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PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

MOUNTAIN WATERSHED ASSOCIATION, INC.	:	
	:	
v.	:	**EHB Docket No. 2026-032-B**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and LCT ENERGY, L.P., Permittee	:	**Issued: August 13, 2026**

OPINION AND ORDER ON THE DEPARTMENT'S AND PERMITTEE'S MOTIONS TO DISMISS

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

The Board grants the Department's and Permittee's motions to dismiss an appeal as moot where the Department rescinded its permit revision that reduced the amount of a subsidence bond. The Board cannot provide effective relief where the bond amount the appellant wishes to preserve remains in place and, therefore, deprives the appellant of a necessary stake in the outcome of the appeal. Further, no mootness exceptions apply to overcome the mootness determination.

OPINION

This appeal concerns two closely related actions of the Department of Environmental Protection ("Department") pertaining to the subsidence bond for LCT Energy, L.P.'s ("LCT's") Rustic Ridge #1 Mine ("Rustic Ridge"), Coal Mining Activity Permit No. 65131301 (the "Permit"). Mountain Watershed Association, Inc. ("MWA") is appealing Permit Revision No. 13 and Permit Revision No. 14 to LCT's Permit. Revision 13 authorized a large reduction in the subsidence bond associated with Rustic Ridge and Revision 14 rescinded that authorization before the surety, Rockwood Casualty Insurance Company ("Rockwood"), reduced the bond. Before the

Board are two motions to dismiss the appeal as moot, one filed by LCT and the other filed by the Department. The crux of the motions is whether there remains a live controversy for the Board to decide after the Department rescinded its action reducing the subsidence bond and after confirmation that the bond amount was never reduced. MWA contests the motions.

Background

LCT operates Rustic Ridge, an underground coal mine, located in Westmoreland and Fayette Counties. In 2023, LCT applied for the addition of 1,142 underground acres for its mining operation that the Department ultimately approved. This expansion is documented in the Permit under Revision No. 10. In connection with the expansion, the Department required LCT to post an additional subsidence bond, Surety Bond No. ISM-3624 ("Bond"), in the amount of $3,141,450. On October 3, 2025, LCT requested that the Department evaluate the Rustic Ridge subsidence Bond for the purpose of reducing the amount of the Bond. On March 6, 2026, the Department issued Permit Revision No. 13 ("Revision 13"), reducing the penal sum of the Bond from $3,141,450 to $282,679.

Less than one month later, on April 2, 2026, the Department issued Permit Revision No. 14 ("Revision 14") which rescinded Revision 13. Revision 14 was issued in light of a subsidence damage claim made for a property located on Hellen Ridge Lane in Acme, Pennsylvania ("Hellen Ridge property"). The Department determined that Rustic Ridge caused subsidence damage to structures on the Hellen Ridge property and was developing the reasonable cost of repair. Revision 14 kept in place the pre-adjustment amount of $3,141,450 of the Bond. In its letter to LCT in support of Revision 14, the Department stated that "[a]fter the Department issues its determination as to the reasonable cost to repair the structures on the Hellen Ridge property, the Department will consider an adjustment to the subsidence bond amount." (NOA, Ex. B).

MWA received notice of Revision 13 on March 10, 2026, and notice of Revision 14 on April 3, 2026. MWA filed its Notice of Appeal on April 9, 2026. In its Notice of Appeal, MWA asks the Board to retain jurisdiction over Revision 13, declare Revision 14 procedurally defective and ineffective, vacate Revision 13, reinstate the $3,141,450 bond requirement, and grant other appropriate relief. After MWA filed the appeal, the Department and LCT provided additional confirmation that the amount of the Bond had not been reduced. (DEP Motion, Ex. B). In a letter dated April 23, 2026, the Department requested confirmation from Rockwood that the Bond amount had not been reduced. Rockwood responded on April 28, 2026, confirming that it had not received any releases from the Department and that the Bond remained at $3,141,450.[1] The Department provided documentation to MWA on May 13, 2026, showing that the Bond amount remained unchanged and requesting that MWA withdraw this appeal as moot. (DEP Motion, Ex. B). On May 22, 2026, MWA responded that it would not voluntarily withdraw its appeal. LCT and the Department filed their Motions to Dismiss on June 8, 2026, and June 11, 2026, respectively. MWA filed its Consolidated Response in Opposition to the Motions maintaining that the appeal remains viable. LCT and the Department have filed their replies, completing the briefing and making the matter ripe for decision.

