COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT	:	
v.	:	**EHB Docket No. 2026-030-L**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	**Issued: June 22, 2026**

OPINION AND ORDER ON
PETITIONS TO INTERVENE

By Bernard A. Labuskes, Jr., Board Member and Judge

Synopsis

The Board grants two petitions to intervene in an appeal of two Departmental orders where the case for permitting intervention at this early stage of the proceedings outweighs the case for denying intervention.

O P I N I O N

The Department of Homeland Security, U.S. Immigration and Customs Enforcement ("ICE") has appealed two March 5, 2026 orders issued by the Pennsylvania Department of Environmental Protection (the "Department") to ICE concerning two different facilities ICE has purchased, one located in Upper Bern Township, Berks County, and one located in Tremont Township, Schuylkill County. The properties contain former warehouses. According to the orders, ICE plans to convert the warehouses to detention facilities, incarcerating up to 1,500 people in the Upper Bern facility and up to 7,500 people in the Tremont facility. The orders generally prohibit the use or occupancy of the facilities until ICE has obtained all necessary permits, approvals, and certifications from the Department and the respective townships and their municipal

authorities regarding the provision of drinking water and sewage service that are required under the Pennsylvania Safe Drinking Water Act, 35 P.S. §§ 721.1 – 721.17, the Clean Streams Law, 35 P.S. §§ 691.1 – 691.1001, and the Pennsylvania Sewage Facilities Act, 35 P.S. §§ 750.1 – 750.20a.

The order to ICE regarding the Tremont facility directs, in part, as follows:

> 1. DHS [Department of Homeland Security] shall not obtain water from the SCMA's [Schuylkill County Municipal Authority's] Tremont Water System for any use at the Property other than fire protection without SCMA first obtaining all required permits and approvals from the Department under the Pennsylvania Safe Drinking Water Act and regulations implementing that statute.
>
> 2. DHS shall not haul bulk water to the Property or develop a new source of water to serve the Property without first obtaining all required permits and approvals from the Department under the Pennsylvania Safe Drinking Water Act and regulations implementing that statute.
>
> ….
>
> 4. Neither DHS nor any person shall occupy any building at the Property without first obtaining a permit from Tremont Township and a certification from SCMA indicating that the Property and the plans and specifications for the sewage service to the Property comply with the Sewage Facilities Act and the Clean Streams Law.
>
> 5. DHS shall not allow sewage to flow to SCMA's Tremont sewage system or use onsite equipment, including holding tanks, retaining tanks, privies or chemical toilets, to manage sewage at the Property without first applying for and obtaining a revision to the Tremont Township Official Sewage Facilities Plan that is approved by the Department.

(Tremont Order at 14.) The order to ICE regarding the Upper Bern facility directs, in part, as follows:

> 1. DHS shall not operate the well or the drinking water collection, treatment, storage and distribution facilities at the Property without first obtaining all required permits and approvals from the Department under the Pennsylvania Safe Drinking Water Act and the regulations implementing that statute.
>
> 2. DHS shall not haul bulk water to the Property or develop a new source of water to serve the Property without first obtaining all required permits and approvals from the Department under the Pennsylvania Safe Drinking Water Act and the regulations implementing that statute.
>
> ….
>
> 4. Neither DHS nor any person shall occupy any building at the Property without first obtaining a permit and a certification from the Township indicating that the

> Property and the plans and specifications for the sewage service at the Property are in compliance with the Sewage Facilities Act and Clean Streams Law.
>
> 5. DHS shall not allow sewage to flow to the Township's sewage system or use on-site equipment, including holding tanks, retaining tanks, privies or chemical toilets, to manage sewage at the Property without first applying for and obtaining a revision to the Sewage Plan that is approved by the Department.

