COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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BETH KENDALL	:	
	:	
v.	:	**EHB Docket No. 2026-042-CS**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	**Issued: November 25, 2026**
	:	

OPINION AND ORDER ON
DEPARTMENT'S MOTION TO DISMISS

By Sarah L. Clark, Judge

Synopsis

The Board denies the Department's motion to dismiss for lack of jurisdiction where the Department's notice was ineffective.

Background

The present matter arises from environmental Complaint No. 394198 ("Complaint"), which was submitted by Appellant Beth Kendall ("Ms. Kendall" or "Appellant") and received by the Department of Environmental Protection ("Department") on December 18, 2025. Ms. Kendall, who owns property at 4648 Old Pulaski Road in New Wilmington, PA, filed the Complaint to express her concerns that an effluent pipeline, which runs from a Dairy Farmers of America site in Wilmington Township, Lawrence County, through Ms. Kendall's property, to the Shenango River in Pulaski Township, Lawrence County, may be leaking onto her property, citing a dead tree and what she describes as a consistent snowmelt pattern along the pipeline route. On January 8, 2026, the Department conducted a site visit in connection with the Complaint, ultimately concluding that a pipeline leak was unlikely to have caused the issues observed by Ms. Kendall.

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

Following the site visit, Ms. Kendall and the Department exchanged numerous emails regarding the Complaint. Then, on March 30, 2026, Ms. Kendall sent an email to the Department requesting a complete record and attachments for the Complaint, and for the Complaint to remain open for "at least" thirty days after the Department provided the complete record. In response, the Department emailed Ms. Kendall a document referred to as its Final Report[1] concerning the Complaint that same day. The Department did not respond to Ms. Kendall's request regarding timing. On April 16, 2026, Ms. Kendall sent an email to the Department requesting that additional testing and verification be undertaken regarding the Complaint, and that the Complaint be held open for fifteen days following Ms. Kendall's receipt of the results. The Department responded to her email the same day and notified Ms. Kendall that the Complaint had been closed since March 30, 2026, when the Department provided her with the Final Report. Ms. Kendall, proceeding *pro se*, filed an appeal on May 15, 2026, claiming that her Complaint had been closed without notice and without a clear answer regarding her concerns.

On August 19, 2026, the Department filed a Motion to Dismiss ("Motion"), arguing that the Department's April 16, 2026 email to Ms. Kendall is not a final action within the Board's jurisdiction, and, if Ms. Kendall is in fact appealing the closure of the Complaint, her appeal is untimely because it was not filed within 30 days of receipt of the Department's action. Ms. Kendall filed her Response on September 18, 2026, and the Department filed its Reply on October 5, 2026.[2]

[1] We believe this to be in reference to the Resolved Investigation Right to Know Report attached to the Department's March 30 email. For ease we will use "Final Report" throughout this Opinion.

[2] On October 7, 2026, Ms. Kendall filed Appellant's Motion for Leave to File a Limited Surreply and Additional Exhibit, and on October 9 she filed Appellant's Motion for Leave to Submit Supplemental Authority and Original Complaint. We did not consult those documents in arriving at our decision today and both requests are denied as moot.

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

Standard of Review

A motion to dismiss is appropriate where there are no material facts in dispute and the moving party is clearly entitled to judgment as a matter of law. *Telford Borough Auth. v. DEP*, 2009 EHB 333, 335; *Blue Marsh Labs., Inc. v. DEP*, 2008 EHB 306, 307; *Butler v. DEP*, 2008 EHB 118, 119; *Borough of Chambersburg v. DEP*, 1999 EHB 921, 925. The Board evaluates motions to dismiss in the light most favorable to the non-moving party. *Latkanich v. DEP*, 2023 EHB 299, 302; *Ongaco v. DEP*, 2023 EHB 239, 241; *Scott v. DEP*, 2023 EHB 138, 139-40; *Hopkins v. DEP*, 2022 EHB 143, 144; *Consol Pennsylvania Coal Co. v. DEP*, 2015 EHB 48, 54, aff'd, 129 A.3d 28 (Pa. Cmwlth. 2015); *Winner v. DEP*, 2014 EHB 135, 136-37. Rather than comb through the parties' filings for factual disputes, for the purposes of resolving a motion to dismiss, we accept the nonmoving party's version of events as true. *Fletcher v. DEP*, 2020 EHB 214, 215; *Ehmann v. DEP*, 2008 DEP 386, 390. 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. *Consol*, 2015 EHB at 54.

