



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

**LAURA DENGEL**

v.

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, and NEW SEWICKLEY  
MUNICIPAL AUTHORITY, Permittee**

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**EHB Docket No. 2022-092-B**

**Issued: July 15, 2024**

**OPINION AND ORDER ON  
APPELLANT’S MOTION FOR LEAVE TO AMEND NOTICE OF APPEAL**

**By Steven C. Beckman, Chief Judge and Chairperson**

**Synopsis**

The Board denies a motion for leave to amend notice of appeal where it contains no verification as required by 25 Pa. Code § 1021.53(c) and fails to demonstrate that the proposed amendments would not cause undue prejudice to the opposing parties at this late stage in the proceeding.

**OPINION**

**Background**

This matter involves an appeal filed with the Environmental Hearing Board (“Board”) by Laura Dengel (“Ms. Dengel”) on October 21, 2022. The appeal challenges the Department of Environmental Protection’s (“Department’s”) issuance of a water allocation permit to New Sewickley Township Municipal Authority (“Authority”). In her Notice of Appeal, Ms. Dengel stated her objection as follows: “I am objecting to the Department’s actions for granting the issuance of a New Water Allocation Permit to New Sewickley Township Municipal Authority.” (Notice of Appeal, Dkt #1). On November 14, 2022, Ms. Dengel filed an Amended Notice of

Appeal (“Amended Appeal”), expanding on her previously stated objection by adding that her reason for objecting is as follows:

Signed, dated and notarized 06-21-2022; however, this application (Reference No. 62504) was voted on July 7th, 2022. Therefore, the entire application package is null and void because it was illegitimate from the moment it was created. Such application never comes into effect with submission of the Water Allocation Permit Application package to the Department because it misses essential elements of a legal application and violates Federal and State laws.

(Amended Appeal, Dkt # 7).

Throughout this proceeding, the Board has granted several requests to stay proceedings and for extensions of the pre-hearing deadlines. The time for discovery ultimately concluded on December 22, 2023. On March 1, 2024, the deadline for filing dispositive motions, the Department filed a Motion for Summary Judgment (“SJ Motion”).<sup>1</sup> Following the SJ Motion, the Authority timely filed a memorandum of law in support thereto and Ms. Dengel filed her Response in Opposition to the Department’s SJ Motion (“SJ Response”) on April 1, 2024. In her SJ Response, Ms. Dengel incorporated her own request for summary judgment. Following Ms. Dengel’s SJ Response, the Department and the Authority quickly filed a Joint Motion to Stay Filing Deadlines (“Motion to Stay”) and to Strike (“Motion to Strike”) (collectively, the “Joint Motions”). The Joint Motions requested the Board to strike Ms. Dengel’s motion for summary judgment as untimely and for raising issues outside the scope of the Amended Appeal and further requested that the Board stay the deadline to respond to Ms. Dengel’s summary judgment motion until the Board ruled on the Motion to Strike. On May 9, 2024, Ms. Dengel filed her response to the Joint

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<sup>1</sup> The Board set the deadline for dispositive motions on January 31, 2024 in its Order dated October 13, 2023. However, the Board granted the Department’s motion to extend the dispositive motion deadline after receiving no response to the motion from either Ms. Dengel or the Authority.

Motions and concurrently filed a motion to amend her appeal. Shortly thereafter, the Department filed a Motion to Stay Proceedings Pending Ruling on its SJ Motion.

On May 17, 2024, following a conference call with the parties, the Board issued two orders. The first order granted the Department's Motion to Strike Ms. Dengel's request for summary judgment after Ms. Dengel stated on the conference call that she did not oppose the Motion to Strike. Additionally, the first order stayed all other deadlines until the Board ruled on Ms. Dengel's verbal request to supplement her motion to amend that she made during the conference call. The Board's second order denied the Department's Motion to Stay Proceedings Pending Ruling on its Motion for Summary Judgment. The Board issued an Order on May 20, 2024, permitting Ms. Dengel to supplement her motion to amend and staying the deadline for replies to Ms. Dengel's SJ Response. On May 24, 2024, Ms. Dengel filed her Motion for Leave to Amend Appeal ("Motion to Amend" or "Motion") and the Department and the Authority filed their Joint Response to the Motion to Amend ("Joint Response"). We are now prepared to rule on the Motion to Amend.

### **Standard of Review**

Section 1021.53 of the Board's Rules of Practice and Procedure governs amendment of appeals. Appeals may be amended as of right within 20 days after the filing of the notice of appeal. 25 Pa. Code § 1021.53(a). Amendments after the 20-day period are governed by Section 1021.53(b) which provides as follows:

(b) After the 20-day period for amendment as of right, the Board, upon motion by the appellant or complainant, may grant leave for further amendment of the appeal or complaint. This leave may be granted if no undue prejudice will result to the opposing parties. The burden of proving that no undue prejudice will result to the opposing parties is on the party requesting the amendment.

