



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

CHARLES S. WARREN AND
PATRICIA S. WARREN

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and CONSOL
PENNSYLVANIA COAL COMPANY, LLC,
Permittee

:
:
:
:
:
:
:
:
:
:

EHB Docket No. 2024-067-W

Issued: August 4, 2026

**OPINION AND ORDER ON
MOTION FOR LEAVE TO AMEND NOTICE OF APPEAL**

By MaryAnne Wesdock, Judge

Synopsis

Appellants’ motion to amend their notice of appeal is granted. Where the mining covered by the challenged permit revision will not begin for over a decade, the Board finds that no undue prejudice will result to the Department or Permittee in allowing the amendment.

OPINION

Introduction

This matter involves an appeal filed by Charles S. Warren and Patricia S. Warren (the Warrens) challenging the Department of Environmental Protection’s (Department) issuance of a revision to Coal Mining Activity Permit No. 30121301 for the Harvey Mine in Richhill Township, Greene County. The Harvey Mine is operated by Consol Pennsylvania Coal Company, LLC (Consol), and the permit revision authorizes Consol to conduct development mining in an area designated as the “Harvey D Panels Expansion.”

The Warrens filed an appeal of the issuance of the permit revision on March 8, 2024. The parties have been actively engaged in discovery, and most recently, on June 26, 2026, the Warrens filed a motion to extend the fact discovery deadline. Consol consented to an extension of the deadline. The Department consented to an extension of the deadline to allow completion of discovery that had already been served but opposed the service of any new discovery. On July 17, 2026, the Board issued an order granting the extension of discovery for the purpose of allowing follow-up to answers recently provided by the Department in discovery and directing that any such additional discovery be “narrowly tailored to the issues raised in the original Notice of Appeal,” as set forth in the Warrens’ motion.

The matter now pending before the Board is a motion filed by the Warrens on June 15, 2026 seeking leave to amend their notice of appeal via the addition of four new paragraphs. The Department filed a response in opposition to the motion on June 30, 2026, opposing one of the paragraphs which the Warrens seek to add to their appeal. Consol filed a letter stating that it joins with the Department in opposing the same paragraph. Neither the Department nor Consol opposes the inclusion of the other three paragraphs. The Warrens sought leave to file a reply, which the Board granted, and their reply was filed on August 3, 2026.

Standard of Review

An appeal before the Board may be amended as of right within 20 days of the filing of the notice of appeal. 25 Pa. Code § 1021.53(a). After the 20-day period, the Board may grant leave for amendment if no undue prejudice will result to the opposing parties. *Id.* at § 1021.53(b); *Dengel v. DEP*, 2024 EHB 466, 468; *Sokol v. DEP*, 2016 EHB 427. The burden of proving that no undue prejudice will result to the opposing parties is on the party requesting the amendment. 25 Pa. Code §1021.53(b).

Discussion

The Warrens wish to amend their notice of appeal to add four new paragraphs, designated as paragraphs 44, 51, 52 and 53. The Department and Consol do not object to the addition of paragraphs 44, 51 and 52, which they acknowledge as simply “clarifying objections raised by the Appellants in their original Notice of Appeal” (Consol Letter in Response) and “restat[ing]” alleged deficiencies in the permit revision “with greater specificity” (Department Response in Opposition, p. 1). However, both the Department and Consol oppose the addition of proposed paragraph 53 which reads as follows:

53. The Department erred as a matter of law and abused its discretion by issuing the permit in a manner that permits or facilitates the permitting of gas well plugging and related surface disturbance to proceed outside the Coal Mining Activity Permit process. By allowing CPCC to bypass the comprehensive permitting scheme of Chapters 86 and 89, the Department has permitted or facilitated a significant regulatory shortcut that is materially inconsistent with its treatment of analogous activities such as degasification boreholes. Under 25 Pa. Code Chapters 86 and 89, surface activities that are incidental to or in support of underground coal mining—including the construction of roads, well pads, support facilities, and any work that could affect streams or high-quality waters—must be authorized through the Coal Mining Activity Permit or a major revision to it. 25 Pa. Code § 86.1 (defining “underground mining activities” to include “surface operations incident underground extraction of coal” and “any other work done on land or water in connection with the mine”). These well plugging activities involve surface disturbance and potential water-quality impacts performed exclusively to facilitate CPCC’s underground extraction and therefore must be authorized through the coal mining activity permit or major revision thereto.