(Upper Bern Order at 15-16.)[1]

Two organizations, the Delaware Riverkeeper Network (the "Riverkeeper Network"), and Green Amendments for the Generations ("Green Amendments"), have each filed a petition to intervene in this appeal (collectively, the "Petitioners"). The petitions are filed by the same counsel and are substantially similar. The Riverkeeper Network seeks to intervene with respect to the Upper Bern Township order, and Green Amendments seeks to intervene with respect to the Tremont Township order. ICE opposes the Petitioners' intervention. It bases its opposition on what it characterizes as the very narrow scope of relief that it seeks in this appeal. It points out that it is only challenging the Department's orders to the extent they prevent it from utilizing water and sewer services used by the prior owners of the properties. ICE argues that the Petitioners have not shown that the Board's modification of the orders to allow ICE's use at *those* levels could possibly harm them. Similarly, the Department says that, *if* we allow intervention, the Petitioners' participation should be limited to the narrow issues identified in ICE's Notice of Appeal. (Notably, the Department does not contend that the Petitioners lack a stake in those narrow issues.)

Under Section 4(e) of the Environmental Hearing Board Act, "[a]ny interested party may intervene in any matter pending before the board." 35 P.S. § 7514(e). A would-be intervenor must file a petition to intervene in accordance with our Rules. 25 Pa. Code § 1021.81. A petition to

[1] The Department issued a similar version of the orders to the Schuylkill County Municipal Authority and Tremont Township regarding the Tremont facility. Neither ICE nor any other party timely appealed those orders and they are now administratively final. *A.W. Long Coal Co. v. DEP*, EHB Docket No. 2025-137-L, slip op. at 2 (Opinion and Order on Motion for Partial Dismissal issued June 8, 2026).

intervene must be verified and it must contain sufficient factual averments and legal assertions to establish: (1) the reasons the petitioner seeks to intervene; (2) the basis for asserting that the petitioner's identified interest in the appeal is greater than that of the general public; (3) the manner in which that interest will be affected by the Board's adjudication of the appeal; and (4) the specific issues upon which the petitioner will offer evidence or legal argument. 25 Pa. Code § 1021.81(b). The Board will deny the petition if it fails to include sufficient legal grounds or verified factual averments to establish the right to intervene. 25 Pa. Code § 1021.81(e).

In order to be granted intervention, a prospective intervenor must establish it has standing by showing a "direct interest" in an appeal, meaning an interest that will either gain or lose by direct operation of the Board's adjudication of the appeal:

> This Board has held that "[t]he right to intervene in a pending appeal is comparable to the right to file an appeal at the outset and, therefore, an intervenor must have standing." *CRG Services Management LLC v. DEP*, 2025 EHB 494, 496 (quoting *Mountain Watershed Association*, 2024 EHB at 479). While there is a relatively low burden for establishing standing for intervention in Board proceedings, the Commonwealth Court has directed that "a person seeking to intervene must have an interest that 'will either gain or lose by direct operation of the Board's ultimate determination.'" *Friends of Lackawanna v. DEP*, 2022 EHB 11, 13 (quoting *Browning-Ferris, Inc.* [*v. Dep't of Env't Res.*, 598 A.2d 1057, 1060 (Pa. Cmwlth. 1991)]). In other words, a party must have a "direct interest" in the action. *Muth v. DEP*, 315 A.3d 185, 196 (Pa. Cmwlth. 2024) (quoting *Citizens Against Gambling Subsidies, Inc. v. Pa. Gaming Control Board*, 916 A.2d 624, 628 (Pa. 2007)). The requirement of a "direct interest" ensures that the Board concerns itself with "material interests that are discrete to some person or limited class of persons" rather than "more diffuse ones that are common among the citizenry." *CRG Services Management LLC*, 2025 EHB at 496 (quoting *Muth*, 315 A.3d at 196).