Standard of Review

A motion to dismiss is typically appropriate where a party objects to the Board hearing an appeal because of a lack of jurisdiction, some issue of justiciability, or another preliminary concern, and there are no material facts in dispute. *Heights Plaza Materials, Inc. v. DEP*, 2025 EHB 36, 38; *Kelosky v. DEP*, 2024 EHB 662, 664. The Board evaluates motions to dismiss in the

[1] MWA acknowledges that Rockwood never processed the documentation necessary to reduce its liability and that the penal sum on the Bond remains unchanged.

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light most favorable to the non-moving party and will only grant the motion when the moving party is clearly entitled to judgment as a matter of law. *Bernstein v. DEP*, 2025 EHB 514, 515; *Lizabella Mining, LLC v. DEP*, 2024 EHB 783, 785. See also *Carlisle Pike Self Storage v. DEP*, 2022 EHB 25 (denying a motion to dismiss arguing that the Board lacks jurisdiction because it was not clear as a matter of law); *Perano v. DEP*, 2010 EHB 439 (denying a motion to dismiss arguing lack of jurisdiction because the facts must be viewed in the light most favorable to the non-moving party).

For the purposes of resolving motions to dismiss, the Board accepts the non-moving party's version of factual events as true. *Angela Cres Trust of June 25, 1998 v. DEP*, 2025 EHB 567, 569 *Protect PT v. DEP*, 2024 EHB 154, 156. Importantly, motions to dismiss will be granted only when a matter is free from doubt. *River Hill Coal Company, Inc. v. DEP*, 2025 EHB 354, 355; *Clean Air Council v. DEP*, 2023 EHB 203, 206; *Scott v. DEP*, 2023 EHB 138, 140; *Popovich v. DEP,* 2023 EHB 35, 36. *See also Downingtown Area Regional Authority*, 2022 EHB 153 (denying a motion to dismiss on jurisdictional grounds because the matter is not free from doubt).

Discussion

The material facts are straightforward in this matter. Revision 13 authorized a reduction of LCT's subsidence bond and Revision 14 rescinded that authorization. Rockwood did not reduce the amount of the Bond at any time between the enactment of Revision 13 and Revision 14 and has not done so since. The Bond remains at $3,141,450, the amount MWA seeks to preserve. The Department and LCT argue that, given these facts, there is no effective relief the Board can provide, rendering MWA's appeal of Revisions 13 and 14 moot, and thereby making dismissal appropriate.

MWA opposes the Department's and LCT's mootness position, and contends that the matter remains a live case and controversy. MWA's legal theory to overcome the mootness claim is a layered one. First, MWA posits that Revision 13 is a "formal permit decision" that became legally effective when issued. It says that Revision 13 changed the amount of the required subsidence Bond from approximately $3.14 million to $282,679, and that it was accompanied by a Bond Release and Adjustment Transmittal Form documenting the release of more than $2.8 million. It argues that in order "to restore the higher required bond amount, the Department was required to process a new upward bond adjustment through the formal procedures of 25 Pa. Code § 86.152, including advance written notice to the surety." (MWA Brief at 4). MWA characterizes Revision 14 as an "informal letter" with "redline edits" that did not comply with the regulatory requirements necessary to readjust the Bond upward. In essence, MWA argues that Revision 13 created a legally effective bond reduction and that the Department's later Revision 14 did not validly erase that reduction. Therefore, in MWA's view, the appeal cannot be moot where Revision 13 still has legal consequences since Revision 14 did not validly rescind the Department's earlier authorization to reduce the Bond.

A matter is moot when the Board is unable to grant effective relief or the appellant has been deprived of a necessary stake in the outcome. *Teska v. DEP and EQT Production, Co.,* 2015 EHB 639, 640; *Delaware Riverkeeper Network v. DEP and PennDOT*, 2012 EHB 215, 216, citing *Horsehead Res. Dev. Co. v. DEP*, 780 A.2d 856, 858 (Pa. Cmwlth. 2001), *appeal denied*, 796 A.2d 987 (Pa. 2002); *Bensalem Township Police Benevolent Assoc., Inc. v. Bensalem Township*, 777 A.2d 1174, 1178 (Pa. Cmwlth. 2001); *Blue Marsh Labs v. DEP*, 2008 EHB 306, 307-08; *Solebury Township v. DEP*, 2004 EHB 23, 28-29. Further, when the Department rescinds the action that is the subject of an appeal, the appeal is rendered moot. *Teska v. DEP and EQT*

Production, Co., 2015 EHB 639, 640; *Gardner v. Cumberland County Conservation Dist.*, 2008 EHB 110, 111. See also *Delaware Riverkeeper Network v. DEP and PennDot*, 2012 EHB 215 (the appeal was moot where the permit at issue was revoked by the Department).

