



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



TIMOTHY M. BROUSE, P.E.	:	
	:	
v.	:	EHB Docket No. 2026-099-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION	:	
	:	
and	:	
	:	Issued: September 22, 2026
LAKE WYNONAH PROPERTY OWNERS	:	
ASSOCIATION	:	

**OPINION AND ORDER ON
PETITION FOR SUPERSEDEAS**

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

Synopsis

The Board denies a petition for supersedeas without a hearing in an appeal of a Departmental letter declaring a dam to be unsafe because the petitioner asks the Board for relief that is beyond the scope of what the letter authorizes or requires.

OPINION

Timothy Brouse, P.E., proceeding *pro se*, has appealed an August 14, 2026 letter issued by the Department of Environmental Protection (the “Department”) to the Lake Wynonah Property Owners Association (“Property Owners Association” or “Association”) declaring Lake Wynonah Dam in South Manheim Township, Schuylkill County to be an “unsafe dam” under 25 Pa. Code § 105.136. The letter sets forth the reasons the Department believes the dam is unsafe, including observed seepage on the dam’s embankment, a deteriorating concrete spillway, an analysis indicating that the current spillway could only pass approximately 60% of a probable maximum

flood event, which could then overtop the dam and lead to a failure of the dam, and possible internal erosion within the dam embankment and foundation. The Department has found that the dam has a high risk of failure, and there are 32 structures housing approximately 70 people downstream of the dam.

Of central importance to the instant matter, the letter does not actually order or otherwise require the Property Owners Association to take any specific action regarding the dam or the water impounded by the dam. Rather, in the letter the Department “requests a voluntary and immediate complete drawdown of the Dam’s reservoir at a rate not to exceed more than one foot of reservoir depth per day.” The letter goes on to state that, if the Property Owners Association does not immediately begin a drawdown, the Department plans to pursue heightened enforcement action. The Association has already been drawing down the lake. The Association is not contesting the Department’s letter.

Mr. Brouse says he “owns property directly associated with Lake Wynonah” and he uses and enjoys the lake. In his appeal he challenges the underlying analysis and conclusions that led the Department to declare the Lake Wynonah Dam unsafe. The day after he filed his appeal, Mr. Brouse filed a petition for supersedeas and an application for temporary supersedeas asking the Board to halt any further drawdown of Lake Wynonah. He “requests a narrowly tailored supersedeas preventing DEP from requiring, directing, or enforcing further drawdown pursuant to, or as a consequence of, the August 14, 2026 action below the reservoir elevation existing when supersedeas relief becomes effective....” He asks that we “suspend the effect of the letter.” He argues that further drawdown of the lake will alter the shoreline, threaten aquatic habitats, and impair recreational use of the lake. He asserts that any threats to public health, safety, and welfare

from any possible deterioration of the dam can be appropriately managed through monitoring and safety conditions while a supersedeas is in effect.

We held a conference call with the parties on August 31 to discuss Mr. Brouse's application for temporary supersedeas and a schedule for addressing his petition for supersedeas. When Mr. Brouse was asked by the presiding judge during the call how superseding a letter that only requests a voluntary drawdown would provide him with the relief he is seeking to completely halt any drawdown, Mr. Brouse did not provide a convincing explanation. Following the call, we issued an Order denying Mr. Brouse's application for temporary supersedeas and set a response deadline to his petition for supersedeas for September 8. On September 8, in lieu of a response per se, the Department filed a motion to deny the petition for supersedeas without a hearing. The Property Owners Association filed a letter concurring in the Department's motion. The Department argues that Mr. Brouse's petition should be denied under 25 Pa. Code § 1021.62(c) because it does not plead facts with particularity, contain adequate legal authority to support the requested relief, or state grounds sufficient for granting a supersedeas. The Department also contends that Mr. Brouse has not sufficiently demonstrated irreparable harm to himself and that the risk of harm to the public if there were a dam failure is too great. Mr. Brouse filed a response in opposition to the Department's motion on September 10.

Supersedeas Standard

The Environmental Hearing Board Act, 35 P.S. §§ 7511 – 7514, provides adversely affected parties with the right to file an appeal from a Departmental action. No appeal acts as an automatic supersedeas, but the Board may grant a supersedeas upon cause shown. 35 P.S. § 7514(d)(1). The Board's Rules define a supersedeas as “[a] suspension of the effect of an action of the Department pending proceedings before the Board.” 25 Pa. Code § 1021.2. “The central

purpose of a supersedeas is to prevent an appellant from suffering irreparable harm while the Board considers the appeal.” *Center for Coalfield Justice v. DEP*, 2017 EHB 38, 55.

