



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



CLEAN AIR COUNCIL, CITIZENS FOR	:	
PENNSYLVANIA’S FUTURE, and SIERRA	:	
CLUB	:	
v.	:	EHB Docket No. 2025-135-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and HOMER CITY	:	Issued: September 11, 2026
GENERATION LP, Permittee	:	

**OPINION AND ORDER ON
PETITION TO INTERVENE**

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

Synopsis

The Board grants a petition to intervene where the petitioner has established a direct interest in an appeal of an air quality plan approval but limits the petitioner’s participation to the issues set forth in the notice of appeal and the proceedings remaining pursuant to the existing parties’ joint case management order.

OPINION

Clean Air Council, Citizens for Pennsylvania’s Future, and Sierra Club (the “Appellants”) have appealed Air Quality Plan Approval No. 32-00457A issued by the Department of Environmental Protection (the “Department”) to Homer City Generation, LP (“Homer City”), authorizing the construction and initial operation of the Homer City Generation Project, a natural gas-fired electric generation station located in Center Township, Indiana County. In their appeal, the Appellants generally challenge the emissions limits for the facility and the Department’s determination regarding emissions reduction credits for criteria pollutants. They also argue that the Department failed to conduct a proper alternatives analysis or demonstrate that the benefits of

the project significantly outweigh the environmental and social costs, and that Homer City did not provide a sufficient analysis of additional impacts under 40 C.F.R. § 52.21(o). They allege that the Department failed to follow its environmental justice policy and assert that the Department violated its obligations as a trustee under Article I, Section 27 of the Pennsylvania Constitution.

On August 24, 2026, James Harris, proceeding *pro se*, filed a petition to intervene in what he referred to as the consolidated appeals of this appeal at EHB Docket No. 2025-135-L, and *McIntosh v. DEP*, EHB Docket No. 2025-136-L, which both involve appeals of Homer City's plan approval. Because these appeals have not been consolidated, *see Clean Air Council v. DEP*, EHB Docket No. 2025-135-L (Opinion and Order on Motion to Consolidate issued Mar. 23, 2026), it was not clear if Mr. Harris intended to seek to intervene in both cases, or only one. Additionally, he did not serve his petition on Homer City or any of the Appellants in EHB Docket No. 2025-136-L. The petition was served on only one of the Appellants in EHB Docket No. 2025-135-L, and he served the petition on some attorneys for the Department, but none of the attorneys who are representing the Department in these two appeals. Accordingly, we issued an Order on August 25 stating that we would not act on the petition until Mr. Harris clarified in which appeals he sought to intervene and effected proper service in accordance with 25 Pa. Code § 1021.81(c). Mr. Harris filed new petitions on August 26, one in each appeal, and served the petitions on all parties via email.¹ We issued an Order the same day requiring any answers to the petition to be filed by September 4.

¹ In conjunction with his first petition to intervene, Mr. Harris filed a "consolidated motion for emergency supersedeas and/or supplement to the pending petition to intervene." In conjunction with his second petition to intervene, Mr. Harris filed a "motion for emergency supersedeas." Then on August 31, James Harris, identifying himself as an appellant, filed a "first supplemental petition for emergency stay and supersedeas introducing evidence of ex-parte scientific fraud, systemic coal permit shams, concealed records, and corporate state regulatory capture." The supersedeas petition in this appeal remains pending.

The Appellants have filed a letter stating that they take no position on the petition to intervene, so long as Mr. Harris's intervention does not impact the deadlines set forth in the parties' joint case management order. Both the Department and Homer City have filed answers in opposition. They generally argue that Mr. Harris has not established a sufficient interest in this appeal, that he has raised issues beyond the scope of this appeal, and that his intervention is coming too late in this appeal, after significant discovery has already been completed. For the reasons discussed below, we grant Mr. Harris's petition to intervene but limit his participation in this appeal to the proceedings that remain.²

Standard for Intervention

Under Section 4(e) of the Environmental Hearing Board Act, "[a]ny interested party may intervene in any matter pending before the board." 35 P.S. § 7514(e). A would-be intervenor must file a petition to intervene in accordance with our Rules. 25 Pa. Code § 1021.81. A petition to intervene must be verified and it must contain sufficient factual averments and legal assertions to establish: (1) the reasons the petitioner seeks to intervene; (2) the basis for asserting that the petitioner's identified interest in the appeal is greater than that of the general public; (3) the manner in which that interest will be affected by the Board's adjudication of the appeal; and (4) the specific issues upon which the petitioner will offer evidence or legal argument. 25 Pa. Code § 1021.81(b). The Board will deny the petition if it fails to include sufficient legal grounds or verified factual averments to establish the right to intervene. 25 Pa. Code § 1021.81(e).

