



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

JOHN AND ROSE MATHEWS	:	
	:	
v.	:	EHB Docket No. 2023-061-CS
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	Issued: February 20, 2024
PROTECTION and SUNOCO PIPELINE, L.P.,	:	
Intervenor	:	

**OPINION AND ORDER ON
MOTIONS TO DISMISS**

By Sarah L. Clark, Judge

Synopsis

The Board grants the Department’s and Intervenor’s Motions to Dismiss where the *pro se* appellants have evidenced a demonstrable disinterest in pursuing their appeal.

OPINION

This matter concerns a *pro se* appeal filed by John and Rose Mathews (“Mathewses”), seemingly to the Department of Environmental Protection’s (“Department”) June 30, 2023 approval of Sunoco Pipeline, L.P.’s (“Sunoco”) Land Recycling and Environmental Standards Act 2 Final Report for Groundwater following remediation of a pinhole release of refined petroleum products from a 12-inch pipeline owned by Sunoco that occurred near the Mathewses’ property on April 10, 2015.

On August 3, 2023, the Board docketed a Notice of Appeal received by mail from John and Rose Mathews. While the Notice of Appeal form was included in the filing, the only information provided on the form were the names and contact information of the Appellants, and

the signature page, which was signed and dated July 29, 2023. Attached to the mostly blank form was a single page, which, following contact information, stated in its entirety:

SUB: Notice of Appeal. (Oil spill, injury to person property, 1423 Grady Ville Road
Glen Mills Pa. 19342)
Before this approval,
Is this oil spill is [sic] whose fault, my fault or oil pipe line company?
How this pipeline oil spillage took place?
How long and how many barrels of oil is leaked?
How much land area, wet land and water way is flooded with this oil spill?
Estimate a Total area contamination?
Affected streams and nearby water systems including my drinking water sources
affected?
I think, it is a state crime, and the state is responsible to answer my con [sic]
Due to all of these un answered [sic] and in conclusive [sic] work conducted so far,
I request your good office to not approve the order.

Notice of Appeal at 1, (emphasis in original). The following day, August 4, 2023, the Board issued its standard Pre-Hearing Order No. 1 and an Order to Perfect the appeal, directing the Mathewses to send a copy of the Department action being appealed, the name of the Department officer who took the action, the date they received notice of the Department's action, and clear objections to the Department's action by August 23, 2023. After the Mathewses failed to respond by the 23rd, the Board issued an Order to Comply with Order to Perfect, giving the Mathewses until September 12, 2023 to provide the information requested in the Order to Perfect.

In early September, Board staff communicated extensively with Mr. Mathews via phone and email. In these communications, Board staff explained that their Notice of Appeal initiated a legal proceeding in which the Mathewses' continued and active participation would be required, and that certain information and general compliance with Board orders and deadlines were necessary to maintain their appeal. Board staff further explained that, while the Mathewses were entitled to proceed *pro se*, their *pro se* status would not excuse them from this compliance, and it is generally recommended that appellants in front of the Board seek legal counsel. Board staff

then provided Mr. Mathews with the Citizens Guide to Practice Before the Environmental Hearing Board via email and indicated the pages wherein he could find information on how to obtain legal counsel, *pro bono* or otherwise. Mr. Mathews indicated his understanding and enrolled in e-filing; however, across several phone calls, Mr. Mathews vehemently denied the need for counsel, to which Board staff repeated that the choice was theirs, that Board staff cannot provide legal advice, and that engaging counsel is always suggested.

On September 8, 2023, the Board received a fax from the Mathewses which included the Department's June 30, 2023 letter approving the Act 2 Final Report for Groundwater and a one-page affidavit. While this filing was somewhat responsive to the Board's Order to Perfect the appeal remained incomplete, and the Board issued an Order for Date of Notice on September 12, 2023 – the date the Response was docketed – giving the Mathewses until September 19, 2023 to provide the date they received notice of the Department's action. Following further phone conversations with Mr. Mathews on the afternoon of the 19th, the Board received an email from the Mathewses just before 5 pm that day stating that they received notice on July 7, 2023.