(Exhibit A to Motion for Leave to Amend Notice of Appeal.)

The Department opposes this amendment, arguing that it significantly expands the scope of the appeal, introduces a novel legal theory which the Department had no notice of prior to the motion, and occurs late in the discovery period that has been ongoing for over two years. Consol

also opposes the amendment on the basis of untimeliness. Both the Department and Consol argue that allowing the amendment at this stage of the proceeding will result in unfair prejudice to them.

In response to the Department's argument that proposed paragraph 53 introduces a novel theory to the case, the Warrens disagree and assert that this objection is "a direct and necessary particularization" of objections set forth in the original notice of appeal, which the Warrens say "challenged both the failure to identify oil and gas wells that would be affected and the vagueness of [Consol's] assurance to comply with 'applicable law.'"¹ (Warren Reply, p. 1-2.)

As to the Department's argument that the proposed amendment seeks to reopen and allow expansive discovery, the Warrens counter that "the purpose of the amendments is efficiency and clarity, not expansion of discovery." (Warren Reply, p. 8.) They contend that the issue raised in proposed paragraph 53 has been the subject of targeted discovery from the start of this appeal.

Finally, the Warrens address the argument of both the Department and Consol that the proposed amendment is untimely, coming more than two years after the filing of the notice of appeal. The Warrens point out that mining under the permit revision is not expected to take place for well over a decade. They further note that limited discovery is still ongoing at this time.

The decision of whether to allow a party to amend its appeal after expiration of the 20-day grace period rests firmly within the Board's discretion and involves an analysis into whether the opposing parties will suffer undue prejudice. *Dengel*, 2024 EHB at 469 (citing *Tapler v. DEP*, 2006 EHB 463, 465). The right to amend one's appeal is viewed liberally by the Board. *Pruden v.*

¹ Specifically, in their reply the Warrens reference the following objections which appeared in the original notice of appeal and which appear as the following numbered paragraphs in the proposed amended notice of appeal: Paragraphs 28-32, 34, 37, 39, relating to hydrological consequences of the proposed underground mining activities, and 47-49, relating to the Warrens' allegation that Consol failed to identify gas wells within the area of the permit revision and "failed to address notification procedures, agreements, and precautionary measures it intends to take at the surface or in the mine." (Proposed Amended Notice of Appeal, para. 48.)

DEP, 2025 EHB 360, 363, (citing *Williams v. DEP*, 2020 EHB 277, 281 (citing *Chester Water Authority v. DEP*, 2016 EHB 358, 362)). While the moving party must demonstrate the amended appeal will not cause undue prejudice to other parties, the Board has held that, when possible, "the right to amend should be liberally granted to secure determination of cases on their merits." *Williams*, 2020 EHB at 281 (quoting *Chester Water Authority*, 2016 EHB at 362).

Factors that the Board considers in making the undue prejudice determination include the following: the reason for the amendment, the time when the amendment is requested relative to other developments in the litigation such as the hearing schedule, the scope and size of the amendment and the extent to which it diverges from the original appeal, and whether the opposing party had notice of the issue. *Angela Cres Trust v. DEP*, 2025 EHB 652, 656 (citing *Borough of St. Clair v. DEP*, 2013 EHB 171, 173 (citing, *inter alia*, *Rhodes v. DEP*, 2009 EHB 325, 328-29)).

