



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| MARK ROHNER                   | : |                                   |
|                               | : |                                   |
| v.                            | : | <b>EHB Docket No. 2026-101-BP</b> |
|                               | : |                                   |
| COMMONWEALTH OF PENNSYLVANIA, | : |                                   |
| DEPARTMENT OF ENVIRONMENTAL   | : |                                   |
| PROTECTION and AMERICAN ROCK  | : | <b>DATE: September 4, 2026</b>    |
| MECHANICS, LLC, Permittee     | : |                                   |

**OPINION ON APPELLANT'S  
APPLICATION FOR TEMPORARY SUPERSEDEAS**

**By Paul J. Bruder, Jr., Judge**

**Synopsis**

The Environmental Hearing Board (“Board”) denies Appellant Mark Rohner’s (“Appellant or Mr. Rohner”) Application<sup>1</sup> for Temporary Supersedeas because Appellant’s pleadings do not satisfy the Board’s procedural requirements governing Applications for Temporary Supersedeas, and Appellant has failed to establish grounds sufficient to warrant the issuance of a temporary supersedeas.

**OPINION**

**Background**

This appeal involves the Department of Environmental Protection’s (“Department”) July 20, 2026 letter closing its investigation into Complaint No. 397963 concerning blasting activities conducted pursuant to Permit No. 23264102 at the Christiana Care Hospital & Health Center Site

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<sup>1</sup> Appellant improperly labeled his Application for Temporary Supersedeas as a Petition for Temporary Supersedeas. The differences are explained below.

(“Site”). On August 24, 2026, Appellant filed a Notice of Appeal and an Application for Temporary Supersedeas, alleging that blasting activities caused structural damage to his home. Specifically, Appellant asserts that the blasting damaged his master bathroom’s marble floor shower tile. Appellant’s Application for Temporary Supersedeas requests an immediate stay of any blasting activities under Permit No. 23264102.<sup>2</sup>

On August 31, 2026, Permittee American Rock Mechanics, LLC (“Permittee” or “American Rock”) and the Department filed separate Responses in Opposition to Appellant’s Application for Temporary Supersedeas. Both Permittee and the Department argued that the Appellant’s pleading was procedurally deficient, as in the case of the Board’s recent decision in *Gallagher v. DEP*, EHB Docket No. 2026-080-BP (Opinion issued July 31, 2026). Additionally, both Appellees represented under oath that blasting under the permit had been completed.

The Department submitted an Affidavit by Ross Klock, Compliance Manager of the Pottsville District Mining Office, stating that American Rock received Blasting Activity Permit No. 23264102 for the Site. American Rock completed blasting for the Site in May 2026. (*See* DEP Ex. “A” at ¶¶ 7-8). Thereafter, Mr. Rohner filed a blasting complaint with the Department concerning the marble floor tile in his master bathroom shower. (*Id.* at ¶ 9). In August 2026, the Department issued Blasting Activity Permit No. 23264103 to blasting contractor, Maine Drilling & Blasting, for the Site. (*Id.* at ¶ 11). One blast was performed pursuant to that permit, and no further blasting will occur. (*Id.* at ¶¶ 12-13). At this time, no other blasting permits were issued for the Site. (*Id.* at ¶ 14).

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<sup>2</sup> On September 1, 2026, Appellant submitted a Corrected Amended Application for Supersedeas stating his supersedeas request as:

“**Supersedeas Request:** Appellant requests a Temporary Supersedeas capping site vibrations under Permit 23264102 to a maximum of 0.030 inches per second (ips).” (*See* Corrected Amended Petition for Supersedeas at pg. 1).

The Department also submitted an Affidavit by Jon Neithercoat, Divisional Manager with Maine Drilling and Blasting, Inc. (“MDB”). Mr. Neithercoat stated that on August 5, 2026, MDB entered into a subcontract with H&K Group to perform a single blast on August 13, 2026 under Permit No. 23264103. (*Id.* at ¶¶ 3-4). Following completion of the blast, MDB conducted drilling on August 14, 2026 and August 17, 2026, and then demobilized from the Site because no further blasting or drilling was required. (*Id.* at ¶ 5).

