COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

NATHAN EACHUS	:	
	:	
v.	:	**EHB Docket No. 2025-131-L**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and MOXIE FREEDOM, LLC, dba CAITHNESS MOXIE FREEDOM, Permittee	:	**Issued: November 6, 2026**

OPINION AND ORDER ON
PETITION FOR RECONSIDERATION

By Bernard A. Labuskes, Jr., Board Member and Judge

Synopsis

The Board denies an appellant's petition for reconsideration where the appellant does not address any of the requirements for the reconsideration of a final order established in our Rules and he merely restates arguments that were disposed of during summary judgment.

O P I N I O N

Nathan Eachus, proceeding *pro se*, filed this appeal from the renewal of Title V Operating Permit No. 40-00129 issued by the Department of Environmental Protection (the "Department") to Moxie Freedom, LLC dba Caithness Moxie Freedom ("Moxie") for a natural gas fired power plant in Salem Township, Luzerne County. In his appeal, Mr. Eachus raised issues concerning the public notice that was provided for the permit renewal, and issues that bear some relation to potential risks associated with a nuclear power plant known as the Susquehanna Steam Electric Station. Both Mr. Eachus and Moxie filed motions for summary judgment. We granted Moxie's motion for summary judgment and denied Mr. Eachus's motion. We held that Mr. Eachus had not substantiated any credible connection between Moxie's facility and the Susquehanna Steam

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Electric Station that justified evaluating the projects together for purposes of renewing Moxie's Title V permit.

With respect to Mr. Eachus's public notice concerns, the parties agreed that Moxie was required to publish notice of the Department's intent to issue the renewed permit in a newspaper on three separate days, but instead only published notice in the newspaper on one day. The failure to publish notice in the newspaper on three separate days was brought to the Department's attention by Mr. Eachus and another individual in November 2025, after the renewal permit had been issued in August 2025. Upon learning of the newspaper notice error, the Department directed Moxie to republish newspaper notice on three days. Moxie then published newspaper notice in the Wilkes-Barre *Citizens' Voice* on November 18, 19, and 20, 2025. The Department opened up another 30-day comment period until December 20, 2025. No comments were received during the additional comment period.

We concluded that Moxie and the Department had already sufficiently addressed the lack of complete newspaper notice by republishing notice on three separate days and opening a new 30-day comment period. We found that Mr. Eachus had not established any basis for taking the rather severe measure of vacating the permit renewal based solely on the newspaper notice issue, noting among other things that this appeal concerns the renewal of an operating permit for a facility that has been operating since 2018. We added that Mr. Eachus had not established any basis for his assertion that a public hearing on the permit renewal should be held at Berwick High School because holding a public hearing is not a mandatory requirement under the law.

Mr. Eachus has now filed a petition for reconsideration of our Opinion and Order granting Moxie's motion for summary judgment. (He has not sought reconsideration of the aspect of our Opinion and Order denying his own motion for summary judgment.) He seeks reconsideration

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based on his arguments regarding public notice, not his arguments related to the nuclear power plant. Moxie has filed a response in opposition to the petition, and the Department has filed a letter indicating its opposition.

Our rule regarding reconsideration of a final order such as the Opinion and Order we issued in this case reads in the relevant part as follows:

> (a) A petition for reconsideration of a final order shall be filed within 10 days of the date of the final order….Reconsideration is within the discretion of the Board and will be granted only for compelling and persuasive reasons. These reasons may include the following:
>
> (1) The final order rests on a legal ground or a factual finding which has not been proposed by any party.
>
> (2) The crucial facts set forth in the petition:
>
> (i) Are inconsistent with the findings of the Board.
> (ii) Are such as would justify a reversal of the Board's decision.
> (iii) Could not have been presented earlier to the Board with the exercise of due diligence.