Discussion

By its Motion, the Department argues that the Board does not have jurisdiction over the present appeal because the Department's April 16 email is not a Department action, but merely a communication reiterating a final action previously taken by the Department, i.e. the closure of Ms. Kendall's Complaint. Because that closure action was taken on March 30, 2026 and Ms. Kendall did not file the present appeal until May 15, 2026, the Department alternatively argues that the appeal is untimely. Ms. Kendall, of course, disputes these contentions, arguing that the Department's March 30 email did not provide effective notice from the Department that the Complaint was closed, but rather indicated future closure as the language is primarily proscriptive.

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

She contends that notice of the Complaint's closure was not effective until the Department's April 16 email. The Department does not argue that the closure of the Complaint was not an appealable action.

It is well established that appeals to the Board must be filed within thirty days of notice of the Department's action for the Board's jurisdiction to attach unless a different period is provided for by statute. 25 Pa. Code § 1021.52(a)-(a)(1). For the recipient of a Department action such as Ms. Kendall, notice occurs when the person to whom the action is directed has received written notice of the action. 25 Pa. Code § 1021.52(a)(1).[3] Often, challenges to timeliness are easily resolved with evidence regarding date of receipt or involve an appellant's motion to appeal nunc pro tunc. Here, however, Ms. Kendall does not dispute that she received and read the Department's March 30 email, which would, in many instances, end the timeliness inquiry. Instead, she challenges the sufficiency of the Department's notice. In her Notice of Appeal, Ms. Kendall

> disputes that any earlier communication provided sufficiently clear notice of a final, appealable closure action and submits that this appeal was filed protectively and promptly upon DEP's April 16, 2026 communication expressly stating that the complaint had been closed effective March 30, 2026, remained closed, and would not accept additional documents.

NOA Objection 12. Essentially, Ms. Kendall contends that, regardless of when the Department actually closed the Complaint, the language of the Department's March 30 email and its attachments did not effectively notify her that the Complaint was closed. Instead, she maintains that she understood the Department's March 30 email to be notice of impending closure, something she had repeatedly requested to be informed of prior to the closure in her communications to the Department. She further argues that the Department's April 16 email provided the first instance

[3] There appears to be no debate here that for notice purposes Ms. Kendall should be considered a recipient of the Department's action, and, therefore, notice occurred when she received notice of the Complaint's closure.

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

of clear, actual notice that the Complaint was closed, rather than indicating that it would be closed at some future, unspecified time. The Department contests this assertion, arguing that "[t]he March 30 Email also clearly stated 'that the complaint be closed.' … Actual notice was achieved in this case when the Department emailed the Complaint's Final Report to Ms. Kendall on March 30, 2026, closing the Complaint." DEP Reply at 3.

Regardless of the date of receipt, or whether actual or constructive notice is required, the action being noticed must be clearly communicated in order to be effective. The Commonwealth Court has held that "[c]onstitutionally adequate notice of administrative action is notice which is reasonably calculated to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Harvilchuck v. Dep't of Envtl. Prot.*, 117 A.3d 368, 372 (Pa. Cmwlth. 2015) (quoting *Milford Township Board of Supervisors v. Department of Environmental Resources*, 644 A.2d 217, 219 (Pa. Cmwlth. 1994)). Clearly, the reasonable calculation contemplated by the Commonwealth Court can only be undertaken by the noticing party, meaning that here, the onus was on the Department to reasonably calculate a way to communicate the notice of the Complaint's closure to Ms. Kendall so that she would understand it to be final and triggering of this Board's appeal window. Further, the Board has consistently insisted that the Department be precise when providing notice of final actions. *Barra v. DEP*, 2004 EHB 276, 284; *Emerald Mine Resources, LP v. DEP*, 2007 EHB 611, 612; *Solebury Township v. DEP*, 2003 EHB 208. Finally, when determining whether and when notice was effective, "the common underlying theme is the Board's focus on whether or not *a member of the public* would have sufficient information to file an appeal." *Telford Borough Authority v. DEP*, 2009 EHB 333, 337; *Borough of West Chester v. DEP*, 2009 EHB 308, 312. Taken together,

> the standard for the adequacy of notice is whether it clearly identifies an action of the Department such that an ordinary member of the public would have sufficient

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

> information to determine that they may be affected by such an action for the purposes of filing an appeal with the Board.

