



NOTICE OF APPEAL FORM APPEAL INFORMATION

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

Eugene Wolfgang, President
Eugene H. Wolfgang Enterprises, Inc.
Country View MHP
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Orefield, PA 18069
Telephone: 610-737-3245
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2. Describe the subject of your appeal:

(a) What action of the Department do you seek to have the Board review (for example, a permit, license or order issued or denied by the Department, an assessment of a civil penalty or some other determination made by the Department)?

Appellant seeks review of the Comprehensive Operation Permit issued for Public Water System Permit ID No. 3060048 (APS ID No. 1071757; Auth ID No. 1537961), pertaining to the facility located in Longswamp Township, Berks County. The permit authorizes modifications to the existing 4-log treatment system and the construction of new finished water storage.

(b) Which Department official took the action (usually the person identified on any written notice that you received)?

The permit was issued by the Pennsylvania Department of Environmental Protection, Southcentral Regional Office, Safe Drinking Water Program. The identified project manager is Joseph M. Mattuci.

(c) What is the location of the operation or activity which is the subject of the Department's action (the municipality and/or county where the activity takes place or will take place)?

The subject operation is located in Longswamp Township, Berks County, Pennsylvania.

(d) How, and on what date, did you receive notice of the Department's action? Please specify whether through public notice, a letter or email from the Department, or some other source.

Appellant received written notice of the Department's action, dated August 21, 2025.

(e) Did you receive written notification of the Department's action (for example, letter, order or permit that you are appealing)? If yes, you must attach a copy of the notification to this Notice of Appeal. If you are appealing a permit, you may attach the first page

rather than the entire document. In lieu of attaching the document, you may provide a link to notice of the action in the *Pennsylvania Bulletin*. See filing instructions for further instruction.

A copy of the notification has been attached as *Exhibit A*.

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

Appellant is not aware of any related or pending appeals before the Board.

4. Describe your objections to the Department's action in separate, numbered paragraphs. Rather than use the space on this form, you may type your objections on separate paper if you require more space. **NOTE:** The objections may be factual or legal and must be specific. It is important that you include ALL your objections in this section. Although you may be able to amend your appeal to add new objections, you may require permission of the Board to do so, and you may not be able to raise omitted objections later in the appeal process.

Exceeds Regulatory Authority on Nitrate Monitoring

Legal Standard:

Pennsylvania courts afford deference to agency interpretations of their regulations, but that deference is not unlimited. Courts will reverse agency action when it is taken in bad faith, constitutes a manifest or flagrant abuse of discretion, or represents a purely arbitrary execution of duties. *Tire Jockey Serv., Inc. v. DEP*, 591 Pa. 73, 915 A.2d 1165 (2007). An agency's interpretation must be consistent with the regulation and the enabling statute, and it is controlling only if not clearly erroneous. *Martin Media v. Dep't of Transp.*, 700 A.2d 563 (Pa. Cmwlth. 1997). Conditions imposed must also be reasonable, supported by the record, and tied to the statutory purpose. *Joyce Outdoor Advertising, LLC v. Dep't of Transp.*, 49 A.3d 518 (Pa. Cmwlth. 2012); *DEP v. N. Am. Refractories Co.*, 791 A.2d 461 (Pa. Cmwlth. 2002). Arbitrary or unduly burdensome permit requirements may therefore be stricken by the Board.

Application to this Case:

1. **Nitrate Monitoring Beyond Regulation**

Special Condition 3.C requires daily raw and finished water nitrate-nitrogen monitoring, while Chapter 109, Section 109.301(7)(ii)(C)(VI) requires only quarterly finished water monitoring. By mandating daily testing, the Department of Environmental Protection (DEP) has imposed obligations not grounded in the regulation. This represents an arbitrary expansion of regulatory authority.

2. **Lack of Necessity Given Compliance History**

Country View MHP has achieved 100 percent nitrate compliance for more than ten years, with finished water levels consistently in the 3–4 mg/L range and no exceedances of the

Maximum Contaminant Level. Daily testing adds no meaningful public health protection, making the requirement arbitrary under the governing legal standard.