² On September 8, 2026, we issued an Order denying Mr. Harris's intervention in the case at EHB Docket No. 2025-136-L because of the very narrow scope of that appeal and the fact that essentially all of the issues Mr. Harris identified in his petition were completely different than the issues the appellants in that case raised in their notice of appeal. The parties to that appeal had also negotiated a joint case management order that has shorter deadlines than the one in this appeal and we determined that the parties would be unduly prejudiced by Mr. Harris's intervention.

In order to be granted intervention, a prospective intervenor must establish it has standing by showing a “direct interest” in an appeal, meaning an interest that will either gain or lose by direct operation of the Board’s adjudication of the appeal. *Probst v. DEP*, EHB Docket No. 2025-114-L, slip op. at 6-7 (Opinion and Order on Petition to Intervene issued Apr. 7, 2026); *Muth v. Dep’t of Env’t Prot.*, 315 A.3d 185, 196 (Pa. Cmwlth. 2024); *Browning-Ferris, Inc. v. Dep’t of Env’t Res.*, 598 A.2d 1057, 1060 (Pa. Cmwlth. 1991). When a petitioner’s standing is challenged in an answer to a petition to intervene, we accept as true all of the verified facts set forth in the petition and all the inferences fairly deducible from those facts and decide whether the averments nevertheless fail to establish a basis for standing as a matter of law. *Dep’t of Homeland Security v. DEP*, EHB Docket No. 2026-030-L, slip op. at 4 (Opinion and Order on Petitions to Intervene issued June 22, 2026); *Petrus Holdings, Inc. v. DEP*, 2022 EHB 284, 286 (citing *Barr Farms, LLC v. DEP*, 2022 EHB 74, 76; *Tri-County Landfill, Inc. v. DEP*, 2014 EHB 128, 131; *Ainjar Trust v. DEP*, 2000 EHB 75, 79-80 n.3).

Discussion

Construction at the Homer City site is apparently currently underway. James Harris lives in Blairsville, Indiana County and says that he lives “downwind” of the Homer City facility. He asserts that he has a direct, substantial, and immediate interest in this appeal. He says his interest is direct because Homer City’s “earth-moving, excavation, and demolition operations” as well as the facility’s “future combustion plume emissions” impact the air quality, the environment, and his physical safety. He says his interest is substantial because he is a resident who breathes the local airshed and recreates in the local watersheds of Two Lick Creek and Blacklick Creek “affected by the permitted activities.” He says he “suffers localized exposure to downwind air pollutants, heavy metal contaminants, hydrological leachate migration, and unpermitted

stormwater runoff that directly degrades his surrounding environment.” Mr. Harris says his interest is immediate because construction of the facility is already underway, “posing an imminent threat of permanent environmental and public health contamination.”

The Department argues that Mr. Harris lives 6.75 miles away from the facility and in an “upwind” direction, which the Department asserts is too far away and not in the right direction to be affected by the Homer City facility. The Department also argues that his interest in the project is no greater than a member of the general public because there are a lot of other people who live within 6.75 miles of the facility. Initially, we reject the Department’s contention that Mr. Harris should not be permitted to intervene because his interest is potentially no different from any of the other 3,200 people the Department says live in Blairsville along with Mr. Harris. Intervention is not to be assessed based on the number of people who might also have an interest sufficient to support standing in an appeal.

We also reject the Department’s argument that Mr. Harris lives too far away or insufficiently downwind from the facility for purposes of standing in an air quality case involving a major source. The Department attaches to its response a portion of Homer City’s plan approval application to support its contention that the prevailing downwind direction from the facility is to the east. (DEP Ex. B.) Interestingly, that portion of the application appears to rely on monitoring data from monitoring locations in Strongstown, located approximately 20 miles away from the Homer City facility, and Johnstown, located even farther away. This portion of the application also appears to assess other sources of emissions within the facility’s “significant impact area,” which includes sources within 23-25 kilometers (14-15 miles) of the facility located in Indiana, Armstrong, and Westmoreland counties in all directions surrounding the facility. Far from supporting the Department’s narrow conception of impact from an air pollution source, the

application excerpt instead appears to support the opposite idea that a far greater area than 6.75 miles in all directions is considered to some degree by the Department in assessing Homer City's potential impact in relation to existing sources of air emissions.

