



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

**WAROQUIER COAL COMPANY**

v.

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

:  
:  
:  
:  
:  
:  
:  
:  
:

**EHB Docket No. 2024-007-BP**

**Issued: May 17, 2024**

**OPINION AND ORDER ON  
FAILURE TO OBTAIN COUNSEL**

**By Paul J. Bruder, Jr., Judge**

**Synopsis**

The Board dismisses as a sanction an appeal filed *pro se* by a company that is required by Board rules to be represented by counsel but has failed to comply with Board Orders to obtain representation.

**OPINION**

**Background**

This matter concerns a *pro se* appeal filed by Waroquier Coal Company (“Waroquier”) on January 11, 2024 contesting the Department of Environmental Protection’s (“Department”) suspension of Permit No. 17080111 for failure to comply with the Surface Mining Act, the Clean Streams Law, and, more generally, the Department’s rules and regulations.

Under our rules, “[p]arties, except individuals appearing on their own behalf, shall be represented by an attorney in good standing at all stages of the proceedings subsequent to the filing of the notice of appeal or complaint.” 25 Pa. Code § 1021.21(a). Because Waroquier is not an individual appearing on its own behalf, on February 2, 2024 this Board issued an Order to Obtain

Counsel that required either an attorney to enter an appearance on behalf of Waroquier, or, in the alternative, that Waroquier file a statement addressing its progress toward obtaining counsel by March 4, 2024. That Order went unanswered. The Board followed that Order with two Rules to Show Cause requiring the same dated March 19, 2024 and April 26, 2024 with respective response deadlines of March 29, 2024 and May 8, 2024, both of which have also been ignored.

On March 18, 2024, the deadline set by Pre-hearing Order No. 1 to file a required joint statement certifying that the parties have conferred about settlement, Department Counsel filed a Status Report addressing Waroquier’s failure to comply with the Board’s Order to Obtain Counsel and informing the Board that due to that failure, the parties had not yet conferred on settlement, but that Department Counsel would seek to do so as soon as an attorney entered an appearance on Waroquier’s behalf. To date, no attorney has entered an appearance on Waroquier’s behalf.

Between April 1, 2024 and April 22, 2024, Board staff exchanged emails with Waroquier on the subject of obtaining counsel and the fact that doing so is a requirement when it is a company – rather than an individual – pursuing the appeal. While Joseph Waroquier, Jr. indicated via email that Waroquier had secured representation on April 5, 2024, no attorney has entered an appearance on Waroquier’s behalf despite Board staff’s continued attempts to communicate the necessity of having an attorney enter an appearance, all of which have gone unanswered.

**Discussion**

This Board may impose sanctions – including dismissal of the appeal – for failure to comply with our orders. 25 Pa. Code § 1021.161; *Martin v. DEP*, 1997 EHB 158. Dismissal is warranted where the Appellant clearly demonstrates a lack of intent to pursue the appeal by failing to comply with Board orders. *Blackwood v. DEP*, 2020 EHB 442; *Scottie Walker v. DEP*, 2011 EHB 328; *K H Real Estate, LLC v. DEP*, 2010 EHB 151; *Pearson v. DEP*, 2009 EHB 628; (citing

*Bishop v. DEP*, 2009 EHB 260; *Miles v. DEP*, 2009 EHB 179; *RJ Rhodes Transit, Inc. v. DEP*, 2007 EHB 260; *Swistock v. DEP*, 2006 EHB 396; *Sri Venkateswara Temple v. DEP*, 2005 EHB 54). The Board has imposed dismissal as a sanction when entities required to be represented by an attorney in good standing have failed to retain counsel. *Mann Realty v. DEP*, 2015 EHB 110; *Falcon Coal & Construction Co. v. DEP*, 2009 EHB 209.

While it seems that initially Waroquier may have been interested in pursuing this appeal, communications from Waroquier have ceased as of April 22, 2024, and Waroquier has failed to respond to our initial Order to Obtain Counsel and two following Rules to Show Cause, demonstrating a lack of intent to pursue this appeal.

Accordingly, we issue the following order.



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

WAROQUIER COAL COMPANY

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

:  
:  
:  
:  
:  
:  
:

**EHB Docket No. 2024-007-BP**

**ORDER**

AND NOW, this 17<sup>th</sup> day of May, 2024, following Appellant’s failure to comply with Board orders, and pursuant to 25 Pa. Code § 1021.161, it is hereby ordered that the appeal in the above-referenced matter is terminated. The docket will be marked as **closed**.

**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: May 17, 2024**



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

**For the Commonwealth of PA, DEP:**  
Daniel Schramm, Esquire  
David N. Smith, Esquire  
(via *electronic filing system*)

**For Appellant:**  
Waroquier Coal Company  
Attn: Joseph L. Waroquier, Jr.  
P.O. Box 128  
Clearfield, PA 16830  
(via *first class U.S. mail*)