3. **Excessive Financial Burden**

Daily certified laboratory testing would cost approximately \$73,000 annually, or \$110 per unit per month. The only EPA-approved field method requires equipment costing \$6,000–\$7,000 plus \$6 per day in reagents. For a 48-connection system, these costs are disproportionate to any potential benefit, rendering the condition unduly burdensome.

4. **Scientific and Logistical Unsoundness**

The only approved “field kit” (Hach TNTplus) is not a simple test but a spectrophotometric method requiring controlled laboratory conditions. Raw water nitrate levels do not fluctuate daily, and DEP has admitted that samples must be taken “accurate or not.” Requiring unreliable and meaningless testing is an arbitrary exercise of discretion.

5. **Recordkeeping Disproportionate to Risk**

Special Condition 3.D requires all field analysis results to be recorded and kept on site at all times. While recordkeeping is expected, this condition elevates clerical errors to regulatory violations regardless of actual water quality. Such a requirement is unreasonable and inconsistent with the principle that permit conditions must relate directly to public health protection.

6. **Reasonable Alternative**

A proportionate approach would be to maintain quarterly finished water nitrate monitoring, with the addition of quarterly raw water sampling. This aligns with Chapter 109, reflects Country View MHP’s compliance record, and avoids imposing undue burdens.

Conclusion:

Under Pennsylvania law, agency actions must conform to governing statutes, regulations, and the evidentiary record, and may not impose conditions that are arbitrary, excessive, or unduly burdensome. The challenged permit provisions, particularly daily nitrate monitoring, heightened recordkeeping obligations, and related conditions, exceed regulatory authority, lack sufficient technical or factual justification, and place disproportionate burdens on a small water system. Accordingly, these conditions should be rescinded or appropriately amended by the Environmental Hearing Board.



NOTICE OF APPEAL FORM PROOF OF SERVICE

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

(1) Environmental Hearing Board 2 nd Floor Rachel Carson State Office Bldg. 400 Market St., P.O. Box 8457 Harrisburg, PA 17105-8457	via	<input type="checkbox"/> first class mail, postage paid <input type="checkbox"/> overnight delivery <input type="checkbox"/> personal delivery <input checked="" type="checkbox"/> electronic filing
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(2) Department of Environmental Protection Office of Chief Counsel Attn: Administrative Officer 16 th Floor Rachel Carson State Office Bldg 400 Market Street, P.O. Box 8464 Harrisburg, PA 17105-8464	via	<input type="checkbox"/> first class mail, postage paid <input type="checkbox"/> overnight delivery <input type="checkbox"/> personal delivery <input checked="" type="checkbox"/> electronic filing
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(3) The officer of the Department who took the action being appealed	via	<input type="checkbox"/> first class mail, postage paid <input type="checkbox"/> overnight delivery <input type="checkbox"/> personal delivery <input checked="" type="checkbox"/> electronic filing (via email)
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Note to Attorneys who **electronically** file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel and officer who took the action. There is no need for you to independently serve the Department.

(4) If your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following:

The entity to whom the permit, license approval, or certification was issued.	via	<input type="checkbox"/> first class mail, postage paid <input type="checkbox"/> overnight delivery <input type="checkbox"/> personal delivery
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(5) Where applicable, you should also serve a copy of your appeal on any of the following:

☐ In appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7, any affected municipality, its municipal authority, and the proponent of the request, when applicable, and any municipality or municipal authority whose official plan may be affected by a decision of the Board in the appeal.

☐ A mining company, well operator, or owner or operator of a storage tank in appeals involving a claim of subsidence damage, water loss or contamination.



**NOTICE OF APPEAL FORM
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 knowledge and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 3 of this form on the following date: September 18, 2025.

Signature for Appellant's Counsel,
Daniel K. McCarthy, Esquire

Date: SEPTEMBER 17, 2025

If you have authorized counsel to represent you, please supply the following information
(Corporations must be represented by counsel):

Daniel K. McCarthy, Esquire
Davison & McCarthy, P.C.
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