

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 198 Session of 2023

INTRODUCED BY BARTOLOTTA, STEFANO, DUSH AND HUTCHINSON, JANUARY 19, 2023

AS AMENDED ON THIRD CONSIDERATION, JUNE 20, 2023

AN ACT

1 Amending the act of July 13, 1988 (P.L.530, No.94), entitled "An
2 act establishing the Environmental Hearing Board as an
3 independent, quasi-judicial agency; providing for the
4 membership and staff, the powers and duties, the seats and
5 the existing members of the board; transferring certain
6 funds; and making repeals," further providing for definitions
7 and for jurisdiction.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2 of the act of July 13, 1988 (P.L.530,
11 No.94), known as the Environmental Hearing Board Act, is amended
12 to read:

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Board." The Environmental Hearing Board of the
18 Commonwealth.

19 "Department." The Department of Environmental [Resources]
20 Protection of the Commonwealth.

1 "Record of decision." A decision justification document <--
2 prepared by the department. The term includes any department
3 correspondence on a permit application to an applicant,
4 including administrative completeness determination, technical
5 deficiency letter and written response to the department by an
6 applicant, summary of the department's written response to
7 public comment on a permit application, applicant written
8 response to public comment, other State agency written comment
9 to a permit application and written response by the department
10 or permit applicant. THE DOCUMENT ISSUED BY THE DEPARTMENT TO AN <--
11 APPLICANT WHICH CONVEYS THE DEPARTMENT'S APPROVAL OR DENIAL OF A
12 PERMIT APPLICATION, ALONG WITH ANY AND ALL DOCUMENTS OR OTHER
13 EVIDENCE ISSUED, CREATED OR RELIED UPON BY THE DEPARTMENT IN ITS
14 CONSIDERATION OF THE APPLICATION, INCLUDING, BUT NOT LIMITED TO,
15 CORRESPONDENCE TO OR FROM AN APPLICANT, ANY ADMINISTRATIVE
16 COMPLETENESS DETERMINATION, ANY TECHNICAL DEFICIENCY LETTER OR
17 WRITTEN RESPONSE THERETO, ANY RECORDS OR DOCUMENTS SUBMITTED TO
18 THE DEPARTMENT REGARDING THE APPLICATION, ANY PUBLIC COMMENT ON
19 THE APPLICATION AND ANY WRITTEN RESPONSE BY THE DEPARTMENT OR
20 THE APPLICANT REGARDING PUBLIC COMMENT ON A PERMIT APPLICATION,
21 OTHER STATE AGENCY WRITTEN COMMENT TO A PERMIT APPLICATION AND
22 WRITTEN RESPONSE BY THE DEPARTMENT OR PERMIT APPLICANT.

23 "Rules committee." The Environmental Hearing Board Rules
24 Committee established under section 5.

25 "Secretary." The Secretary of Environmental Resources of the
26 Commonwealth.

27 Section 2. Section 4 of the act is amended by adding a
28 subsection to read:

29 Section 4. Jurisdiction.

30 * * *

1 (c.1) Standard of review.--In an appeal of a permit issued
2 by the department in which a record of decision has been
3 prepared by the department at the time of the permit decision,
4 the ~~standard for~~ review by the board shall be exclusively <--
5 limited to the record of decision. ~~The moving party must prove~~ <--
6 ~~by the preponderance of evidence contained in the record of~~
7 ~~decision that the department's action in issuing or denying the~~
8 ~~permit was arbitrary and capricious.~~ NO PARTY SHALL BE PERMITTED <--
9 TO PRESENT NEW EVIDENCE BEFORE THE BOARD THAT WAS NOT PART OF
10 THE RECORD OF DECISION AS CONSIDERED BY THE DEPARTMENT. ANY
11 PARTY CHALLENGING THE DECISION OF THE DEPARTMENT BEFORE THE
12 BOARD MUST DEMONSTRATE, BY A PREPONDERANCE OF THE EVIDENCE, THAT
13 THE DEPARTMENT COMMITTED AN ABUSE OF ITS DISCRETION IN DENYING
14 OR GRANTING THE PERMIT APPLICATION BEING APPEALED.

15 * * *

16 Section 3. This act shall take effect in 60 days.