On September 1, 2026, Judge Bruder held a conference call with all parties to discuss the pending request for relief. At that time, Judge Bruder asked the parties questions concerning the Application and provided all parties with an opportunity to make statements and arguments concerning their respective positions. On September 2, 2026, Judge Bruder issued an Order denying the Application for Temporary Supersedeas. This Opinion serves as support for the September 2, 2026 Order.

### **Standard of Review**

The Environmental Hearing Board’s rules require that an Application for Temporary Supersedeas be accompanied by a Petition for Supersedeas. 25 Pa. Code § 1021.64(b). A temporary supersedeas is an extraordinary remedy that is granted only when there is a clear demonstration of need for immediate and temporary relief before the Board can conduct a supersedeas hearing. *See Liberty Twp., et. al. v. DEP*, 2023 EHB 108, 109-11; 25 Pa. Code § 1021.64(a). The temporary nature of the relief is emphasized by the Board’s rule providing that a temporary supersedeas automatically expires after six (6) business days, unless otherwise ordered by the Board. 25 Pa. Code § 1021.64(f).

The standard for granting or denying a temporary supersedeas is set forth in 25 Pa. Code § 1021.64(e). When deciding whether to grant or deny a temporary supersedeas, the Board considers the following factors:

- (1) The immediate and irreparable injury the applicant will suffer before a supersedeas hearing can be held.
- (2) The likelihood that injury to the public, including the possibility of pollution, will occur while the temporary supersedeas is in effect.
- (3) The length of time required before the Board can hold a hearing on the petition for supersedeas.

25 Pa. Code § 1021.64(e).

A party seeking a temporary supersedeas has an exceptionally high burden to show that a temporary supersedeas is justified. *Nicholas Meat, LLC v. DEP*, 2021 EHB 96, 97. In order to grant a temporary supersedeas, there needs to be credible evidence of immediate and irreparable injury. *Global Eco-Logical Servs., Inc. v. DEP*, 1999 EHB 93 (denying a temporary supersedeas where not enough evidence supporting injury); *A&M Composting, Inc. v. DEP*, 1997 EHB 965 (denying a temporary supersedeas where application did not explain how party would be harmed during the time period until the Board could rule on the petition for supersedeas).

### **Discussion**

The instant matter is similar to the Board's recent decision in *Gallagher v. DEP*, EHB Docket No. 2026-080-BP (Opinion issued July 31, 2026). In *Gallagher*, The Board denied appellant's Application for Temporary Supersedeas because it did not include a formal Petition for Supersedeas or supporting documentation, including affidavits, as required by the Board's procedural rules. *Id.* at. 5-6. As the Board explained, although we often provide leniency to *pro se* appellants with respect to procedural requirements, we are nonetheless bound by our rules, and therefore that leniency has limits. *Id.* at 6. The Board has consistently held that the form and content requirements of 25 Pa. Code § 1021.62 must be strictly followed and that failure to comply

may result in the *sua sponte* denial of a temporary supersedeas pursuant to 25 Pa. Code § 1021.62(c). *Id.*

Additionally, the Board denied Ms. Gallagher's request because she failed to meet her burden of demonstrating that her requested relief was so urgent that she could not wait for a supersedeas hearing, typically held within two to three weeks from the filing of a proper Petition for Supersedeas. The Board also found a potential risk of harm to public safety if a supersedeas was granted. *Id.* at 6-8.

As in *Gallagher*, in the instant matter, Mr. Rohner's request for relief does not comply with the Board's procedural requirements and does not satisfy the substantive burden of demonstrating that the requested relief is so urgent it cannot await a supersedeas hearing.

Pursuant to 25 Pa. Code § 1021.64(b), an Application for Temporary Supersedeas must be accompanied by a Petition for Supersedeas and all proper supporting documentation. Here, Appellant did not file a Petition for Supersedeas, did not include supporting affidavits, and did not provide a satisfactory explanation for the absence of supporting affidavits. Without these required pleadings, any request for temporary supersedeas relief is procedurally deficient.