Considering the above factors, we do not believe that the Department and Consol will be unduly prejudiced by the proposed amendments to the appeal, including proposed paragraph 53. Although the Department and Consol are correct that the request for amendment comes more than two years after the notice of appeal was filed, we do not find the proposed amendment to be prejudicial given the unique circumstances of this case. In a March 21, 2025 conference call, Consol advised the Board that mining under the permit revision is not expected to take place until at least 2040.² Given this timeframe, the Board has granted carefully managed extensions to the discovery period, most recently to allow narrowly tailored follow-up discovery based on answers that have been produced, and for the purpose of resolving ongoing discovery disputes which the

² Several filings also contain the 2040 date, which was not disputed by Consol. (See Docket 2024-067-W, Entries no. 33, 35, 40, 41.)

parties are working through.³ Dispositive motions have not been filed and no hearing has been scheduled at this time.

The Department argues that the addition of paragraph 53 should not be allowed because it expands the scope of this appeal. Based on our review of the original notice of appeal, we are not convinced that it does. However, even if the Department is correct that proposed paragraph 53 is an expansion of what has been raised so far in the appeal, that, by itself, is not necessarily a basis for rejecting the amendment. *See Angela Cres Trust*, 2025 EHB at 656 (“Moreover, even if the proposed amendments were to expand the litigation, as argued by the [opposing parties], that, by itself, would not necessarily prevent us from granting the motion.”) (citing *Ullom v. DEP*, 2025 EHB 501, 508-09) (In adopting the language of the current rule at 25 Pa. Code § 1021.53, the Board rejected one commenter's suggestion that Rule 1021.53 provide that any expansion of the litigation is *per se* prejudicial.). As the Board recognized when the current version of Rule 1021.53 was adopted, “there may be times when an amendment *will* expand what is in the case. 36 Pa.B. 709 (Preamble) (Feb. 11, 2006) (emphasis added) (cited in *Ullom*, *supra* at 509). Here, the Warrens state that, even with the amendment of their appeal, they do not anticipate substantial additional written discovery. In fact, the Warrens assert that allowance of the amendment will “end, rather than perpetuate, the cycle of scope disputes” already present in the case. (Warren Reply, p. 8.) Moreover, “the record suggests that the parties have already been engaged in discovery and debate” on matters related to this issue. *Borough of St. Clair*, 2013 EHB at 173.

Finally, the Department argues that the assertions set forth in the proposed amendments are without merit. As we stated in *Borough of St. Clair*, 2013 EHB at 173-74, “A motion to amend

³ The Board commends the parties for their collaborative efforts in addressing the discovery disputes that have arisen in this matter.

does not provide an occasion for debating the underlying merits of the objections that are the subject of the proposed amendment. The merits of the new objections are not a factor in considering whether to allow an amendment." Thus, the merits of the Warrens' new objections are not a factor in deciding whether to allow the amendment; rather, the merits of their objections will be addressed at the appropriate time.

The decision of whether to allow an amendment of appeal involves a careful balancing of a variety of factors. Some may weigh in favor of the party seeking the amendment while others weigh against allowing the amendment. Here, we have taken all the parties' arguments into consideration and we believe that, under the circumstances of this case, allowing the amendment requested by the Warrens will not result in undue prejudice to the opposing parties.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

CHARLES S. WARREN AND
PATRICIA S. WARREN

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and CONSOL
PENNSYLVANIA COAL COMPANY, LLC,
Permittee

:
:
:
:
:
:
:
:
:
:

EHB Docket No. 2024-067-W

ORDER

AND NOW, this 4th day of August, 2026, it is hereby ORDERED that the Motion for Leave to Amend Notice of Appeal is **granted**.

ENVIRONMENTAL HEARING BOARD

s/ MaryAnne Wesdock
MARYANNE WESDOCK
Judge

DATED: August 4, 2026

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

For the Commonwealth of PA, DEP:
Forrest Smith, Esquire
Brian L. Greenert, Esquire
(via *electronic filing system*)

For Appellants:
Sarah E. Winner, Esquire
(via *electronic filing system*)



For Permittee:
Brandon D. Coneby, Esquire
(via *electronic filing system*)