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 period for amendment as-of-right has expired "rests firmly within the Board's discretion" and involves an assessment of whether the amendment will result in undue prejudice to the opposing parties. *Tapler v. DEP*, 2006 EHB 463, 465. In assessing whether the opposing parties will suffer undue prejudice, the Board considers such factors as the following:

- 1) the time when 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.

*Borough of St. Clair v. DEP*, 2013 EHB 171, 173 (citing *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; *PennFuture v. DEP*, 2006 EHB 722, 726; *Tapler*, 2006 EHB at 465; and *Robachele v. DEP*, 2006 EHB 373, 379).

## **Discussion**

In reviewing the Motion to Amend, it is not entirely clear to the Board the exact issues/objections Ms. Dengel is raising. The Memorandum in Support of the Motion to Amend includes a brief description of the Pennsylvania Administrative Procedures Act and, in addition, includes the following statement:

Including but not limited to: Permit Decision Guarantee, coordinated permits, the Water Rights Act, the Safe Drinking Water Act, the Fourteenth Amendment of the United States Constitution, and the public participation requirements pertaining to Freedom of

Information Act, Open Meetings and Sunshine Act are a few of the additional encompassing laws and legal principles which are being objected by the Department's Permit approval action.

(Memorandum in Support of the Motion to Amend at 2). While this list presumably sets forth laws that Ms. Dengel believes the Department violated, the Motion does not offer any facts or further explanation to assist the Board in understanding how or in what way Ms. Dengel alleges the Department and/or Authority violated any of these laws and/or legal principles. Ms. Dengel contends that she is not seeking to raise any new objections but instead, she is merely attempting "to state the legally specific arguments which will clearly define the issues raised in the [Amended Appeal]." (Motion to Amend ¶ 5). She goes on to argue that although "it has taken [her] a while to unpack what the correct claims are" neither the Department nor the Authority should be surprised by any of the claims she is now asserting. ("Memorandum in Support of Motion to Amend at 3). She asserts that the requested amendments will not result in undue prejudice to either the Department or the Authority but would instead offer clarification of the issues to the opposing parties. (See Motion to Amend ¶ 3). She further states that in ruling in favor of her Motion, the Board and the parties would be spared further confusion moving forward. (See Motion to Amend ¶ 6).

The Department and the Authority oppose the Motion to Amend on the basis that it is procedurally deficient because it is not verified. Additionally, they argue that the proposed amendments are sweeping in their scope, diverge significantly from the Amended Appeal, and that it is far too late in the proceedings to entertain the many new claims set forth by Ms. Dengel without incurring prejudice. Additionally, they argue that they had no notice that Ms. Dengel intended to raise such issues and that she has provided no persuasive reason for waiting until this late stage in the proceeding to amend her appeal. After reviewing the parties' arguments, we agree

with the Department and the Authority and conclude that Ms. Dengel's Motion to Amend should be denied by the Board.

First, Ms. Dengel's Motion to Amend is procedurally deficient. Section 1021.53(c) of the Board's rules requires that a motion to amend is both verified and supported by affidavits. While Ms. Dengel included an affidavit with her Motion to Amend, it lacks verification and therefore the Motion can be denied on that basis alone. As we held in *Harvilchuck v. DEP*, 2013 EHB 544, "a motion for leave to amend an appeal must be denied where it is not verified and supported by affidavits [...]" *Id.* at 546 (quoting *Robachele*, 2006 EHB at 375 (citing *CNG Transmission Copr. v. DEP*, 1998 EHB 1, 3)).

Even if we were to look past the procedural deficiencies of Ms. Dengel's Motion, she still has not met her burden to convince us that the Department and the Authority would not suffer undue prejudice by granting her Motion. Ms. Dengel has not provided any legitimate explanation for, or extenuating circumstances justifying, the proposed late amendment in this appeal. As we noted earlier, we look to five factors when assessing whether an amendment to an appeal will cause undue prejudice (i.e., timing of the request, the scope of the amendment, the extent to which it diverges from the original appeal, whether the opposing parties had notice, and the reason behind the request to amend). All five factors favor the conclusion that the Department and the Authority would be prejudiced if we allowed the requested amendment.