Two days later, on September 21, 2023, nearly a month outside of the twenty-day amendment by right window granted by 25 Pa. Code § 1021.53(a), the Board received a single-page filing entitled “Amended notice of appeal Appellant John Rose Mathews Appellee Pennsylvania environmental protection Board Amendment of Notice of Appeal.” This filing was accompanied by neither a request for leave to amend the appeal nor supporting affidavits as required by 25 Pa. Code § 1021.53(a)-(c). This filing was the last communication that the Board has received from the Mathewses to date.

During this nearly two-month long back and forth between the Mathewses and Board staff, Sunoco filed a Petition to Intervene on August 16, 2023. After receiving no responses from the

Mathewses or the Department, the Board granted that Petition on September 6, 2023. On November 9, 2023, the Department filed a Motion to Dismiss, or in the alternative, Motion to Strike (“DEP Motion”), and on November 13, 2023, Sunoco joined in that Motion and filed its own separate Motion to Dismiss (“Sunoco Motion”) as well. When the Mathewses did not file a response to either of those Motions within the 30-day response period provided by regulation, the Board issued a Rule to Show Cause as to why the Board should not dismiss the appeal as a sanction pursuant to 25 Pa. Code § 1021.161, which would be discharged if the Mathewses filed a response to the Motions on or before January 17, 2024. The Mathewses were further cautioned that failure to respond may result in dismissal of their appeal. The Mathewses did not file a response or otherwise contact the Board in any way, and the Motions are now ripe for decision.

The Board evaluates a motion to dismiss in the light most favorable to the non-moving party and only grants the motion where the moving party is entitled to judgment as a matter of law. *Protect PT v. DEP*, EHB Docket No. 2023-025-W, slip op. at 2 (Opinion and Order Jan. 10, 2024); *Scott v. DEP*, EHB Docket No. 2022-075-B, slip op. at 2 (Opinion and Order on Motion to Dismiss issued May 15, 2023) (citing *Muth v. DEP*, 2022 EHB 262, 264); *Ritsick v. DEP*, 2022 EHB 283, 284. When resolving a motion to dismiss, the Board accepts the non-moving party’s version of events as true. *Clean Air Council v. DEP*, EHB Docket No. 2022-093-C, slip op. at 4 (Opinion and Order on Motion to Dismiss issued July 14, 2023) (citing *Pa. Fish and Boat Comm’n v. DEP*, 2019 EHB 740, 741); *Downingtown Area Regional Authority v. DEP*, 2022 EHB 153, 155. Thus, “[a]s a practical matter, whether or not there are ‘factual disputes’ on the record is irrelevant with respect to a motion to dismiss, because the operative question is: even assuming everything the nonmoving party states is true, can – or should – the Board hear the appeal?” *Consol v. DEP*, 2015 EHB 48, 55. Where the non-moving party does not file a response to a motion to dismiss, the Board “will

deem a party's failure to respond to a motion to be an admission of all properly-pleaded facts contained in the motion." 25 Pa. Code § 1021.91(f); *Burnside Twp. v. DEP*, 2002 EHB 700, 701. The rules further provide that failure to respond may result in the motion to dismiss being granted. 25 Pa. Code 1021.94(f).

Through their Motions, the Department and Sunoco make several arguments as to why this appeal should be dismissed. While the arguments made by the Department and Sunoco here may very well have merit, we decline to take them up and engage in "empty chair litigation" where the Appellants have opted not to respond. *Pirolli v. DEP*, 2003 EHB 514, 518. Instead, as we cautioned in our most recent order, we dismiss the appeal as a sanction pursuant to 25 Pa. Code § 1021.161:

The Board may impose sanctions upon a party for failure to abide by a Board order or Board rule of practice and procedure. The sanctions may include dismissing an appeal, entering adjudication against the offending party, precluding introduction of evidence or documents not disclosed, barring the use of witnesses not disclosed, or other appropriate sanctions including those permitted under Pa.R.C.P. 4019 (relating to sanctions regarding discovery matters).

While dismissal is a harsh sanction, it is appropriate where the appellant has seemingly abandoned their appeal. *Slater v. DEP*, 2016 EHB 380, 381 ("The Board has repeatedly held that where a party has evidenced a demonstrable disinterest in proceeding with an appeal, dismissal is appropriate."); *Mann Realty Associates, Inc. v. DEP*, 2015 EHB 110, 113 ("The repeated indifference to the Board's orders and Rules affects the integrity of the appeal process before the Board."); *Casey v. DEP*, 2014 EHB 908, 910-11 ("Although dismissing a party's appeal is a drastic sanction, we have often held that it is appropriate in circumstances where a party has evinced an intention to no longer continue with its appeal.").