EQT Production Co. v. DEP, EHB Docket No. 2024-117-W, slip op. at 5 (Opinion and Order on Petition to Intervene issued Mar. 9, 2026). When a petitioner's standing is challenged in an answer to a petition to intervene, we accept as true all of the verified facts set forth in the petition and all the inferences fairly deducible from those facts and decide whether the averments nevertheless fail to establish a basis for standing as a matter of law. *Probst v. DEP*, EHB Docket No. 2025-114-L,

slip op. at 4 (Opinion and Order on Petition to Intervene issued Apr. 7, 2026); *Petrus Holdings, Inc. v. DEP*, 2022 EHB 284, 286 (citing *Barr Farms, LLC v. DEP*, 2022 EHB 74, 76; *Tri-County Landfill, Inc. v. DEP*, 2014 EHB 128, 131; *Ainjar Trust v. DEP*, 2000 EHB 75, 79-80 n.3).

A third-party organization that seeks to intervene can establish the requisite direct interest in an appeal before the Board through the organization's own work or through the representation of its affected members. *Petrus Holdings, supra*, 2022 EHB at 286-87; *Lawson v. DEP*, 2018 EHB 265, 267; *Citizens for Pa.'s Future v. DEP*, 2015 EHB 750, 751; *Pa. Trout v. DEP*, 2004 EHB 310, 355, *aff'd*, 863 A.2d 93 (Pa. Cmwlth. 2004). An organization can establish a direct interest for itself when the organization's work, interests, and/or mission are sufficiently close to the subject matter of the appeal, such as if the organization's mission and/or work includes the protection or improvement of the environment in the area affected by the Department's action. *Citizens for Pa.'s Future v. DEP*, 2025 EHB 275, 306-07, *appeal pending*, 3d. Cir. No. 25-2134; *Petrus Holdings*, 2022 EHB at 286-87; *Friends of Lackawanna v. DEP*, 2016 EHB 641, 648. The organization can also have a direct interest as a representative of its members "if at least one individual associated with the group has standing." *Friends of Lackawanna v. DEP*, 2022 EHB 11, 14; *Funk v. Wolf*, 144 A.3d 228, 245-46 (Pa. Cmwlth. 2016). *See also Pa. Med. Soc'y v. Dep't of Pub. Welfare*, 39 A.3d 267, 278 (Pa. 2012) ("an association, as a representative of its members, has standing to bring a cause of action even in the absence of injury to itself if the association alleges that at least one of its members is suffering immediate or threatened injury as a result of the challenged action and the members of the association have an interest in the litigation that is substantial, direct, and immediate."). Although not explicitly stated in the petitions to intervene, it appears that both the Riverkeeper Network and Green Amendments assert that they have standing both as organizations and as representatives of their members.

As previously mentioned, ICE argues in opposition to intervention that the Petitioners will not be harmed by the narrow result it is seeking from the Board, namely, modification of the Department's orders to allow ICE to use water and sewer service at unspecified preexisting levels. There are several problems with this argument. First, we are not sure that the appeal is in fact as immutably limited as ICE and the Department say it is. It is true that ICE in its objections in the Notice of Appeal first says it objects to the orders only to the extent they prohibit use of water and sewer services previously permitted to the facilities' prior occupants. However, it goes on to state:

> *Additionally,* ICE objects to the administrative orders as unreasonable in that the orders extend well beyond what would be reasonably necessary to uphold the DEP's responsibilities to protect the Pennsylvania environment and public water systems; instead, the orders unreasonably interfere with and encroach upon a federal law enforcement agency's ability to fulfill its responsibilities of enforcing the nation's immigration laws.

(Notice of Appeal at 1 (emphasis added).) There are several other broad statements scattered through the Notice of Appeal that do not necessarily constrain ICE as it pursues this appeal. *See, e.g.*, Notice of Appeal at ¶ 6 ("Department has failed to demonstrate why its orders to ICE are reasonable and appropriate"); *id.* at ¶ 8 ("unreasonable breadth of DEP's orders leads to inexplicably inconsistent results"); *id.* at ¶ 12 ("orders impermissibly infringe on ICE's ability to carry out its mandated Constitutional duties and responsibilities"). Further, as it is certainly entitled to do, ICE has reserved the right to amend its Notice of Appeal upon obtaining information that would "provide additional bases for challenging the Department's action and Orders regarding the properties or the application of Pennsylvania law or regulations." (*Id.* at ¶ 13.)

