



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 4 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

**ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at
<https://ehb.pa.gov/>



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NOTICE OF APPEAL FORM
APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

2. Describe the subject of your appeal:
 - (a) 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)?

 - (b) Which Department official took the action (usually the person identified on any written notice that you received)?

 - (c) What is the location of the operation or activity which is the subject of the Department's action (the municipality and/or county where the activity takes place or will take place)?

 - (d) How, and on what date, did you receive notice of the Department's action? Please specify whether through public notice, a letter or email from the Department, or some other source.

 - (e) Did you receive written notification of the Department's action (for example, letter, order or permit that you are appealing)? If yes, you **must** attach a copy of the notification to this Notice of Appeal. If you are appealing a permit, you may attach the first page rather than the entire document. In lieu of attaching the document, you may provide a link to notice of the action in the *Pennsylvania Bulletin*. See filing instructions for further instruction.

3. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

NOTICE OF APPEAL FORM
APPEAL INFORMATION, CONT.

4. Describe your objections to the Department's action in separate, numbered paragraphs. Rather than use the space on this form, you may type your objections on separate paper if you require more space. **NOTE:** The objections may be factual or legal and must be specific. It is important that you include **ALL** your objections in this section. Although you may be able to amend your appeal to add new objections, you may require permission of the Board to do so, and you may not be able to raise omitted objections later in the appeal process.

NOTICE OF APPEAL FORM
SIGNATURE PAGE

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 3 of this form on the following date: _____.

Signature of Appellant or Appellant's Counsel

Date: _____

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Attorney Name (Type or Print)

Address

Telephone No.: _____

Email: _____

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.

FILING INSTRUCTIONS

Please read and follow these instructions in their entirety. If you fail to follow the requirements outlined below (including submitting a copy of the action you are appealing and serving process to other parties), the Board may dismiss your appeal.

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate *legal proceedings*, which ask the Board to review an action of the Department of Environmental Protection. The proceedings will require you to file documents, participate in discovery, and may ultimately require you to participate in a hearing before the Board. In addition to the Board, the proceedings will also involve interaction with, including you being required to send copies of your filings to, the Department of Environmental Protection and possibly other parties, such as those who have received a permit from the Department.

How to File a Notice of Appeal

Your Notice of Appeal, along with any required documents and information, shall be filed either by facsimile or by mail, hand or other delivery service at the following address:

Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738

Attorneys also have the option to file a Notice of Appeal electronically at <https://ehb.pa.gov/>

A Notice of Appeal filed by *mail, hand, or other delivery service* that is received after the close of the business day at 4:30 PM Eastern Time shall be deemed to be filed on the following business day. A Notice of Appeal filed by *facsimile* shall be deemed filed on the day it is received by the Board. A notice of appeal filed by facsimile should be followed up with a hard copy. A Notice of Appeal filed *electronically* before midnight EST will be considered to be filed on that date.

Filling out the Notice of Appeal Form—Appeal Information

1. When filing a new appeal, provide your name (or name of the business, where applicable), address, telephone number, and an email address.
2. (a) You must specify the action of the Department that you seek to have the Board review, for example, a permit, determination, or other act.
(b) You must identify the Department official that took the action.
(c) You must identify the location (the municipality and county) of the operation or activity that is the subject of the action.
(d) You must describe when and how you were notified of the Department's action.

(e) If you have received written notification of an action of the Department, you must attach a copy of that notification and any documents received with the notification to the Notice of Appeal. If the documents include a permit, you only need attach the first page of the permit. Instead of attaching a copy of the notification of the action or related documents, you may provide a link to the publication of the action in the *Pennsylvania Bulletin*.

3. You must specify any related appeal already pending before the Board of which you are aware.
4. When describing your objections to the Department's action, you must do so in separate, numbered paragraphs for each objection. The objections must be specific and may be factual or legal.