Ms. Dengel's filed her Motion to Amend extremely late in this matter's proceedings. Discovery was closed and the deadline for dispositive motions had passed. The Department's Motion for Summary Judgment was already pending in front of the Board. Recently, in *Protect PT v. DEP*, 2023 EHB 15, the Board denied the appellant's motion to amend. While we denied that motion on the basis it was not verified and lacked the required affidavits, we also noted the

late stage of the case when the motion was filed, approximately two weeks before the close of discovery. In *Starr v. DEP*, 2002 EHB 799, the Board denied a motion to amend the appeal where discovery had been closed for one month after having been extended and amending the appeal would have required the reopening of discovery. Here, the matter is significantly further along than either of these two cases. Discovery had been closed for over three months and the dispositive deadline motion had also passed before Ms. Dengel requested an amendment. At this late stage and considering the litany of legal theories Ms. Dengel has raised, discovery would have to be reopened and a new deadline set for dispositive motions. Presumably, the Department would need to reevaluate its pending dispositive motion and decide whether to withdraw and replace it or abandon it entirely. All of this would result in further delay and clearly prejudices the Department and the Authority.

Moreover, the Motion to Amend requests the introduction of at least nine legal principles that have not been directly raised in this matter prior to Ms. Dengel's Motion to Amend. The scope of the proposed amendments is extremely broad, and the new legal allegations diverge significantly from the objection set forth in the Amended Appeal. Further, Ms. Dengel has indicated that the scope of her legal objections could be larger still, stating in her affidavit that "additional laws or legal principles may come to my attention between now and when the final Notice of Appeal is submitted [...]" (Affidavit of Ms. Dengel in Support of Motion to Amend ¶ 3). Ms. Dengel has not provided us a credible reason for allowing her new legal arguments to come in at this late stage. In *Joshi v. DEP*, 2018 EHB 787, the Board denied a *pro se* appellant's request to amend his appeal where it was clear to the Board that the appellant's proposed amendments did not rise from new information revealed in discovery but instead, the only real reason he sought to amend was because he had learned of new legal issues that were relevant to

his appeal. We stated that “[o]ur overriding impression is that this is a simple case of a party doing more research and devising new theories as the case goes along based upon long-known information.” *Joshi*, 2018 EHB at 792. We are under that same impression here. Ms. Dengel has not pointed out any discovery that revealed new information leading to the need to amend her appeal. Further, she offers no persuasive reason in support of her late filing or for the breadth of entirely new and unrelated objections other than she learned of new legal theories while responding to the Department’s SJ Motion and/or upon further thought and legal research.

Finally, Ms. Dengel insists that the broad set of legal principles that she is just now spelling out for the first time, were somehow inherent in her original objection and that her new legal assertions should have been apparent to the Department and the Authority all along. Ms. Dengel cites to the objection contained in her Amended Appeal which states that the Permit application/issuance “misses essential elements of a legal application and violates Federal and State laws.” (Motion to Amend ¶ 1). Ms. Dengel is in essence arguing that this singular statement has preserved her right to object to any Federal and/or Pennsylvania law in existence that could have application in this matter. The Board’s Notice of Appeal Form clearly denotes that when filing an appeal, all objections must be included and that the objections *must be specific* whether they are factual or legal. (See Board’s Notice of Appeal Form ¶ 4). Ms. Dengel’s Amended Notice of Appeal specifies the factual circumstances that formed the basis of this matter; the date on the permit application is earlier than the date the application was voted on. At this late stage of the proceedings, we find that reliance on the catchall phrase asserting that the application violates “Federal and State Laws” is not adequate to have put the Department and the Authority on notice of the broad new issues she is seeking to raise in her request to amend. The sole issue that Ms. Dengel raised in her appeal with any specificity was the date of the signature on the permit



application. The proposed amendments to her appeal are far afield of the original complaint. We are not persuaded by her assertion that the opposing parties should not be surprised by these new issues.

Ms. Dengel has failed to meet her burden to demonstrate that the Department and Authority would not suffer undue prejudice by allowing her to amend her appeal. The Motion to Amend was filed extremely late in this proceeding and the proposed amendments are vast in the scope of the legal issues that she seeks to raise and dramatically diverge from the original objection in the Amended Appeal. The prejudice to the Department and the Authority are readily apparent if we were to grant the Motion to Amend. Therefore, we issue the following Order:



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EHB Docket No. 2023-046-B

**ORDER**

AND NOW, this 15<sup>th</sup> day of July, 2024, it is hereby ORDERED that the Appellant’s Motion for Leave to Amend Notice of Appeal is **denied**.

**ENVIRONMENTAL HEARING BOARD**

s/ Steven C. Beckman

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**STEVEN C. BECKMAN**

**Chief Judge and Chairperson**

**DATED: July 15, 2024**

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

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