We are cognizant that the Mathewses have opted to proceed without counsel and still find dismissal to be appropriate. The Board takes the rights of *pro se* appellants very seriously, as we

do the rights of all parties appearing before us. *See Perrin v. DEP*, 2008 EHB 78. While *pro se* appellants are not given special consideration, Board staff often go out of their way, as they did here, to provide *pro se* appellants with the procedural information they require to sustain their appeals. *Schlafke v. DEP*, 2013 EHB 733 (“[P]*ro se* appellants are not excused from following the Board’s rules of procedure. It must also be noted that during the course of this appeal, Ms. Schlafke participated in multiple telephone conversations with assistant counsel for the Board regarding the practices and procedures of the Board and the requirements for compliance with both.”) While the Board may assist in this way, particularly when an appeal is in the process of being perfected, it is the responsibility of the parties – *pro se* or not – to meet deadlines and generally follow Board rules. *Perrin* at 81 (“We have also observed that although individuals have a constitutional right to proceed *pro se*, they still must comply with the same legal requirements that govern proceedings involving parties represented by counsel. Proceeding without counsel often is the legal equivalent of performing a medical operation on yourself.”); *Green v. Harmony House North 15 Street Housing Association, Inc.*, 684 A.2d 1112, 1114-1115 (Pa. Cmwlth. 1996) (“The fact that Green decided to be her own lawyer does not excuse her from failing to follow the rules of civil and/or appellate procedure. ‘The right of self-representation is not a license...not to comply with relevant rules of procedure and substantive law.’”) (quoting *Faretta v. California*, 422 U.S. 806, 834 n. 6 (1975)).

Here, the Mathews filed their appeal and failed to respond to the first Order to Perfect issued by the Board. While they did respond to the Order to Comply with Order to Perfect, they did so only after Board staff made phone contact with Mr. Mathews and explained that more information was required to sustain their appeal. Further, when the Mathews did respond to the Order to Comply with Order to Perfect, they only provided a partial response, and the Board was

compelled to issue another order relating to the perfection of the appeal. Once again, the Mathews only responded after yet another phone call with Board staff. Throughout these interactions, Board staff stressed the importance of following Board orders and rules and specifically cautioned Mr. Mathews that their choice not to engage representation meant that they were responsible for keeping track of deadlines, being responsive to orders issued by the Board and filings made by opposing parties, and understanding and complying with the rules that govern this adjudicatory process. Specifically, Board staff informed Mr. Mathews that he must check his mail regularly, and then when he signed up for e-filing, that he must check his email – including his junk folder – regularly, and that the Mathews could not simply presume that Board staff would reach out each and every time something was required of them to sustain their appeal because as a party to this litigation, that is their responsibility. Throughout these communications, Board staff also supplied Mr. Mathews with information on how to acquire counsel and encouraged him to do so. Despite these efforts by Board staff, the Mathews have only ever responded to Board orders when chased down and prompted to do so in addition to receiving standard service, and none of their filings have conformed to Board rules. Now, they have failed to respond to both the Department’s Motion and Sunoco’s Motion within the regulation’s response period and have further ignored the Board’s Rule to Show Cause ordering them to respond to those Motions. Taken together, these facts evidence a demonstrable disinterest in proceeding with their appeal, and therefore dismissal is appropriate.

Accordingly, we issue the following order.



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COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and SUNOCO PIPELINE, L.P.,
Intervenor

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EHB Docket No. 2023-061-CS

ORDER

AND NOW, this 20th day of February, 2024, it is hereby ordered that the Department’s and Intervenor’s Motions to Dismiss are **granted** and this appeal is **dismissed**.

ENVIRONMENTAL HEARING BOARD

s/ Steven Beckman

STEVEN BECKMAN
Chief Judge and Chairperson

s/ Bernard A. Labuskes, Jr.

BERNARD A. LABUSKES, JR.
Judge

s/ Sarah L. Clark

SARAH L. CLARK
Judge

s/ MaryAnne Wesdock

MARYANNE WESDOCK
Judge

s/ Paul J. Bruder, Jr.

PAUL J. BRUDER, JR
Judge



DATED: February 20, 2024

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

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