Under the EHB Act and our Rules, among the factors to be considered in whether to grant a supersedeas are (1) irreparable harm to the supersedeas petitioner, (2) the likelihood of the supersedeas petitioner prevailing on the merits, and (3) the likelihood of injury to the public or other parties, such as a permittee. 35 P.S. § 7514(d)(1); 25 Pa. Code § 1021.63(a). However, the EHB Act prohibits issuing a supersedeas “in cases where pollution or injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect.” 35 P.S. § 7514(d)(2). *See also* 25 Pa. Code § 1021.63(b) (rule providing the same). The Dam Safety and Encroachments Act, 32 P.S. §§ 693.1 – 693.27, also contains a provision addressing a supersedeas of an action taken by the Department pursuant to that Act, which has a slightly different formulation of the factors to be considered:

An appeal to the hearing board of any action of the department shall not act as a supersedeas. A supersedeas may be granted by the hearing board upon a showing by the petitioner:

- (1) the irreparable harm to the petitioner or other interested parties will result if the supersedeas is denied;
- (2) that there is a likelihood of the petitioner’s success on the merits; and
- (3) that the grant of a supersedeas will not result in irreparable harm to the Commonwealth. The board may grant such a supersedeas subject to such security as it may deem proper.

32 P.S. § 693.24(b). In evaluating a request for a supersedeas “we must keep in mind that superseding a Department action is an extraordinary remedy that may be granted only where the evidence indicates it is clearly warranted.” *Pa. Fish and Boat Comm’n v. DEP*, 2004 EHB 473, 476.

Our Rules require that a petition for supersedeas plead facts with particularity that are supported by affidavits or explain why affidavits have not been included, and contain citations to

specific legal authority to support granting a supersedeas. 25 Pa. Code § 1021.62(a)-(b). They also state that a petition for supersedeas may be denied upon motion or *sua sponte* without a hearing for one of the following reasons: (1) lack of particularity in the facts pleaded; (2) lack of particularity in the legal authority cited as the basis for the grant of the supersedeas; (3) an inadequately explained failure to support factual allegations by affidavits; or (4) a failure to state grounds sufficient for the granting of a supersedeas. 25 Pa. Code § 1021.62(c). Where a petition along with its supporting documents does not provide a basis for granting a supersedeas, it will be denied. *Dougherty v. DEP*, 2014 EHB 9, 13 (citing *Mellinger v. DEP*, 2013 EHB 322).

Discussion

Mr. Brouse's petition for supersedeas must be denied because he has failed to state grounds sufficient for granting a supersedeas. 25 Pa. Code § 1021.62(c)(4). Mr. Brouse has been very clear in emphasizing to us that the only relief that he seeks in his petition for supersedeas is an enforced halt to drawing down the water any further in the lake. The fundamental shortcoming in his petition is that he has failed to show how superseding the Departmental action under appeal—the designation letter—would result in the limited relief he seeks. The letter neither authorizes nor requires a drawdown. Therefore, superseding the letter would have no effect on the ongoing drawdown of the lake. To use Mr. Brouse's words, the Department's letter does not "require, direct, or enforce" any drawdown. The letter does not "have the effect of" requiring, directing, or enforcing any drawdown. It only declares the dam to be unsafe and then *requests* that the Property Owners Association undertake a *voluntary* drawdown of the lake. While the Department threatens *future* enforcement action if the Property Owners Association does not voluntarily comply, the letter itself does not contain any order or other enforcement action regarding drawdown that we could suspend through a supersedeas order. Absent any obligation contained within the letter or

by operation of the regulations triggered by the letter to draw down the lake, there is nothing we can supersede in the letter that would afford the relief Mr. Brouse seeks. Stated another way, even if we were to supersede the letter and the declaration that Lake Wynonah Dam is unsafe, that would not prevent the Association from continuing to voluntarily draw down the lake as it is doing now.

Because the Department's letter does not authorize or require the drawdown of the lake, this case stands in contrast to our recent decision in *Friends of High Point Lake v. DEP*, 2025 EHB 687 (Opinion denying supersedeas petition). That appeal was taken from a permit authorizing the drawdown of a lake, not a letter designating a dam as unsafe. Although in that case we could have (but did not) paused the drawdown by superseding the permit that authorized that drawdown, the Department's letter in the case before us provides no such vehicle for superseding the drawdown.