Rather than use the space on the Notice of Appeal form, you may type your objections on separate paper if you require more space. Note that if you fail to state an objection to the action in your Notice of Appeal, you may be barred from raising that objection later.

Filling out the Notice of Appeal Form—Proof of Service

You must provide proof of service of the Notice of Appeal to the agency taking the action (typically the Department of Environmental Protection), as well as certain other individuals that may be affected by the appeal.

This means that a copy of the Notice of Appeal must be delivered to each the following:

- (1) The Environmental Hearing Board at:

Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

- (2) The Department of Environmental Protection Office of Chief Counsel at:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

- (3) The officer of the Department of Environmental Protection (or other agency) that took the action being challenged. If you do not know the correct address for the agency office involved in the appeal, you should contact that agency directly, or you may contact the Secretary to the Environmental Hearing Board to obtain the appropriate address.

- (4) If you are appealing an action by the Department that involves someone else (for

example, if you want to appeal a permit issued to another person or business), you must also send that person or business a copy of your Notice of Appeal. This is required by the Environmental Hearing Board's rules at 25 Pa. Code § 1021.51.

- (5) For certain claims, you must notify the person, municipality, or operator of your Notice of Appeal because their rights may be affected. This may include:
- ❑ In appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7, any affected municipality, its municipal authority, and the proponent of the request, when applicable, and any municipality or municipal authority whose official plan may be affected by a decision of the Board in the appeal.
 - ❑ The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. §§ 1406.5a, 1406.5b, 1406.5d, and 1406.5e.
 - ❑ The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218.
 - ❑ The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.

Note: For Attorneys who file an appeal electronically, only the persons listed in (4) and (5) above must be served where applicable. Electronically filed Notices of Appeal are automatically served on the Department's Office of Chief Counsel and officer who took the action. There is no need to independently serve the Department.

Additional Information on Appeals Involving a Penalty Assessment

In the case of a penalty assessment, many environmental statutes require the amount of the penalty or a bond in that amount to be submitted within the 30-day period required for the filing of the appeal.

Where the statute requires that prepayment be made to the Board, the appellant shall submit to the Board with the Notice of Appeal a check in the amount of the penalty, or an appropriate bond securing payment of the penalty as required by statute. A check shall be made payable to the *Commonwealth of Pennsylvania*; a bond shall be in favor of the Board, and these shall be sent to the following address:

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

Where the statute requires that prepayment be made to the Department of Environmental Protection, the appellant shall submit the prepayment to the Department at the following address in accordance with the Department's instructions:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer

16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

If the appellant claims an inability to prepay, that claim must be submitted within the 30-day period by a verified statement either with the Notice of Appeal or in a supplementary document.

Pro Bono Information

Individuals filing an appeal on their own behalf before the Environmental Hearing Board do not need a lawyer. However, important legal rights may be at stake, and proceedings before the Environmental Hearing Board are legal and technical in nature. Therefore, it is strongly recommended that you seek legal counsel. If you cannot afford a lawyer, you may qualify for free legal representation. If your household income is less than 200% of the federal poverty level, then, within fifteen calendar days of filing the Notice of Appeal, you may submit a written request for pro bono representation to the Pro Bono Committee of the Pennsylvania Bar Association's Environmental & Energy Law Section at the following address:

Thomas M. Duncan, Esq.
PBA Environmental & Energy Law Section
Chair, Pro Bono Committee
c/o Faegre Drinker Biddle & Reath LLP
One Logan Square, Ste. 2000
Philadelphia, PA 19103
Phone: 215-988-2572
thomas.duncan@faegredrinker.com

Please also mail a copy of your request to the Environmental Hearing Board. Even if you are deemed financially eligible, a pro bono referral is not guaranteed and is instead based on the availability of volunteers. In addition, you may contact your local or county bar association for more information.

Small corporations owned by no more than three (3) individuals may also be eligible for a pro bono referral if each of the owners' household income is less than 300% of the federal poverty level.