Second, ICE has not been consistent when describing what level of water and sewer service it believes it is entitled to. For example, in the Notice of Appeal form, ICE says that it seeks to have the two orders "amended to allow *reasonable use* of water and sewer systems, consistent with use *permitted to prior property owners* at two properties purchased by ICE…." (Emphasis

added.) But in the accompanying objections, ICE phrases its requested relief a little differently, asking that the Board "amend the Department's orders to allow ICE to make reasonable use of the water and waste water systems at levels which have *already been approved* for the prior owners *or preliminarily authorized* in the case of the Upper Bern Township site's well water system, *prior to any necessary revisions* to DEP water or waste water plans." (Notice of Appeal at 1-2 (emphasis added).) In ICE's response to the petitions to intervene, it appears to drop its request for sewer service altogether, saying that it "seeks only to restore its water services levels to those that the prior owner of the property utilized." (ICE Resp. at ¶ 12.) In its opposition to the Petitioners' motions for leave to file reply briefs in further support of their petitions, ICE again only refers to "water service," saying "ICE seeks only to have the water service levels utilized by the prior owners of the properties in Hamburg and Tremont restored to it." (ICE Opp. at ¶ 6.)

ICE's varied and rather ambiguous descriptions of its appeal make it unclear what the true scope of the appeal actually is—whether that is using water and/or sewer at the facilities at levels "which have already been approved" or "preliminarily authorized" or at levels "utilized" by prior owners or for "reasonable use" of water and/or sewer "consistent with use permitted to prior property owners." All of these different formulations are notably unspecific. Among other things, we do not know what "reasonable use" means. ICE never defines it in its filings. ICE has not offered anything specific regarding its requested relief or quantified it in any way, such as saying it seeks to amend the orders so it can use *x* gallons of water per day and generate *y* gallons of sewage at a certain facility.

Third, setting aside the ambiguities in the phrasing of the relief requested, we do not have a good sense of what amounts were in fact available and/or utilized and/or permitted and/or approved and/or preliminarily authorized for the facilities and/or their owners before ICE

purchased the facilities. For example, it has already developed that water previously thought available at the Upper Bern facility is in fact not available because, according to the Department, the prior owner of the property did not construct the water system in accordance with the Department's prior approval, and the prior owner never sought or received approval from the Department to operate the water system. If it turns out that prior owners were doing things they were not supposed to do, or doing things that were not approved, or were causing environmental harm, that could very well factor into what harm the Petitioners might face from even the purportedly narrow relief sought by ICE.

Fourth, there is very little record for us to reference to assess how we might exercise our discretion to limit the Petitioners' participation to the "narrow issues before the Board" if such a limitation is indeed appropriate, as requested by the Department. In light of the outstanding ambiguities concerning the scope of the appeal and the relief sought, we are not even sure how we would fashion an appropriate directive to limit the Petitioners' participation. Even if we did limit their participation to the "narrow issues before the Board," we do not think that is necessarily helpful or meaningful.

In sum, in light of all the uncertainties, we cannot agree at this juncture that ICE's and the Department's reasons for opposing or limiting intervention—the so-called narrowness of the appeal—warrants disallowing the Petitioners' intervention or limiting their participation. Having said that, as ICE's requested relief becomes better defined and the case otherwise progresses, it may become clearer that the Petitioners lack the requisite standing. It is certainly not clear, for example, that ICE's limited use of water and sewer services could realistically result in "sewage runoff" that might "pollute groundwater" as alleged in the petitions. We also note that the petitions suffer from a general lack of specificity with such generic averments as the Petitioners have

"members who live and recreate in the vicinity of the Property" without any indication of their proximity. There is a passing reference to Wolf Creek and Swatara Creek, but no further details are supplied with respect to how the members use those creeks and how those uses might be impacted. *Compare EQT Production Co., supra* (intervention permitted where affidavit states one member lived within one mile of the site directly at issue, another lived within two miles, and 17 others lived within two miles of other relevant sites). *See generally Lawson v. DEP*, 2017 EHB 1040 (intervention denied where vague and unsubstantiated information supplied in petition to intervene).

