



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

<b>DAVID C. BERNSTEIN</b>	:	
	:	
v.	:	<b>EHB Docket No. 2023-090-BP</b>
	:	<b>(Consolidated with 2024-006-BP)</b>
	:	
<b>COMMONWEALTH OF PENNSYLVANIA,</b>	:	
<b>DEPARTMENT OF ENVIRONMENTAL</b>	:	
<b>PROTECTION and MONTGOMERY</b>	:	<b>Issued: March 18, 2025</b>
<b>COUNTY CONSERVATION DISTRICT, and</b>	:	
<b>222 CHURCH ROAD LLC, Permittee</b>	:	

**OPINION AND ORDER**  
**GRANTING MOTION TO WITHDRAW AS COUNSEL**

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

**Synopsis**

The Environmental Hearing Board (“Board”) grants a motion requesting leave to withdraw as counsel. Permittee 222 Church Road, LLC has failed to substantially fulfill an obligation to counsel and withdrawal will not prejudice the litigants, delay the case, or impede the efficient administration of justice. Permittee 222 Church Road, LLC shall obtain new counsel if it wishes to participate in any hearing or submit any filings in this case.

**OPINION**

**Background**

This third-party appeal centers around a National Pollutant Discharge Elimination System (“NPDES”) permit, PAC460811, issued to Permittee 222 Church Road, LLC. Appellant David C. Bernstein (“Mr. Bernstein”) filed two appeals with the Board regarding the subject NPDES permit. The first Board appeal occurred in November 2023 and challenged the Montgomery County Conservation District’s (“MCCD”) issuance of the NPDES permit. (See NOA, November 8, 2023

at docket 2023-090-BP). The second appeal was filed in January 2024 and challenged the Department of Environmental Protection’s (“Department” or “DEP”) determination, after an informal hearing, that the MCCD’s issuance of the permit was valid. (*See* NOA, January 10, 2024 at docket 2024-006-BP). The Board consolidated the two appeals by Order dated January 22, 2024 at EHB Docket No. 2023-090-BP. Throughout the appellate process, Permittee was represented by Steven A. Hann, Esquire of Hamburg, Rubin, Mullin, Maxwell & Lupin, PC.

Procedurally, fact and expert discovery have ended, and dispositive motions have been filed and decided. However, pre-trial deadlines have not yet been established nor has a hearing date been scheduled.

On February 28, 2025, Attorney Hann filed a Motion for Leave to Withdraw as Counsel. On March 3, 2025, the Board issued an Order that any Response to said Motion was due on or before March 14, 2025. It was further ordered that Permittee be made aware, in writing, that it must obtain counsel if it wishes to participate in any hearing and/or submit any filings in accordance with 25 Pa. Code § 1021.21(a).<sup>1</sup> On March 13, 2025, the Department and MCCD filed their Response agreeing to the withdrawal so long as Permittee is advised that failure to participate in any hearing or filing does not protect it from potential costs and attorneys’ fees under Section 307(b) of the Clean Streams Law, 35 P.S. § 691.307(b), and applicable case law. Appellant did not file a Response. This matter is ready for review and disposition.

### **Standard of Review**

Pennsylvania Rule of Professional Conduct 1.16(b), governing declining or terminating representation, states that a lawyer may withdraw from representing a client if “withdrawal can be

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<sup>1</sup> A copy of the March 3, 2025 Order was served on Permittee’s personal contact, Zvi Bloom, as well as counsel.

accomplished without material adverse effect on the interests of the client.” Pa.R.P.C. 1.16(b)(1). Additionally, a lawyer may withdraw from representation if “the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.” Pa.R.P.C. 1.16(b)(5).

In ruling on a request for leave to withdraw in a circumstance that will leave a party unrepresented, the Board considers “the reasons why withdrawal is requested; any prejudice withdrawal may cause to the litigants; delay in resolution of the case which would result from withdrawal; and the effect of withdrawal on the efficient administration of justice.” 25 Pa. Code § 1021.23(b); *DEP v. Allegheny Enterprises, Inc.*, 2013 EHB 40, 41.

