



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

**BIG SEWICKLEY CREEK WATERSHED
ASSOCIATION** :

v. :

EHB Docket No. 2024-065-W

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and PENNENERGY
RESOURCES, LLC, Permittee** :

PRE-HEARING ORDER NO. 1

IT IS HEREBY ORDERED as follows:

SCHEDULING DISCOVERY AND FILING OF DISPOSITIVE MOTIONS

1. The above matter has been assigned to **The Honorable MaryAnne Wesdock** for primary handling.
2. The Board’s Rules are published at Chapter 1021 of Title 25 of the Pennsylvania Code and are available on the Board’s website, 25 Pa. Code §§ 1021.1 – 1021.201. Failure to adhere to the Board’s Rules may result in the imposition of sanctions, including but not limited to dismissal of an appeal.
3. Any appellant may amend its appeal as of right within **20** days of the date the appeal was filed and docketed by filing an amended notice of appeal with the Board. Thereafter, any appellant desiring to amend an appeal must do so by filing a motion for leave to amend, setting forth the basis for the request pursuant to 25 Pa. Code § 1021.53. A motion to amend need not be accompanied by a memorandum of law pursuant to 25 Pa. Code § 1021.95(d) if it is consented to by all parties, but it must be verified and supported by affidavits.
4. All discovery in this matter shall be *completed* within **180** days of the date of this pre-hearing order, **September 3, 2024**, unless extended for good cause upon written motion. 25 Pa. Code § 1021.101(a). All written discovery must be *served* no later than **30** days prior to the end of discovery, **August 5, 2024**, unless extended for good cause upon written motion. Discovery in proceedings before the Board, including discovery regarding expert witnesses, is governed by the Pennsylvania Rules of Civil Procedure unless otherwise provided in the Board’s Rules. Subpoenas for discovery purposes may be issued by Counsel in accordance with the Pennsylvania Rules of Civil Procedure.
5. Within the first **45** days of the discovery period specified in Paragraph 4, the parties shall confer about settlement of some or all of the issues raised in this appeal. The parties shall file a joint statement within the first **60** days of the discovery period, **May 6, 2024**, certifying

that they have conferred about settlement. The conference under this Paragraph may be combined with the conference pertaining to electronically stored information specified in Paragraph 11 and with discussions pertaining to Paragraph 7 that concern the submission of a proposed alternate schedule.

6. All dispositive motions shall be filed within **210** days of the date of this pre-hearing order, **October 3, 2024**. The motions shall comply with the Board's rules on dispositive motions at 25 Pa. Code §§ 1021.94 and 1021.94a.
7. As an alternative to this schedule, the parties may, within **60** days of the date of this pre-hearing order, submit a Joint Proposed Case Management Order to the Board, which shall, among other things, propose alternate dates for the conclusion of discovery and the filing of dispositive motions. At any time, parties may also submit a motion for an expedited hearing pursuant to 25 Pa. Code §§ 1021.96a – 1021.96d.
8. Any request for continuance, or for extending any filing deadline, must be made as a formal motion, pursuant to 25 Pa. Code § 1021.92, except when opposing counsel consent to the continuance or extension. When there is such consent, the request may be embodied in an informal letter, provided the letter indicates the consent of opposing counsel. Requests for extensions or continuances and the accompanying proposed Order, whether in letter or motion form, shall contain a specific date for the extension or continuance.
9. Any party desiring to respond to a petition or motion must do so within the time set forth in 25 Pa. Code §§ 1021.91 – 1021.95, unless otherwise ordered. A party will be deemed to have waived the right to contest any motion or petition to which a timely response has not been filed. The Board will not notify the parties that a response may be due.
10. The Board may also direct that the parties meet prior to the hearing to stipulate to uncontested facts, the qualifications of experts, and the admissibility of exhibits.

ELECTRONIC DISCOVERY

11. *Conference*. Not later than **45** days after the issuance of this Order, all parties shall confer and discuss whether the parties believe discovery of electronically stored information (ESI) requires an ESI plan as set forth in Paragraph 12.
12. *Report to Board*. If the parties agree that an ESI plan is necessary, not later than **60** days after the issuance of this Order, the parties shall submit to the Board for its consideration a proposed plan for conducting electronic discovery along with a proposed order. The proposed plan shall address the following:
 - (a) any issues relating to preservation of discoverable information;
 - (b) the form in which the information will be produced;
 - (c) the period within which the information will be produced;

- (d) the method for asserting or preserving claims of privilege or of protection of the information as trial-preparation materials, including whether such claims may be asserted after production;
- (e) the method for asserting or preserving confidentiality and proprietary status of information relating to a party or a person not a party to the proceeding;
- (f) whether allocation among the parties of the expense of production is appropriate;
- (g) the position of each party as to any issue about which they are unable to agree; and,
- (h) any other issue relating to the discovery of electronically stored information.

13. *Board Order.* The Board will issue an order governing the discovery of electronically stored information upon consideration of the parties' proposed plan and order submitted pursuant to Paragraph 12. The Board may also issue an order upon its own motion or the motion of any party.

ELECTRONIC FILING

- 14. Except as set forth in 25 Pa. Code § 1021.32 or otherwise provided by the Board, everything filed in this matter shall be filed electronically or it will not be accepted.
- 15. Individuals not already registered for electronic filing must do so at the Board's website at: <http://ehb.courtapps.com/efile/userRegistration.php>.
- 16. Individuals who believe that the electronic filing requirement will impose an unreasonable burden and wish to be excused from the requirement must file a motion with the Board setting forth the reasons why electronic filing presents an unreasonable burden.
- 17. Individuals registered with the Board's electronic filing system will only receive copies of the Board's orders, opinions, and adjudications electronically and will not be mailed hard copies of those documents.
- 18. Anyone who encounters problems registering or filing a document electronically should contact the Board's staff at (717) 787-3483.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman
STEVEN C. BECKMAN
Chief Judge and Chairperson

DATED: March 7, 2024

c: DEP, Office of Chief Counsel:
Attention: Cassandra Fritch
(via *electronic mail*)



For Appellant:

Evan D. Johns, Esquire
(via *electronic filing system*)

For Permittee:

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