The petitions describe general organizational work (e.g. work in the greater Delaware River watershed and work promoting Article I, Section 27 of the Pennsylvania Constitution and other similar state constitutional provisions), but there does not appear to be any work specific to the areas of the two facilities. *Compare Citizens for Pa.'s Future, supra*, 2025 EHB at 307-13 (describing localized work and campaigns relating to a specific pipeline project and project area to establish standing as an organization). There is not much in the petitions to suggest that the Petitioners' organizational interests in this appeal are greater than the abstract interest any citizen has in ensuring compliance with the law. *See Wm. Penn Parking Garage, Inc. v. Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975).

Furthermore, it remains to be seen how the Petitioners' interests will be affected by our adjudication of the Department's orders. The Petitioners fail to point to any direct causative link between any action we might take with respect to the orders and their interests, or explain how they could gain or lose by direct operation of our determination. In assessing causation, the focus is not on ICE's "proposed use" of the facilities as repeatedly averred by the Petitioners, but on the Department's orders and any potential action we might take with respect to those orders.

Although they never explicitly say as much, we assume the Petitioners want to see the Department's orders upheld. We imagine the worst possible result from their perspective, then, would be for us to overturn the orders. Yet there are no averments in the petitions on how doing that would somehow harm them. It is not clear that overturning the orders would authorize ICE to use water and sewer at the facilities. The orders simply require ICE to obtain all necessary permits and approvals, but under the law ICE must obtain all necessary permits and approvals with or without the orders.[2] Whatever right or ability that ICE has to use water or sewer services is independent of the Department's orders. We do not see how our adjudication will affect that right or ability. For example, overturning the orders would not authorize ICE to use an unpermitted water supply at the Upper Bern facility.

In light of the myriad uncertainties both for and against intervention, we believe the best approach at this early stage of the proceeding is to grant the petitions to intervene. Future events and discovery may shed better light on whether the Petitioners' standing can withstand further scrutiny. *See Petrus Holdings*, 2022 EHB at 290 n.2 (appellant can probe the standing of an intervenor through discovery as the appeal progresses).

Accordingly, we grant the petitions to intervene in the Order that follows.

[2] The orders also require ICE to obtain necessary permits and certifications from the respective townships and municipal authorities, and require ICE to submit plans to the Department describing how ICE intends to provide drinking water and manage sewer at the facilities.

DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT	:	
v.	:	**EHB Docket No. 2026-030-L**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	

O R D E R

AND NOW, this 22nd day of June, 2026, it is hereby ordered that the petitions to intervene filed by Delaware Riverkeeper Network and Green Amendments for the Generations are **granted**.

The caption of this appeal shall be revised as follows:

DEPARTMENT OF HOMELAND SECURITY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT	:	
v.	:	**EHB Docket No. 2026-030-L**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	
and	:	
DELAWARE RIVERKEEPER NETWORK AND GREEN AMENDMENTS FOR THE GENERATIONS, Intervenors	:	

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Board Member and Judge

DATED: June 22, 2026

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

For the Commonwealth of PA, DEP:
Douglas G. Moorhead, Esquire
Michael J. Heilman, Esquire
Ann Conserette, Esquire
Erika Uebelhor, Esquire
Dennis Yuen, Esquire
Daniel R. Schramm, Esquire
(*via electronic filing system*)

For Appellant:
Jody M. Prescott, Esquire
Daniella Lees, Esquire
(*via electronic filing system*)

For Intervenor, Delaware Riverkeeper Network:
Devon E. Guyer, Esquire
Kacy C. Manahan, Esquire
(*via electronic filing system*)

For Intervenor, Green Amendments for the Generations:
Devon E. Guyer, Esquire
Kacy C. Manahan, Esquire
(*via electronic filing system*)