



**ENVIRONMENTAL HEARING BOARD
2nd Floor, Rachel Carson State Office Building
400 Market Street, Post Office Box 8457
Harrisburg, Pennsylvania 17105-8457**

CITIZENS FOR PENNSYLVANIA'S
FUTURE, CLEAN AIR COUNCIL, and
SIERRA CLUB,

Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Appellee,

and

BRADFORD COUNTY REAL ESTATE
PARTNERS LLC,

Permittee.

EHB Docket No. _____

ELECTRONICALLY FILED

NOTICE OF APPEAL

Citizens for Pennsylvania's Future
1429 Walnut Street, Suite 400
Philadelphia, PA 19103
215-545-9692

Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
(215) 567-4004

Sierra Club
50 F Street NW, Eighth Floor
Washington, DC 20001
202-495-3023

NOTICE OF APPEAL FORM

APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellants:

Citizens for Pennsylvania's Future
1429 Walnut Street, Suite 400
Philadelphia, PA 19103
215-545-9692
oneill@pennfuture.org
kilbert@pennfuture.org

Clean Air Council
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Sierra Club
50 F Street NW, Eighth Floor
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elly.benson@sierraclub.org

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

Appellants seeks review of the Department of Environmental Protection's ("Department") issuance of an **Extension of Plan Approval 08-00058A** (the "Plan Approval Extension") to **Bradford County Real Estate Partners LLC**, 111 West 19th Street, 8th Floor, New York, NY 10011. The Plan Approval Extension is attached hereto as Exhibit A. Appellants were provided an email from DEP Assistant Regional Director Jared Dressler containing the Plan Approval Extension, and that email is attached as Exhibit B. In addition to the Plan Approval Extension, already attached as Exhibit A, the email also included an issuance letter to Bradford County Real Estate Partners, attached here as Exhibit C.

(b) Which Department official took the action?

Muhammad Q. Zaman, Program Manager, Bureau of Air Quality, Northcentral Regional Office, issued the Plan Approval Extension.

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

The facility is located in Wyalusing Township, Bradford County, PA.

(d) How, and on what date, did you receive notice of the Department's action?

Appellants received actual notice of the Department's action on July 27, 2021, via the email attached as Exhibit B and the email's accompanying attachments.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets if necessary.)

- A. The Department erred in granting the Plan Approval Extension under 25 Pa. Code § 127.13(a) because the Permittee failed to commence construction by the Plan Approval expiration date, as required by 25 Pa. Code § 127.13(a) as well as by the modified Plan Approval.
- B. The Department's Plan Approval Extension was in error because the Permittee has not received a Certificate of Public Convenience and Necessity for the facility from the Federal Energy Regulatory Commission. Because the Permittee has not yet received this necessary preconstruction approval and has not commenced construction, it cannot receive an extension.
- C. To the extent the Department attempted to issue the Plan Approval Extension under 25 Pa. Code § 127.13(b), it did not have the authority to do so because it had already issued an extension of the initial 18-month period.
- D. To the extent the Department believes its issuance of the Plan Approval Extension was made under 25 Pa. Code § 127.13(b), such issuance was in error because the Permittee failed to provide a satisfactory showing that an extension is justified as required by that section.
- E. The Department's issuance of the Plan Approval Extension was in error because the Best Available Technology (BAT) analysis is already outdated, resulting in insufficient emissions limits, and will be over four years old by the estimated date of the plant's operation, well beyond the 18-month regulatory deadline intended to protect public health from adverse air pollution effects.
- F. The Department's Plan Approval Extension was issued in error because it relies upon an underlying BAT analysis that contains significant flaws, including the process by which the BAT limits were determined. This includes simple reliance on prior BAT analyses and no additional analyses of technologically feasible and cost-effective emissions limits that are lower than what are proposed as BAT.

- G. The Department miscalculated the potential to emit of the facility, including using inaccurate and unrepresentative emissions factors and mis-represented emissions data for criteria pollutants, hazardous air pollutants, ammonia, and greenhouse gas emissions. The Department's potential to emit analysis was also in error because the application contained no assurances that the emissions rates indicated by the Permittee's vendors would not be exceeded.
- H. The Department's miscalculations regarding the potential to emit of the facility led to the unlawful treatment of the facility as a minor source rather than a major source, resulting in the Department failing to apply the appropriate requirements of Non-Attainment New Source Review and the Prevention of Significant Deterioration programs.
- I. The Department's Plan Approval Extension was in error because it included an inappropriately high natural gas sulfur limit.
- J. The Department's Plan Approval Extension was in error because it includes an improper basis for defining the end of the startup period and the beginning of the shutdown period for the turbines.
- K. The Department's Plan Approval Extension was in error because, though it contains putative emissions limits for a multi-point ground flare, the Department does not have the ability to test and verify the emissions from this permitted flare and therefore has created an unenforceable permit term.
- L. The Department erred in issuing the Plan Approval Extension without sufficient monitoring requirements, including but not limited to minimum monitoring to ensure continual compliance with the limits for all pollutants from the turbines and other sources.
- M. The Department erred in issuing the Plan Approval Extension without sufficient reporting of process data to support emissions calculations, including the temperatures at the inlets to the selective catalytic reduction (SCR) catalysts and oxidation catalysts for the turbines.
- N. The Department's approval was in error because the application failed to include emissions data from equipment manufacturers and vendors.
- O. The facility does not comply with the federal safety standards for liquefied natural gas facilities in 49 C.F.R. Part 193.
- P. The Department erred in issuing the Plan Approval Extension when the Permittee is unable to commence construction because it has not received all necessary authorizations, including but not limited to zoning approvals.
- Q. The Department erred in issuing the Plan Approval Extension in violation of its trustee duties as established in Article 1, Section 27 of the Pennsylvania Constitution by permitting the Permittee to significantly degrade the natural environment.

- R. The Plan Approval Extension is otherwise unsupported by fact, contrary to law, arbitrary, capricious, unreasonable, and/or an abuse of discretion.
- S. Appellants reserve the right to amend this Notice of Appeal to include additional objections that may arise during further investigations and discovery in this matter.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

Appellants are not aware of any related appeals.



SIGNATURE PAGE

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated in the Certificate of Service on the date below.

Dated: August 26, 2021

/s/ Jessica O'Neill
Jessica O'Neill

/s/ Angela Kilbert
Angela Kilbert

Citizens for Pennsylvania's Future
1429 Walnut Street, Suite 400
Philadelphia, PA 19102

*Counsel for Appellants Citizens for
Pennsylvania's Future, Clean Air Council,
and Sierra Club*



**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

CITIZENS FOR PENNSYLVANIA'S
FUTURE, CLEAN AIR COUNCIL, and
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CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Notice of Appeal was filed with the Pennsylvania Environmental Hearing Board and was served on the following on the date listed below:

Electronic Service via the Board

Department of Environmental Protection
Office of Chief Counsel
16th Flr. Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

Overnight Mail

Brannen McElmurray
Bradford County Real Estate Partners LLC
111 West 19th St., 8th Floor
New York, NY 10011

Date: August 26, 2021

s/ Jessica O'Neill