Telford Borough Authority, 2009 EHB at 337; *Borough of West Chester*, 2009 EHB at 313.

For the reasons that follow, we agree with Ms. Kendall and find that the Department's March 30 email and included attachments did not meet the above articulated standard. The entirety of the Department's March 30 email reads:

> Attached is the Department's final report concerning Complaint ID No. 394198, along with the referenced attachment. Please note that any documents referenced in the report that may reveal the complainant's identity have been marked as "CONFIDENTIAL" and were redacted or excluded from the report.

DEP Ex. A. If this email were reasonably calculated to put Ms. Kendall on notice of the closure of her Complaint, the Department could easily have stated that the Complaint had been closed or simply replaced the word "concerning" with the word "closing" or a similar term. Making the closure clear such that an ordinary person – not a lawyer, not a Department employee, but an ordinary person – would understand was squarely within the Department's power and responsibility, and judging by the body of the email, it failed. The email's language is not precise, and interestingly, the quotation "that the complaint be closed" that the Department claims is clearly stated in its March 30 email does not appear in the body of that email; rather, it can be found on the final page of the Final Report attached to the March 30 email. While we do look at the totality of the circumstances to determine notice, including a review of the attachments to the email at issue, rather than aiding the Department's cause here, the above quoted language is indicative of the Department's grasping to defend its ineffective notice.

The final "Investigation Description" box wherein the quoted language appears reads:

> Complainant emailed the Department on 3-30-26 concerning the following:
> - Timing for the DEPs [sic] next inspection at Dairy Farmers.
> - If/when DEP will request records from Dairy Farmers regarding the effluent line.

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

- A request to keep the current complaint open until certain things occur.
- A request to review the complaint prior to its closure.

A second email was received on 3-30-26 requesting a record of the complaint report and a request to keep the complaint open.

Copies of the referenced emails have been attached to the complaint record [CONFIDENTIAL].

It is recommended that the complaint be closed. A final, redacted version of the closed complaint record will be provided to the complainant informing the complainant of the Department's findings. All referenced documents indicated as "CONFIDENTIAL" will be redacted from the report since these documents may identify the complainant's identity.

A. Ex. 6A at 4 (emphasis added). In context, the Department's peculiar phrasing "that the complaint be closed" begins to make sense as it is cherrypicked from an unequivocally future-facing construction: "It is *recommended* that the complaint be closed." The future tense language continues in the following sentence, stating: "A final, redacted version of the closed complaint *will be* provided to the complainant." Far from clearly putting Ms. Kendall on notice that her Complaint *had already been closed*, this language does nothing more than indicate future action. Indeed, this kind of proscriptive language is of the exact nature that the Department frequently argues – correctly – renders an action unappealable, leading us to question whether, had Ms. Kendall appealed the Department's March 30 email, we would instead be faced with a motion to dismiss arguing the exact opposite of this present Motion. Further, the Final Report notes that Ms. Kendall emailed the Department that same day with several questions, including requests to both keep the Complaint open until certain actions occur, and to review the Complaint prior to its closure. Neither the body of the Department's March 30 email nor the Final Report address those questions, which is particularly bizarre as doing so would have been yet another easy way to effectuate notice of the Complaint's closure upon Ms. Kendall. Absent such answers, however, it is likely that any reasonable person in Ms. Kendall's position would presume that her questions

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

regarding the timing of the closure of the Complaint would be answered *prior* to that Complaint's closure. And while the reference to, and inclusion of, something called a Final Report (or a Resolved Investigation Right to Know Report) does tend to cut toward notice, it is far from dispositive. A reasonable person who had frequently asked about closure timing and to be informed of the closure ahead of time, absent specific language indicating closure, could easily presume that this document was to be the final report of the open Complaint, issued prior to the closure. On balance, it is far from clear to the Board that an ordinary person would consider herself on notice of a final Department action upon receipt of the Department's March 30 email and attachments.