25 Pa. Code § 1021.152(a).

Taking the listed bases for reconsideration in turn, first, Mr. Eachus's petition does not point to a legal ground or factual finding in our Opinion that was not proposed by any party. In fact, nothing in our Opinion goes beyond the arguments of the parties. Next, Mr. Eachus does not include *any* crucial facts in his petition that are inconsistent with the findings of the Board, let alone facts that would justify reversal of our decision which could not have been presented earlier with the exercise of due diligence. Although the bases for reconsideration set forth at Section 1021.152(a)(1) and (2) are not necessarily exclusive, reconsideration for any reason is within the discretion of the Board and will only be granted for compelling and persuasive reasons. 25 Pa. Code § 1021.152(a).

As we have held many times, mere disagreement with a ruling is not a basis for reconsideration. *Pileggi v. DEP*, EHB Docket No. 2022-068-BP, slip op. at 6 (Opinion and Order

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on Petition for Reconsideration issued Apr. 30, 2026); *B&R Resources, LLC v. DEP*, 2020 EHB 92, 94 (citing *New Hope Crushed Stone & Lime Co. v. DEP*, 2016 EHB 741, 745). Instead, situations warranting reconsideration are limited to those where the Board made a clear mistake or missed key legal or factual points, *B&R Resources*, 2020 EHB at 94 (citing *Consol Pa. Coal Co. v. DEP*, 2015 EHB 117, 118). *See, e.g.*, *Miller v. DEP*, 1997 EHB 335; *Hawbaker, Inc. v. DEP*, 1996 EHB 230; *Adams Sanitation Co., Inc. v. DEP*, 1995 EHB 1279.

Not surprisingly, Mr. Eachus disagrees with our disposition of his appeal and aside from repeating the same arguments raised earlier, suggests that we should have been more thorough and better explained our holding. He seeks a more "reasoned determination." However, he cites no new law, no intervening change in the law, no new evidence, no previously unavailable crucial facts, no factual errors, and no grounds for decision raised *sua sponte* by the Board.

Mr. Eachus says we did not adequately address the separate notice requirements that are particular to Title V facilities under 25 Pa. Code § 127.521, only referencing them in footnotes. In his summary judgment papers, he said there were unresolved questions about whether Moxie and the Department complied with those requirements without providing any evidence suggesting that they did not. However, as we stated in our Opinion, Mr. Eachus bears the burden of proof in this appeal. 25 Pa. Code § 1021.122(c)(2). He needed to show that the issuance of the permit was in error because of a public notice deficiency. The only deficiency he showed was the failure to publish newspaper notice on three separate days under the notice requirements of 25 Pa. Code § 127.424, which we addressed at length.

Many of the notice requirements in Section 127.521 overlap with the requirements in Section 127.424. Mr. Eachus seems focused on the unique requirement of Section 127.521(b) that the Department must provide notice to people on a mailing list. Mr. Eachus argued that the "record

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fail[ed] to establish full and timely compliance" with Section 127.521, but as we noted in our Opinion, he did not provide any evidence that the Department did not comply. Perhaps more importantly, he did not show that, even assuming the Department did not develop and provide notice to people on a mailing list, that that was a reason why Moxie's permit renewal should have been vacated.

The essence of our Opinion, which remains unchanged, is that any demonstrated prior defects associated with public notice and comment regarding the permit renewal have already been cured, such that no further relief from this Board is necessary or appropriate. Mr. Eachus's arguments to the contrary do nothing more than elevate form over substance. Having not addressed any of the requirements for the reconsideration of a final order established in our Rules, we deny Mr. Eachus's petition for reconsideration.

Accordingly, we issue the Order that follows.

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O R D E R

AND NOW, this 6th day of November, 2026, it is hereby ordered that the Appellant's petition for reconsideration is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ MaryAnne Wesdock
MARYANNE WESDOCK
Chief Judge and Chairperson

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Board Member and Judge

s/ Sarah L. Clark
SARAH L. CLARK
Board Member and Judge

s/ Paul J. Bruder, Jr.
PAUL J. BRUDER, JR.
Board Member and Judge

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