25 Pa. Code § 86.152 governs bond adjustments for mining and reclamation operations. It provides in part that the Department can periodically adjust bond amounts when there is a change to: 1) the area requiring bond coverage; 2) future reclamation costs; or 3) the projected subsidence damage repair liability. MWA argues that Revision 14 did not conform to the requirements set forth in Section 86.152 to effectively adjust the Bond back to the pre-Revision 13 amount. In MWA's view, Revision 13 was an effective permit action upon issuance and changed the authorized required bond amount in the Permit from $3,141,450 to $282,679. MWA argues that, once Revision 13 took effect, the Department could restore the higher bond amount only by processing a new upward bond adjustment through the procedures set forth in Section 86.152, including advance written notice to Rockwood. MWA therefore contends that the Revision 14 letter and redline edits were not a lawful substitute for a new bond adjustment and, as such, did not deprive the Board of the ability to review Revision 13.

We do not read Section 86.152 as requiring the elaborate "formal upward bond adjustment" process that MWA claims was required here. The regulation describes the conditions under which the Department can adjust a bond amount, schedules for bond reevaluations, notice requirements, and an opportunity for a permittee to participate in an informal conference with the Department. To the extent Section 86.152 sets forth specific steps or more onerous requirements that are needed to adjust a bond, those procedures apply in the event a permittee requests a reduction in the bond amount. Subsection (b) provides that a permittee may request a reduction by submitting evidence that "warrants a reduction of the bond amount by proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the Department to complete the reclamation, restoration or abatement responsibilities." 25 Pa. Code § 86.152(b). The regulation does not contain a similarly descriptive section explaining requirements for the Department making an upward adjustment. However, even if the regulation spelled out concrete steps for an upward adjustment, we are not persuaded that the Department's failure to follow those procedures in this instance would invalidate Revision 14. MWA's argument depends on treating Revision 14 as though it were a standalone upward bond adjustment. But Revision 14 was not a pure bond adjustment in the ordinary sense. Had Revision 13 actually reduced the operative bond amount and had the Department later sought to increase the requirement back to the pre-Revision 13 amount, it is possible that the Department would have been required to do more such as: determining that the projected liability or other relevant circumstances necessitated the higher bond; notify LTC and Rockwood; provide LTC with the opportunity to for an informal conference; then issue a final bond-adjustment action requiring the higher amount.

Under the facts of this case, MWA is overstating what Section 86.152 requires. MWA's argument assumes that Revision 13 fully changed the operative bond requirement such that Revision 14 necessarily had to be processed as a new increase under Section 86.152. Here, the Bond was never actually reduced. As such, the Department did not need to "restore" the Bond by conducting a new upward adjustment. Additionally, the Department treated Revision 14 as a rescission of the authorization to reduce the Bond before the reduction occurred, not as a new upward adjustment. Section 86.152 does not say that a rescission of an unimplemented downward adjustment must be treated as a new upward adjustment. Here, unlike a routine bond adjustment, the circumstances did not require LCT to post a new bond or for Rockwood to issue new or additional surety coverage. Nor was it necessary to increase the penal sum above the amount already in place. Rather, Revision 14 rescinded the earlier bond adjustment approved in Revision 13 before that adjustment was effectuated by the Department's Bonding Section or processed by Rockwood. The Department's Bonding Section did not issue the letter that would have reduced the Bond, and Rockwood never received a release.

We are also not persuaded by MWA's characterization of Revision 13 as a formal permit action and Revision 14 as an informal letter incapable of undoing it. The Notice of Appeal itself described Revision 13 as an informal permit revision. The Permit documents identify Revision 13 as an informal permit revision to adjust the subsidence bond and Revision 14 as a minor permit revision to rescind the subsidence bond adjustment. Both actions were memorialized in the coal mining activity Permit documents. Even accepting, for purposes of these motions, that Revision 13 had legal significance when it was issued, it is also true that Revision 14 constitutes a Department action. It expressly rescinded Revision 13. It stated that the bond remained at the pre-adjustment amount. The surety then confirmed that the bond remained at $3,141,450. MWA has not identified an operative authorization currently held by LCT that permits it to reduce the bond without further Department action. Nor has MWA identified a present reduction in financial assurance that the Board could undo.