Indeed, the drawdown of Lake Wynonah was in fact authorized by a separate permit. The Property Owners Association was issued a permit (Permit No. 97-25) on October 16, 2025 to draw down the lake up to 90 feet below the normal pool level. (DEP Ex. A.) That permit was issued ten months before the letter under appeal declaring the dam unsafe. The letter did not change, alter, or affect in any way the Association's permitted right to draw down the lake. Superseding the letter similarly would not change, alter, or affect the right or obligation to draw down the lake, which is solely a function and consequence of the unappealed permit.

No one, including Mr. Brouse, appealed the drawdown permit and it is now administratively final. We are foreclosed from taking any action with respect to that permit in the context of this appeal because our jurisdiction is circumscribed by the action under appeal. *See Probst v. DEP*, EHB Docket No. 2025-114-L, slip op at 5-6 (Opinion and Order on Petition for Supersedeas issued May 27, 2026) (denying petition for supersedeas in part because the petitioner asked the Board to supersede a permit that was not under appeal). The unsafe designation letter

did not alter, amend, or renew the permit. To the extent Mr. Brouse is challenging the Association's authorization to draw down the lake pursuant to that permit, he cannot lodge a collateral attack on that authorization through this appeal. *Winegardner v. DEP*, 2002 EHB 790, 793.¹

Mr. Brouse appears to acknowledge these facts. He says he “objects to any determination that an immediate complete drawdown is legally required” by the Department’s letter. In his amended notice of appeal filed after our conference call, he says he “does not contend that the August 14, 2026 letter is itself an Administrative Order compelling immediate complete drawdown.” (Amended Notice of Appeal, pg. 1. *See also* Amended Notice of Appeal at ¶ 50, acknowledging that the letter on its face does not purport to compel immediate complete drawdown.) Mr. Brouse is entirely correct on this point: a complete drawdown, or any drawdown for that matter, is not required by the letter. Nor does it authorize a complete or partial drawdown. It is neutral on the subject, other than requesting voluntary action consistent with the earlier issued permit.

The Department confirms in its filings that the letter did not create any obligation on the Association’s part to draw down the lake. (*See, e.g.* DEP Motion at ¶¶ 30, 31, 34; DEP Memo at 10, 12.) The letter did not trigger any self-executing regulatory duty to draw down the lake. *See* 25 Pa. Code § 105.136 (following unsafe designation, owner must drain lake only “as required and approved by the Department”). The Department and the Association are negotiating a consent

¹ To the extent that there is any doubt regarding the appealability of the drawdown permit, *see Friends of High Point Lake v. DEP*, 2025 EHB 672 (Opinion denying motion to dismiss), the point remains that whatever right or obligation the Property Owners Association has to draw down the lake was established in that permit, not in the letter currently under appeal.

order and agreement, which will embody the Association's legal responsibility, precisely because the letter itself does not serve that function.²

Mr. Brouse at some level appears to concede all of this. He does not ask us to supersede the unsafe designation per se. Rather, he only asks that the Board "suspend the effect of DEP's August 14, 2026 action to the extent DEP **requires, directs, or enforces further drawdown** below the reservoir elevation existing when supersedeas relief becomes effective." (Emphasis added.) As we have now repeatedly said, the letter has no such effect. A supersedeas is unnecessary if that is the goal. We can state right here that the letter does not require, direct, or enforce further drawdown. As far as the Board's role is concerned, the Property Owners Association is perfectly free to draw down the lake with or without an unsafe designation, so a supersedeas would be pointless.³

Accordingly, we issue the Order that follows.

² To the extent Mr. Brouse is attempting to constrict what the Department can do going forward in a consent order and agreement or otherwise, the letter provides no occasion for such prospective relief.

³ On our conference call, counsel for the Property Owners Association told us that Mr. Brouse had previously sought a preliminary injunction in the Court of Common Pleas to stop the Association from drawing down the lake, but the preliminary injunction was denied.



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ORDER

AND NOW, this 22nd day of September, 2026, it is hereby ordered that the Department's motion to deny the Appellant's petition for supersedeas without a hearing is **granted**.

ENVIRONMENTAL HEARING BOARD

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

DATED: September 22, 2026

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