Specifically, Appellant relies upon statements made by Matthew Anderson, P.E., S.E. ("MWA Engineering) but did not secure an Affidavit from Mr. Anderson. (*See* Application for Temporary Supersedeas at pg. 3). Instead, Appellant provided a copy-and-pasted August 10, 2026 e-mail exchange between himself and Mr. Anderson concerning Mr. Anderson's scope of work. Although Mr. Rohner alleges that this email "explicitly admit[s] that Appellant's detailed forensic engineering submissions regarding bottom-up crystal fracture mechanics had material merit," the e-mail – as read by the Board - only discusses Mr. Anderson's scope in performing a pre-blast survey and overseeing the installation of the seismograph, as well as thanking Mr. Rohner for

providing e-mails concerning the alleged stun marks on the marble floor. (*See id.* at pg. 4). As such, the e-mail is insufficient to satisfy the Board's affidavit requirement. Due to these procedural deficiencies, the requested relief must be denied. 25 Pa. Code § 1021.64(b).

However, even if Mr. Rohner had satisfied the procedural requirements for seeking a temporary supersedeas, we would deny relief because Appellant has not met his substantial burden of demonstrating immediate and irreparable injury before the Board can conduct a supersedeas hearing. 25 Pa. Code §§ 1021.62; 1021.64(b). Appellant has not made an argument explaining why relief is so urgent that he could not wait for a supersedeas hearing, typically held within two to three weeks from the filing of a proper Petition for Supersedeas. 25 Pa. Code § 1021.64(a); *Ponderosa Fibres of Pa. P'ship v. DEP*, 1998 EHB 1004, 1007. Although we acknowledge Mr. Rohner's genuine concerns for the safety of his wife in their master bathroom, our Board has held that general or speculative assertions of irreparable injury without greater specificity are insufficient to support issuance of a supersedeas. *See Liberty Twp., et. al. v. DEP*, 2023 EHB 108, 110-11 (citing *Mellinger v. DEP*, 2013 EHB 322, 328; *Al Hamilton Contracting Co. v. DER*, 1993 EHB 329, 331).

Moreover, although the Board does not consider the merits of an appeal in the context of a temporary supersedeas, we cannot ignore circumstances in which the requested relief is moot and not available. *See Beaver v. DEP*, 2002 EHB 574, 580 n.5. Here, we conclude that a supersedeas is not appropriate because the blasting has ceased. Permittee's counsel, as well as an Affidavit by Ross Klock, confirms that the last day of blasting under the appealed permit concluded in May 2026. Additionally, an Affidavit by Jon Neithercoat confirms that the last blasting at the Site concluded in August 2026. Because Mr. Rohner seeks an order requiring the cessation of all blasting at the project site under Permit No. 23264102 and/or capping site vibrations under Permit

No. 23264102 to a maximum of 0.030 inches per second, and blasting under that permit has been completed, there is no action to stay or suspend. Thus, the requested relief is no longer available.

Accordingly, for the above stated reasons, we deny Appellant's request for a temporary supersedeas.

**ENVIRONMENTAL HEARING BOARD**

s/ Paul J. Bruder, Jr.  
**PAUL J. BRUDER, JR.**  
**Judge**

**DATED: September 4, 2026**

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

**For the Commonwealth of PA, DEP**  
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(via *electronic filing system*)

**For Appellant, Pro Se:**  
Mark Rohner, P.E.  
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**American Rock Mechanics, LLC, Permittee:**  
Christopher Rothermel, Esq.  
(via *electronic filing system*)



COMMONWEALTH OF PENNSYLVANIA  
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MARK ROHNER

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION and AMERICAN ROCK  
MECHANICS, LLC, Permittee

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EHB Docket No. 2026-101-BP

**ORDER**

AND NOW, this 2<sup>nd</sup> day of September, 2026, following a conference call with all parties and upon consideration of Appellant's Petition for Temporary Supersedeas and the Department and Permittee's Response in Opposition, it is hereby **ordered** that the Petition for Temporary Supersedeas is **denied**. The Board will issue an Opinion in support of this Order within the next 3-4 business days.

ENVIRONMENTAL HEARING BOARD

s/ Paul J. Bruder, Jr.

PAUL J. BRUDER, JR.

Judge

**DATED: September 2, 2026**

**c: For the Commonwealth of PA, DEP**

Alicia Duke, Esq.

(via electronic mail)

**For Appellant, Pro Se:**

Mark Rohner, P.E.

(via electronic filing system)



**American Rock Mechanics, LLC, Permittee:**

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