MWA’s notice argument does not change the result. Section 86.152(d) requires notice to the permittee, the surety, and certain persons with property interests in collateral of a proposed adjustment to the bond amount. MWA says the Department violated that provision when it issued Revision 14 without advance notice to Rockwood. But Rockwood never reduced the bond after Revision 13. There was, therefore, no surety action that needed to be reversed and no reduced penal sum that needed to be restored. If the Department should have provided notice before issuing Revision 14, MWA has not shown how that alleged notice defect produced a concrete injury to

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MWA or any landowner, or how a decision from the Board would change the present bond amount. To the extent the Department's handling of Revision 14 was procedurally imperfect, any such defect does not preserve a live controversy in this case. The omission MWA identifies - lack of advance notice to Rockwood - did not result in a reduced bond, did not leave the Commonwealth without the higher surety coverage, and did not require Rockwood to restore coverage it had already released. Rockwood later confirmed that it had not received a release from the Department and that the Bond remained active and in force in the full amount.

Additionally, this is not the proper appeal in which to decide whether the Department's technical record for Revision 13 was incomplete. MWA raises serious concerns about missing Module 7 logs, omitted geologic information, the Department's use of a five-year look-back period, and the mine's subsidence history. Those concerns go to whether the Department should have authorized a bond reduction. But the reduction was rescinded before the bond was reduced. If the Department later authorizes another reduction, MWA may challenge that action and raise whatever objections are supported by that record. Deciding those issues now would require us to pass judgment on a rescinded action for the purpose of guiding a future action that has not yet occurred.

MWA's requested relief confirms the problem. MWA asks us to vacate Revision 13 and reinstate the $3,141,450 bond requirement. Revision 13 has already been rescinded, and the $3,141,450 bond remains in place. Even if we decided that Revision 14 was ineffective as MWA asks us to do, we fail to see how that would provide MWA with the practical relief it says it wants. Such a ruling would call into question the very rescission that preserved the higher bond amount. Finally, MWA asks that we direct the Department to base any future bond adjustment on a complete technical record and that it carry the adjustment out following proper procedures. That may be a fair position for MWA to assume in response to a future adjustment, but it is not relief directed to the Department action at issue in the present appeal. For these reasons, MWA lacks a viable stake in this appeal for which the Board can grant effective relief. Therefore, we find that the appeal is moot.

No Exceptions to Mootness Apply

Now that we have determined that MWA's appeal is moot, we turn to evaluating whether any of the exceptions to the mootness doctrine apply to this matter. The recognized exceptions apply when: 1) the challenged conduct is capable of repetition yet likely to evade review; 2) the case presents an issue important to the public interest; or 3) a party will suffer a detriment without a decision from the Board. *Protect PT v. DEP*, 2025 EHB 143, 145-46; *Citizens for Pennsylvania's Future*, 2024 EHB 624, 626 ; *Lawson v. DEP*, 2018 EHB 513, 515; *Wilson, et al. v. DEP*, 2015 EHB, 94, 96 n.1; *Eureka Stone Quarry v. DEP*, 2007 EHB 419, 462; *Pequea Township*, 1994 EHB at 763-65. MWA argues that the issues are likely to recur imminently because Revision 14 states that the Department will consider another bond adjustment after it determines the reasonable cost of repair for the Hellen Ridge property. MWA also asserts that the Hellen Ridge claim has since been resolved, and that, accordingly, another reduction may be close at hand. While that may explain why MWA is concerned about the next bond calculation, it does not mean that this appeal should be decided notwithstanding mootness. A future bond adjustment would require a new Department action. If the Department again authorizes a reduction, MWA or another aggrieved person may appeal that action. The alleged error therefore would not evade review. It would be reviewable in the ordinary course of Board appeals based on a record for the action that actually changes, or authorizes a change to, the bond amount.

