEP*, 2025 EHB 360, 370 (citing *Chester Water Authority v. DEP*, 2016 EHB 358, 359).

Likewise, in regard to notice of the April 2, 2024 Order, we are not persuaded that the Department lacked notice of the Order, or its significance, at the time this appeal was filed. Although the original Notice of Appeal form did not expressly reference or attach the Administrative Order, the Department was well aware of it, having served a copy of the Order on Mr. Rickert multiples times and having obtained a search warrant to determine compliance with the Order. Thus, we find the Department had a fair understanding that the April 2, 2024 Order was central to this appeal.

Further, the reason for the amendment supports its allowance. The Board finds the instant matter to be analogous to *Ullom v. DEP, et. al.*, 2025 EHB 501, where the Board permitted an appellant to amend under comparable circumstances. In *Ullom*, appellants initially proceeded *pro se* and later sought to clarify and refine the issues on appeal after obtaining counsel. *Id.* at 506. The Board determined that such amendment did not unduly prejudice the Department, particularly under the more liberal standard of permitting amendments³ and where the amendments served to more precisely articulate the claims already within the scope of the original appeal. *Id.* at 504-506.

As in *Ullom*, the reason for the amendment is rather straightforward. Mr. Rickert filed his appeal without the benefit of counsel, and now having retained counsel, wishes to set forth his objections with greater clarity and legal precision. The Board has recognized that “[w]here a *pro se* appellant heeds the advice of the Board and obtains legal representation, we need not make that process unduly burdensome.” *Id.* at 507. While *pro se* litigants are subject to the same procedural requirements as represented parties, the Board has acknowledged the practical realities they face in navigating complex regulatory frameworks. *See 354 Broadway, LLC v. DEP*, 2025 EHB 166 (Clark, J., concurring) (quoting *Perrin v. DEP*, 2008 EHB 78, 82 (“Although we often have said that *pro se* parties will be given no special consideration, as we in fact did earlier in this very Opinion, in many (if not most or all cases) this simply is not true.”)). Permitting Mr. Rickert to amend his Notice of Appeal form aligns with the Board’s longstanding practice in ensuring that *pro se* appellants are not unduly disadvantaged from having a hearing on the merits by failing to

³ “The rule was amended in 2006 to its present form which allows amendment of an appeal after the period for amendment-as-of-right has expired so long as “no undue prejudice will result to the opposing parties.” 25 Pa. Code § 1021.53(b). The Preamble to the proposed 2006 rule change stated as follows: [t]his subsection has been amended to create a more liberal standard for allowing the amendment of appeals and complaints after the 20- day amendment as of right period. Rather than setting forth three particular circumstances under which appeals and complaints may be amended after the 20-day amendment as of right period, the rule allows amendment when no undue prejudice will result to the opposing parties. 35 Pa.B. 2107 (Preamble (April 9, 2005)).” *Ullom*, 2025 EHB at 504.

comply with complex regulations and/or procedural requirements.

Accordingly, after reviewing all the relevant factors, we conclude the Department will not be unduly prejudiced by the proposed amendment.

Jurisdictional Issue

Further, the Department argues in its motion that the Board lacks jurisdiction over the appeal for being untimely.⁴ Although the Department makes a convincing argument that this issue is not properly before the Board, Appellant has not filed a motion to appeal *nunc pro tunc* nor has the Department filed a proper motion to dismiss the case for lack of jurisdiction. While we agree that there is a clear jurisdictional issue⁵ present in this matter, our Board cannot *sua sponte* dismiss a case for lack of jurisdiction nor can we grant relief requested in a responsive pleading that should be presented in a dispositive motion pursuant to 25 Pa. Code § 1021.94. *See Angela Cres Trust, et. al., v. DEP*, 2025 EHB 652, 659. Therefore, we leave it up to the parties to file their own

⁴ The Department argues that Mr. Rickert had notice of his right to appeal the subject Administrative Order in 2024. Specifically, the Administrative Order, with cover sheet, was sent on April 2, 2024 via U.S. mail and certified mail to Mr. Rickert's addresses of record at the time, and to his e-mail address of record. (*See* Response at pg. 2; DEP Ex. 1). The certified mail tracking indicates copies of the Order were delivered at 9:02 am on April 4, 2024 with hand delivery to an individual. (*See* DEP Ex. 3).⁴ The delivery receipt for the Department e-mail of the Order indicates it was sent and delivered on April 2, 2024. (*See* DEP Ex. 5 & 6). Additionally, the Department states that on February 4, 2025, Department staff e-mailed Mr. Rickert to schedule an inspection of the Site as it related to the corrective action items in the Administrative Order and included a copy of the Order as an e-mail attachment. (*See* DEP Ex. 7). As the Department did not obtain permission from Mr. Rickert to conduct an inspection at the Site, it obtained a search warrant to do so. On August 6, 2025, Department staff conducted an inspection of the Site to determine compliance with the Administrative Order and hand delivered a copy of the search warrant, supporting affidavit, and Administrative Order to Mr. Rickert. (*See* Response at pg. 3; DEP Ex. 8).

⁵ Mr. Rickert claims he first became aware of the Administrative Order on or about August 6, 2025 when the Department personnel presented him with a copy of the Order during execution of a search warrant at the property. (*See* Response to Rule to Show Cause at ¶ 4). He claimed the Administrative Order was missing the final page containing the Notice of Appeal rights and deadlines. Therefore, he disputes that he received effective notice of a final appealable action prior to that date. (*Id.* at ¶¶ 5-7)).



appropriate motions on the matter, as the only issue properly before this Board is whether Mr. Rickert has leave to amend his notice of appeal.

Accordingly, for the reasons stated above, we issue the following order.



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ORDER

AND NOW, this 1st day of April, 2026, it is hereby **ordered** that:

1. The Order to Perfect issued on January 8, 2026 is **deemed perfected**;
2. The Rules to Show Cause issued on February 2, 2026 and February 10, 2026 are **discharged**;
3. Appellant Dave Rickert’s Motion to Amend his Notice of Appeal is **granted**.
4. Any party may file the appropriate motion regarding the issue of jurisdiction.

ENVIRONMENTAL HEARING BOARD

s/ Paul J. Bruder, Jr.

PAUL J. BRUDER, JR.
Judge

DATED: April 1, 2026

c: DEP, General Law Division:
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(via electronic mail)

For the Commonwealth of PA, DEP:
Ann Conserette, Esquire
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