Homer City argues that Mr. Harris's identified harms are all related to construction activity and that he has not shown any causal connection between the plan approval under appeal and the construction-related harms, thereby failing to show any "immediate" interest in the subject of the appeal. However, we are not convinced at this juncture that Mr. Harris's concerns are entirely beyond the scope of the plan approval. For instance, the plan approval requires Homer City to "take all reasonable actions to prevent particulate matter from becoming airborne" from sources including "construction or demolition of buildings and structures," "clearing of land," and "grading, paving and maintenance of roads and streets" under 25 Pa. Code § 123.1 (concerning the prohibition of certain fugitive emissions). (Plan Approval, Section C, #002.) The plan approval also prohibits fugitive emissions from those sources "if such emissions are visible at the point the emissions pass outside the person's property" under 25 Pa. Code § 123.2 (concerning fugitive particulate matter). (Plan Approval, Section C, #003.) While some of the ongoing construction activity at the site may have been authorized by different Departmental actions, as Homer City claims, it appears that the plan approval still regulates, at least to some extent, the air emissions that result from that construction activity.

Homer City also contends that Mr. Harris has provided no evidence that his home has been affected by earthmoving and excavation activities at the site of the facility, but standing is not a merits inquiry. *Williams v. DEP*, 2021 EHB 232, 246-47; *Citizen Advocates United to Safeguard the Environment, Inc. v. DEP*, 2007 EHB 632, 674 ("An analysis of the merits has no place in the inquiry regarding standing beyond the requirement that the threat of harm must amount to more

than pure speculation.”). All that is needed for purposes of standing is for someone to credibly aver that the challenged activity has adversely affected them. *Dengel v. DEP*, 2024 EHB 605, 615-16. Accordingly, we conclude that James Harris has sufficiently alleged a direct interest in this appeal to meet the standard for intervention. Mr. Harris’s interest in this appeal as a nearby resident of the facility is greater than that of the general public. He expresses an objectively reasonable concern about being exposed to the emissions that will be generated from Homer City’s proposed facility, as well as the emissions resulting from the ongoing construction work currently happening at the site.³

Both the Department and Homer City also oppose Mr. Harris’s intervention because they say he has identified issues in his petition that go beyond the issues the Appellants have set forth in their notice of appeal. Mr. Harris says he will offer evidence showing that the plan approval is based on “invalid, mathematically manipulated, and legally non-compliant baselines.” He says he will present continuous emissions monitoring data to demonstrate errors in Homer City’s baseline emissions in its plan approval application. He says he will show that Homer City “artificially suppressed” the facility’s cumulative emissions by subtracting out the emissions from retired units. He says he will present emails from Department staff showing that baseline emissions data was manually altered and that the Department improperly processed wind files in order to predict the lowest pollution. Mr. Harris also takes issue with Homer City’s air dispersion modeling, claiming that it relied on smokestacks that were taken down in March 2025. He seeks to present evidence

³ The Department asserts that Mr. Harris has not explained in his petition how his interests would be affected by an adjudication of the Board as required by 25 Pa. Code § 1021.81(b)(3). We think the overall tenor of the petition and the contemporaneously filed petition for supersedeas, which Mr. Harris also calls a supplement to his petition to intervene, indicates that Mr. Harris would like the Board to ultimately suspend or vacate the plan approval to stop the environmental harms he alleges are occurring.

that Homer City incorrectly indicated that it was not in an environmental justice community. He also discusses alleged conflicts of interest among local commissioners.

We believe there is merit to Homer City and the Department's argument on this point, but instead of viewing it as a reason to prevent Mr. Harris's intervention in this appeal altogether, we think that his involvement can be appropriately limited to adequately protect the rights of the existing parties. As we have said before, a petitioner takes the case as it finds it. *Wilson v. DEP*, 2010 EHB 192, 196; *Consol Pa. Coal Co. v. DEP*, 2002 EHB 879, 882. Under our Rules, an order granting intervention allows an intervenor to participate in the proceedings that remain at the time of intervention. 25 Pa. Code § 1021.81(f). In granting intervention, we may also limit the issues that an intervenor is allowed to pursue. *Id.*; *Wilson v. DEP*, 2014 EHB 1, 4 (citing *Monroe County Mun. Waste Mgmt. Auth. v. DEP*, 2010 EHB 819, 824). We have previously found it appropriate to limit the issues on which an intervenor may present evidence to the issues that have already been put forth by the appellants. *See, e.g., EQT Production Co. v. DEP*, EHB Docket No. 2024-117-W, slip op. at 11 (Opinion and Order on Petition to Intervene issued Mar. 9, 2026) (limiting petitioner's intervention to the parameters of the current appeal); *CRG Services Mgmt. LLC v. DEP*, 2025 EHB 494, 498 (granting intervention but not allowing intervenor to expand the scope of the appeal). The scope of participation of an intervenor in any proceeding is within the Board's discretion based on the facts of the individual case. *Conners v. DEP*, 1999 EHB 669, 676.