### **Discussion**

In the instant matter, Attorney Hann requests leave to withdraw as counsel as Permittee failed in its obligation to pay the money due to him and his firm for legal services in this current appeal. The Board has found it appropriate for an attorney to withdraw from representation for the failure of a client to pay money owed, as it constitutes failure to substantially fulfill an obligation. *DEP v. Allegheny Enterprises, Inc.*, 2015 EHB 40, 42 (citing *Mann Realty Assocs., Inc. v. DEP*, 2014 EHB 1040, 1043). Any continuation of representation of Permittee will result in an unreasonable financial burden on Mr. Hann and his firm. In addition, as required by Pa.R.P.C. 1.16(b)(5), Mr. Hann has fully advised Permittee that he is seeking withdrawal of counsel unless his payment obligation is fulfilled. Specifically, Mr. Hann’s firm has contacted Permittee on numerous occasions via email, texts, telephone, and certified mail regarding the outstanding bills for legal services rendered and has received only a limited payment.

The Board expresses concern with the withdrawal in that Permittee will be unable to represent itself in any proceedings before the Board *pro se*, as it is a limited liability company. 25

Pa. Code § 1021.21(a). However, this Board has Ordered Mr. Hann to inform Permittee of that information, in writing, and served a copy of that Order on the direct contact person for Permittee. At this stage in the proceedings, all discovery and dispositive motions have been completed. The parties are waiting for the Board to set pre-trial deadlines and a hearing date, and it is unlikely that a hearing will take place for several months. This will allow Permittee ample time to decide if it would like to obtain new counsel to participate in the pre-trial filings and hearing.

As the Board has previously stated in *DEP v. Allegheny Enterprises, Inc.*, while we are permitting Mr. Hann and his firm to withdraw, we advise him of his responsibility to 222 Church Road, LLC and advise:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Pa.R.P.C. 1.16(d).

Notably, Mr. Hann did “provide the Board with a single contact person for future service in all proceedings,” as required by 25 Pa. Code § 1021.23(c). As such, future service will be provided directly to the Zvi Bloom c/o 222 Church Road, LLC, 509 Cedar Hill Road, Far Rockaway, NY 11691 until such time as new counsel enters an appearance before the Board on behalf of Permittee. *See Manning v. DEP*, 2013 EHB 845, 847.

### **Conclusion**

Therefore, for the reasons stated above, we grant the Motion for Leave to Withdraw as Counsel for Permittee 222 Church Road, LLC. Accordingly, we issue the Order that follows.



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<b>COUNTY CONSERVATION DISTRICT, and</b>	:	
<b>222 CHURCH ROAD LLC, Permittee</b>	:	

**ORDER**

AND NOW, this 18<sup>th</sup> day of March, 2025, in consideration of an unopposed Motion to Withdraw as Counsel for Permittee 222 Church Road, LLC filed by Steven A. Hann, Esquire of Hamburg, Rubin, Mullin, Maxwell & Lupin, PC., it is hereby **ordered** that said Motion is **granted**.

It is further **ordered** that under 25 Pa. Code § 1021.21(b), which requires corporations to be represented by an attorney of record admitted to practice before the Supreme Court of Pennsylvania, 222 Church Road, LLC shall retain new counsel and shall have counsel enter an appearance in this matter **by no later than April 30, 2025** if it wishes to participate in any hearing and/or submit any filings. If no attorney has entered an appearance on behalf of 222 Church Road, LLC by April 30, 2025, but Permittee does intend to seek new counsel, 222 Church Road, LLC **shall file a statement on the docket** addressing its progress toward obtaining counsel **by April 30, 2025**.

222 Church Road, LLC is further advised that failure to participate in any hearing, briefing, or filing at any stage of the current appeal does not protect it from potential costs and attorneys’ fees under Section 307(b) of the Clean Streams Law, 35 P.S. § 691.307(b).



**ENVIRONMENTAL HEARING BOARD**

s/ Paul J. Bruder, Jr. \_\_\_\_\_

**PAUL J. BRUDER, JR.**

**Judge**

**DATED: March 18, 2025**

**DEP, General Law Division:**

Attention: Maria Tolentino

*(via electronic mail)*

**c: For the Commonwealth of PA, DEP & Montgomery County Conservation District:**

William J. Gerlach, Jr., Esquire

Patrick J. Donovan, Esquire

*(via electronic filing system)*

**For Appellant:**

Aaron S. Mapes, Esquire

Robert J. Schena, Jr., Esquire

*(via electronic filing system)*

**For Permittee**

Steven Hannn, Esquire

*(via electronic filing system)*

Zvi Bloom

222 Church Road, LLC

509 Cedar Hill Road

Far Rockaway, NY 11691

*(via first class U.S. mail)*