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We find *Solebury Township v. DEP*, 2004 EHB 23 to be particularly instructive in the present matter. In *Solebury Township*, the Department issued a Water Quality Certification to PennDOT. After the parties filed cross-motions for summary judgment and the matter was scheduled for oral argument, PennDot asked the Department to rescind the certification, and the Department did so. The permittee then moved to dismiss the appeal as moot. *Solebury Township v. DEP*, 2004 EHB 23, 24-27. There, the Department rescinded the action under appeal, and the appellants argued that the Department's allegedly deficient process was capable of repetition and likely to evade review. The Board rejected that argument because the challenged certification no longer existed and any future certification for the project would itself be appealable. *Id.* at 28-33. The Board also declined the appellant's request to retain the case in order to oversee how the Department and PennDOT might proceed in the future, explaining that the Board's role was to review an appealable Department action, not to supervise a future permitting process. *Id*. at 32-33. The Board further reasoned that deciding whether the rescinded certification had been unlawfully issued would be a "quintessential academic exercise" and would result in an advisory opinion. *Id*. at 33-34. The same reasoning applies here. If the Department takes a new action concerning the Rustic Ridge subsidence Bond, MWA is free to appeal that action. The prospect of a future appeal is not a sufficient reason to decide a moot one now. Nor do we read Revision 14's statement that the Department will "consider" an adjustment as a commitment to reduce the Bond, much less as proof that any future reduction will be processed in the same manner or supported by the same record. The next Department action, if there is one, will have its own facts, timing, record, and appeal rights connected to it. We are unconvinced that the "capable-of-repetition" exception applies to the circumstances this matter presents.

We next consider MWA's reliance on the public-interest exception. MWA is correct that subsidence bonds matter. They are an important financial backstop for the operator's obligation to repair or compensate for subsidence damage. The public has an interest in ensuring that bond decisions are lawful, reasonable, and supported by the record. But the fact that the general subject of subsidence bonds is important does not mean that every moot appeal involving that subject should be adjudicated. The public-interest exception is applied sparingly. It requires more than a generalized interest in the legal issue. It requires a reason as to why the Board should decide a moot case despite the absence of a live controversy.

That necessary reason is missing in the present matter. Here, as we know, the Bond remains at the higher amount. LCT remains subject to its obligations under the Mine Subsidence Act. No landowner has lost financial assurance because of Revision 13. If the Department issues a future bond adjustment, that adjustment may be appealed. Under these circumstances, deciding the merits of Revision 13 would not prevent concrete public harm. It would amount to review of a rescinded action because the same or similar issues may arise later. The public-interest exception does not apply to the facts of this case. We lastly consider MWA's argument that dismissal will cause a detriment sufficient to overcome mootness.

MWA argues that dismissal will cause it a detriment because the Department's actions will remain on the books as adverse precedent, MWA and affected landowners will have to await the next reduction attempt, and the parties may be forced into piecemeal litigation. We are not persuaded by this assertion. Revision 13 does not remain operative. Revision 14 rescinded it. The Bond amount was never reduced. There is no present loss of financial assurance. The possibility that the Department may later issue another bond adjustment does not create a present detriment requiring a Board decision now. As the Board has said in similar circumstances, speculation about a future Department action, which may or may not occur and may or may not be lawful, is not the kind of exceptional circumstance that justifies deciding a moot appeal.

The possibility of litigation inefficiencies does not change our analysis. MWA argues that this appeal overlaps with the appeals of Revision 10 and 11 and should be decided with them. The Board has consolidated the appeals of Revision 10 and 11 but declined to consolidate this appeal while the motions to dismiss were pending. In any event, efficiency is not a substitute for a live controversy. The Board should not decide a moot appeal simply because some of the background facts overlap with other active appeals. We therefore conclude that MWA will not suffer the type of detriment that warrants retaining a moot appeal.

Conclusion

This appeal began with a bond reduction that was authorized but never processed. Prior to MWA filing its appeal, the Department rescinded the authorization. The surety did not reduce the Bond. The Bond remains at the same amount MWA seeks to preserve. The Board therefore cannot grant effective relief rendering the appeal as moot.[2] Further, no exception to mootness warrants a decision on the merits of the rescinded reduction.

Accordingly, we issue the following order:

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[2] In addition to its mootness challenge, LCT also argues that MWA lacks standing. Because we dismiss this appeal as moot and because no exception to mootness applies, we need not reach LCT's standing claim as our decision to dismiss rests on mootness.

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ORDER

AND NOW, this 13th day of August, 2026, it is hereby ORDERED that the Department's and LTC's Motions to Dismiss the Appeal as Moot are **granted**. The above-captioned matter is **dismissed**.

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: August 13, 2026

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