



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

SALVATORE PILEGGI

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

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EHB Docket No. 2022-068-L

**PETITION FOR RECONSIDERATION OF MARCH 18, 2026 REMAND ORDER**

Appellant, Salvatore Pileggi, by and through undersigned counsel, respectfully petitions the Environmental Hearing Board (“Board”) for reconsideration of its Opinion and Order dated March 18, 2026 (“Remand Order”), pursuant to 25 Pa. Code § 1021.152. Reconsideration under 25 Pa. Code § 1021.152 is warranted where an order rests on legal grounds or factual findings inconsistent with the record.

The March 18, 2026, Remand Order should be vacated because:

1. Denial of Procedural Due Process: On February 26, 2026—while this Board was divested of jurisdiction under Pa.R.A.P. 1701—the Board reached a determination on the remand procedure in a three-hour window. Between the Department’s 9:34 AM email and the Board’s 12:50 PM reply (Exhibit A), the Board declared it was already "satisfied" with the record and that "no further briefing is necessary." This lightning-fast determination not to consider any input from the parties, made while the Board lacked jurisdiction, gives rise to an inference that the subsequent March 18 Remand Order was pre-ordained. The fact that a 12-page, record-intensive Opinion was issued a mere four business days

after the Board regained jurisdiction on March 12 raises suspicion that the "remedial review" was merely a repackaging of its earlier, vacated decision.

2. Repeats vacated legal error: The Commonwealth Court prohibited “speculation that DEP may have some policy reason” and remanded for a de novo, record-based remedial review with DEP bearing the burden of proof (2026 Pa. Commw. LEXIS 2 at 12, 15, 17). The Remand Order repeats this error by relying on generalized “public policy” and “deterrence” rationales (Remand Order at 8-9, 11) in place of evidence in the record, contrary to the mandate.
3. Legal and Physical Impossibility of Ordered Remedy. The Order commands Appellant to obtain an individual NPDES permit for a 1977 subdivision he did not develop, for land he does not own (Lots 1 and 2), and for public rights-of-way he cannot legally control or modify. This creates three insurmountable barriers:
  - A. Non-Developer Status: Record title documents and 1977 subdivision plans confirm Appellant purchased individual lots as a subsequent owner, not as the original developer. Under 25 Pa. Code §102.5(a) and DEP guidance, legacy subdivisions cannot be retroactively “attached” to current owners who are not “proposing” earth disturbance.
  - B. Mandated Trespass: Appellant lacks title or authority over Lots 1 and 2 or the public rights of way traversing his property. He cannot certify legal responsibility for a permit area containing third-party property, nor can he modify infrastructure in public rights-of-way.
  - C. No Proposed Activity: NPDES permits under Chapter 102 apply only to persons “proposing” an earth disturbance activity Appellant proposes no construction or

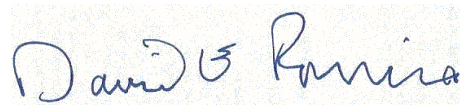
disturbance. The Board cannot create an after-the-fact permit obligation for completed, non-proposed conditions.

D. Absence of Evidence of Discharge: The Board justifies this "after-the-fact" permit by claiming it is necessary to "address the previously unauthorized discharge" (Remand Order at 11). This is a finding of fact built on a vacuum. Despite the Commonwealth Court's mandate that the DEP bear the burden of proof, the Board presumed a discharge existed without any testimonial or documentary evidence in the record to support it. The Board cannot cure a lack of evidence by requiring a "retroactive permit" that is neither authorized by 25 Pa. Code § 102.5 nor supported by the physical reality of the site.

RELIEF REQUESTED: Appellant respectfully requests that the Board vacate the March 18, 2026 Remand Order. The Board should grant the parties a reasonable opportunity to submit the "basic filing" and "opportunity to respond" originally proposed by the Department on February 26, 2026, which the Board rejected while divested of jurisdiction.

Dated: March 30, 2026

Respectfully Submitted,



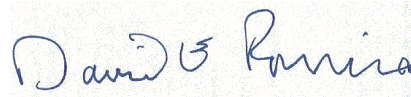
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Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2026, I caused a true and correct copy of the foregoing Appellant's Motion for Summary Judgment to be served on the following by the Board's electronic filing system:

Sean L. Robbins, Esq.  
Assistant Counsel Office of Chief Counsel, DEP  
2 Public Square  
Wilkes-Barre, PA 18701-1915  
serobbins@pa.gov



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**RE: Salvatore Pileggi v. DEP - EHB Docket No. 2022-068-BP**

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**From** Bovender, Jolee <jbovender@pa.gov>  
**Date** Thu 2/26/2026 12:50 PM  
**To** Robbins, Sean <serobbins@pa.gov>  
**Cc** DAVID ROMINE <Dromine@rominelawfirm.com>

**Exhibit A**

Good afternoon Mr. Robbins:

The Board appreciates your suggestion regarding additional briefing in this remanded matter. However, the Board is satisfied that all the information required to make a decision on the remand is included in the existing record, and no further briefing is necessary.

Thank you,

Jolee

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**From:** Robbins, Sean <serobbins@pa.gov>  
**Sent:** Thursday, February 26, 2026 9:34 AM  
**To:** Bovender, Jolee <jbovender@pa.gov>  
**Cc:** dromine@rominelawfirm.com  
**Subject:** Salvatore Pileggi v. DEP - EHB Docket No. 2022-068-BP

Good morning, Jolee:

I'm writing with regard to *Salvatore Pileggi v. DEP* - EHB Docket No. 2022-068-BP, which was partially affirmed and partially vacated and remanded to the Board by Commonwealth Court on January 7, 2026. Forgive me if I'm giving you background that you're already familiar with, I just don't want to assume. The direction on remand from the Court is for the Board to reconsider the portion of its decision to affirm the remedies in the Department's underlying August 11, 2022 Administrative Order and to provide reasons for its decision based on the existing record. The Court explicitly states in its Order that the Board "should only consider the evidence and legal argument that DEP presented to the Board and may not accept any DEP reasoning that came to light after the Board's decision."

The Department's position is that it presented evidence and legal argument supporting the remedies in its Administrative Order at the hearing and in its Post-Hearing Brief and would like an opportunity to point the Board to that evidence and argument. This could likely be accomplished through a very basic filing that cites to the applicable sections in the Department's Post-Hearing Brief without "any DEP reasoning that came to light after the Board's decision." Mr. Pileggi would of course be given an opportunity to respond.

The Department believes that a brief call with you to discuss how we might proceed with this proposal, assuming the Board is receptive to the idea, might be helpful. If Judge Bruder would prefer to be on such a call, the Department would certainly welcome his participation. One of the considerations would be the timing of any such filing, particularly given Mr. Pileggi's February 9, 2026 Petition for Allowance of Appeal of the Commonwealth Court's decision, which is currently pending before the Pennsylvania Supreme Court.



I have the following availability for a call:

- (Today) Thursday, Feb 26 – 1:00pm-3:00pm
- Monday, March 2 – 11:00am-12:00pm and 1:00pm-3:30pm
- Wednesday, March 4 – 9:00am-11:30am and 1:30pm-3:30pm
- Thursday, March 5 – 9:00am-11:30am and 1:30pm-3:30pm

Mr. Romine is copied, and if the dates provided do not work for him or the Board, I can provide additional dates.

Thank you for your time and consideration,

Sincerely

Sean

**Sean L. Robbins** | Assistant Counsel | he/him/his

Department of Environmental Protection

Northeast Regional Office

2 Public Square | Wilkes-Barre, PA 18701-1915

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