But we need not rely on linguistic machinations alone to determine whether Ms. Kendall received effective notice of the closure of her Complaint on March 30. In addition to her unanswered March 30 request that the Complaint be held open, Ms. Kendall repeatedly asked for updates as to the status of the Complaint and requested to be notified before the Complaint was closed. (A. Response at 1, 8-9, 12, 19.) A brief examination of the record reveals considerable back-and-forth regarding the Complaint's closure in one way or another between the Appellant and the Department, both prior to and following March 30, 2026. (A. Response at 1, 3-6, 8-9, 11-12, 16, 19.) Further, it is apparent from Ms. Kendall's April 8 and April 16 emails that she was not aware that the Complaint had been closed.

On April 8, Ms. Kendall sent an email to the Department to resubmit photos of the area of snow melt in question and requested the Department to confirm in writing "...that they will be added to, or linked within, the official CTS 394198 administrative record for consideration *as part of DEP's ongoing review."* A. Ex. 8A (emphasis added). She further requested: "If DEP has an approved method of photo submission (e.g., secure upload link/portal or other process), please

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

provide it *so I can use it going forward*." A. Ex. 8A (emphasis added). The April 8 email went unanswered by the Department. In her April 16 email, Ms. Kendall specifically requested that the Department "hold CTS 394198 open pending completion" and goes on to list several action items she would like the Department to take pursuant to her Complaint. A. Ex. 9. She concluded that email with another request for the Department to confirm in writing "…that CTS 394198 will remain open until at least fifteen (15) business days after DEP completes the verification/testing above and provides a complete, reviewable record of results and any updated findings, so I have a meaningful opportunity to review for accuracy prior to closure." A. Ex. 9.

Finally, the Department explicitly stated that the Complaint had been closed in its April 16 email, which reads in part:

> Complaint #394198 was closed on March 30, 2026, and a final copy of the report was provided to you on the same day. The photographs you sent to Dan Pudlick on April 8, 2026, have been uploaded as a record to compliant #394198. These photographs were added to the complaint file only because you had previously attempted to send them to the Department prior to the complaint record being closed, but you indicated that you were unable to send complete records. The complaint remains closed at this time, and the addition of the photographs did not change the disposition of the investigation or alter the contents of [the] final report that was sent to you previously on March 30, 2026. Please also note that additional documents will not be added to the closed file going forward, including this email and response.

NOA at 8.

We wonder where this clarity and precision were on March 30. Had this email been sent that day, notice would have been effective, and Ms. Kendall's thirty-day appeal window would have begun to run. As it is, construed in the light most favorable to the nonmoving party and taking the nonmoving party's version of events as true, it is abundantly clear that the Department's March 30 email did not meet the standard for effective notice. We hold that Ms. Kendall received notice of the closure via email on April 16, 2026, making her appeal timely.

E-FILED
11/25/2026
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

Conclusion

Having found that notice of the closure was effective on April 16 and having received no argument that the closure itself was not an appealable action – indeed, by its Reply, the Department appears to concede that the closure *was* an action – we must deny the Department's Motion. Upon reviewing the facts in the light most favorable to Ms. Kendall, the Board finds that the Department's March 30 email was insufficient to provide effective notice to Ms. Kendall regarding the Complaint's closure, and that she received notice of the closure via the Department's April 16 email. Ms. Kendall timely filed her appeal twenty-nine days after receiving written notice of the closure. Accordingly, we issue the following order.

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O R D E R

AND NOW, this 25th day of November, 2026, it is **ordered** that the Department's Motion to Dismiss is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Sarah L. Clark
SARAH L. CLARK
Judge

DATED: November 25, 2025

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

For the Commonwealth of PA, DEP:
Brendyn Baptiste, Esquire
Angela Erde, Esquire
(via electronic filing system)

For Appellant:
Beth E. Kendall, *pro se*
(via electronic filing system)