Not all of Mr. Harris's issues are clearly expansive to the scope of the appeal, but some of them are. An issue that seems to be clearly outside the scope of this appeal is his criticism of the actions of local officials with respect to the overall Homer City project. On the other hand, his objections regarding environmental justice, alleged inflated historical baseline emissions and suppressed cumulative emissions, and inaccurate modeling based on old smokestacks might fall

within the Appellants' overall critiques regarding environmental justice, emissions limits, and emissions reduction credits. That will need to be better fleshed out as we move forward, but issues beyond the scope of the appeal will not be allowed to be pursued by Mr. Harris in this appeal

Homer City and the Department also oppose Mr. Harris's intervention because they say it is coming late in the appeal after the parties have already been engaged in discovery pursuant to a schedule established in a negotiated case management order. We are sensitive to that concern, but believe it can be appropriately managed. We have limited an intervenor's participation when a person's intervention comes at a point in a case where the existing parties have already done a significant amount of litigating and introducing a new party would threaten to disrupt the proceedings. *See, e.g., Pileggi v. DEP*, 2010 EHB 433, 435 (preventing additional discovery and limiting witnesses called by intervenor at hearing); *Wilson, supra*, 2010 EHB at 196 (no additional discovery and limited right to call witnesses); *Giordano v. DEP*, 2000 EHB 1154, 1159-60 (allowing expedited discovery against intervenor but not allowing intervenor to conduct discovery). *Compare Pa. Trout v. DEP*, 2003 EHB 590 (denying intervention where it would be too disruptive to an already-scheduled hearing to permit another party to enter the case).

The parties in this case have been engaged in discovery pursuant to a joint case management order. Even the Appellants, who have taken no position on the petition, have nevertheless asked that there be no disruption to the agreed-to pre-hearing schedule. Written discovery is already complete. The parties are actively conducting depositions. We have a duty to ensure that all parties' rights are protected in an appeal. *Pa. Trout, supra*, 2003 EHB at 594. Accordingly, Mr. Harris's participation in this appeal will be limited to the schedule set forth in the existing case management order. The existing deadlines contained in that order, past and present, are not being changed by the admission of Mr. Harris as a party to this proceeding. Mr.



Harris will be bound by the existing deadlines laid out therein governing discovery, expert reports, and filing dispositive motions.

Accordingly, we issue the Order that follows.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

CLEAN AIR COUNCIL, CITIZENS FOR	:	
PENNSYLVANIA’S FUTURE, and SIERRA	:	
CLUB	:	
v.	:	EHB Docket No. 2025-135-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and HOMER CITY	:	
GENERATION LP, Permittee	:	

ORDER

AND NOW, this 11th day of September, 2026, it is hereby ordered that James Harris’s petition to intervene is **granted** in accordance with the preceding opinion. The caption of this appeal is revised as follows:

CLEAN AIR COUNCIL, CITIZENS FOR	:	
PENNSYLVANIA’S FUTURE, and SIERRA	:	
CLUB, Appellants, and JAMES HARRIS,	:	
Intervenor	:	
v.	:	EHB Docket No. 2025-135-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and HOMER CITY	:	
GENERATION LP, Permittee	:	

ENVIRONMENTAL HEARING BOARD

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

DATED: September 11, 2026

c: DEP, General Law Division:

Attention: Maria Tolentino
(via *electronic mail*)

For the Commonwealth of PA, DEP:

Carl D. Ballard, Esquire
Sean L. Robbins, Esquire
Dearald Shuffstall, Esquire
Andrea Costello, Esquire
Jordyn Pace, Esquire
(via *electronic filing system*)

For Appellant, Clean Air Council:

Eleanor M. Breslin, Esquire
Lauren E. Otero, Esquire
Annie Fox, Esquire
Sarah Gordon, Esquire
Lawrence Hafetz, Esquire
(via *electronic filing system*)

**For Appellants, Citizens for Pennsylvania's Future
and Sierra Club:**

Jessica R. O'Neill, Esquire
Angela Kilbert, Esquire
(via *electronic filing system*)

For Permittee:

David R. Raphael, Esquire
Samuel R. Boden, Esquire
Conor T. Daniels, Esquire
Marie A. LaRosa, Esquire
(via *electronic filing system*)

For Intervenor, Pro Se:

James Harris
(via *electronic filing system*)