



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



RIVER HILL COAL COMPANY, INC.

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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EHB Docket No. 2024-173-CS

Issued: May 16, 2025

**OPINION AND ORDER ON DEPARTMENT'S
MOTION TO DISMISS**

By Sarah L. Clark, Judge

Synopsis

The Board grants a Motion to Dismiss where the Appellant limited liability company failed to obtain representation in accordance with 25 Pa Code §1021.21, failed to comply with Board Orders, and failed to file a response to the Motion to Dismiss.

OPINION

Background

This appeal arises from a Compliance Order issued by the Department of Environmental Protection (“Department”) to River Hill Coal Company, Inc. (“Appellant” or “River Hill”) on November 15, 2024, alleging violations of regulatory provisions under the Surface Mining Conservation and Reclamation Act and the Clean Streams Law, specifically 25 Pa. Code § 87.107(a), for failure to properly design, construct or maintain treatment facilities, and detailing corrective actions.

The Appellant filed a Notice of Appeal with the Board on November 22, 2024. The Notice of Appeal did not include all required information, and the Board issued an Order to Perfect on

November 27, 2024, requesting a complete address, telephone number, the date that the Appellant received notice of the Department's action, objections to the Department's action, and proof of service. This Order notified the Appellant that it had 20 days, or until December 12, 2024, to amend the appeal as of right under 25 Pa Code §1021.53(a). On December 12, 2024, the Board received the requested information, and the appeal was deemed perfected.

As River Hill is an incorporated entity, the Board issued an Order to Obtain Counsel on December 13, 2024, requiring the appellant to have an attorney enter an appearance on River Hill's behalf by January 13, 2025, or, to the extent that the search for appropriate counsel remained ongoing, file a statement addressing its progress toward securing representation. After receiving no response from the Appellant by the given date, the Board issued an Order to Comply with the Order to Obtain Counsel on January 21, 2025, requiring River Hill to have an attorney enter an appearance on its behalf by February 21, 2025.

The Appellant once again failed to respond to the Board's Order, and the Department subsequently filed a Motion to Dismiss ("Motion") on March 17, 2025. On March 18, 2025, the Board issued an Order for Response to the Motion to Dismiss with a deadline of April 16, 2025. No response was filed, and this matter is now ripe for disposition by the Board.

Standard

The Board evaluates a motion to dismiss in the light most favorable to the non-moving party and only grants the motion where the matter is free from doubt and the moving party is entitled to judgment as a matter of law. *Protect PT v. DEP*, 2024 EHB 154, 155-156; *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*, 2023 EHB 203, 206 (citing *Pa. Fish and Boat Comm'n v. DEP*, 2019 EHB 740, 741); *Downingtown Area Regional Authority v. DEP*,

2022 EHB 153, 155. 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); *Ongaco v. DEP*, 2023 EHB 239, 241; *Burnside Twp. v. DEP*, 2002 EHB700, 701.

Discussion

By its Motion, the Department argues that this appeal should be dismissed because the Appellant, an incorporated entity, has failed to obtain counsel as required by our Rules, and in so doing, has also ignored Orders of this Board. According to 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[,]” and “[c]orporations shall be represented by an attorney of record.” 25 Pa. Code § 1021.21(a)-(b). Indeed, we have regularly dismissed appeals filed by non-individuals for failure to obtain counsel once such entities have been given a reasonable opportunity to secure representation and have not done so. *Lizabella Mining, LLC v. DEP*, 2024 EHB 783, 786-787; *Waroquier Coal Co. v. DEP*, 2024 EHB 396, 397-398; *Earth First Recycling, LLC v. DEP*, 2018 EHB 819, 820-821; *Falcon Coal and Constr. Co. v. DEP*, 2009 EHB 209, 210. As the Appellant is not an individual appearing on its own behalf, but rather a corporation, we issued two Orders directing River Hill to obtain counsel, or, at a minimum, to inform the Board of its progress toward obtaining counsel. The Appellant did not respond in any way to either of those Orders, and to date no attorney of record has entered an appearance in this appeal.

When appellants fail to respond to orders requiring affirmative action on their part, such as our Orders to Obtain Counsel here, such failure shows a lack of interest to pursue the appeal, justifying dismissal. *Citizens Advocating a Clean Healthy Environment v. DEP*, 2017 EHB 1077,

1078; *KH Real Estate, LLC v. DEP*, 2012 EHB 155, 156-157; *R. J. Rhodes Transit, Inc. v. DEP*, 2007 EHB 260, 261. It is worth noting that this is not a situation where an appellant files an appeal and then disappears completely, as sometimes occurs. As detailed above, prior to ordering River Hill to obtain counsel, we ordered River Hill to perfect its appeal because the initial filing did not include all necessary information. On the final day of the 20-day period in which an appellant may amend its notice of appeal by right under 25 Pa. Code § 1021.53(a), River Hill responded to our Order to Perfect by filing the required information, and we deemed the appeal perfected. Thus, it appears that while River Hill was originally engaged with this appeal, that engagement ceased sometime after perfecting the appeal. Further demonstrating the Appellant's apparent abandonment of this appeal is the fact that it failed to file a Response to the Department's Motion. Although the Board is not required to issue orders for responses to party motions, and our Pre-Hearing Order No. 1 explicitly states that we will not issue such orders, where an appellant has filed an appeal *pro se*, we often do issue orders to inform the non-moving *pro se* appellant that our Rules provide for a response, as well as the date upon which that response is due. We issued such an Order here, but the Appellant did not file a response, and so we deem all properly pleaded facts contained within the Department's Motion admitted. 25 Pa. Code § 1021.91(f); *Mathews v. DEP*, 2024 EHB 223, 226-227; *Ongaco v. DEP*, 2023 EHB at 241; *Burnside Twp. v. DEP*, 2002 EHB at 701. As the Appellant has failed to comply with our Orders and Rules, failed to file a response to the Department's Motion, and has therefore apparently lost interest in pursuing its appeal, we must grant the Department's Motion to Dismiss.

Accordingly, we issue the following Order.



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ORDER

AND NOW, this 16th day of May, 2025, it is **ordered** that River Hill Coal Company, Inc.'s
appeal is **dismissed**.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman

STEVEN C. 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 16, 2025

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

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

For Appellant, *pro se*:
River Hill Coal Company, Inc.
(via *electronic filing system*)

River Hill Coal Company, Inc.
48 Memorial Road
PO Box 141
Kylertown, PA 16847
(via *first class U.S. mail*)