

**BEFORE THE ENVIRONMENTAL APPEALS BOARD FOR
THE STATE OF DELAWARE**

DELAWARE COMMUNITY)
BENEFITS AGREEMENT COALITION,)
MARIE REED, KAREN CHEESEMAN,)
SIMEON HAHN, JEFFREY RICHARDSON,)
and DR. MUJAHID NYAHUMA,)
Appellants,)

EAB Appeal No. 2021-07

v.)
STATE OF DELAWARE,)
DEPARTMENT OF NATURAL RESOURCES)
AND ENVIRONMENTAL CONTROL,)
Appellee.)

ORDER ON DNREC’S MOTION TO DISMISS

Pursuant to due and proper notice of time and place of hearing served on all parties in interest, and to the public, the above-stated cause of action came before the Environmental Appeals Board (“Board”) on April 12, 2022, via remote Web conferencing.

Members of the Board present and constituting a quorum were: Dean Holden (Chair), Frances Riddle, Michael Horsey, and Robert Mulrooney. No Board Members disqualified

themselves or were otherwise disqualified. Deputy Attorney General Kevin P. Maloney represented the Board.

Appellants Karen Cheeseman, Simeon Hahn, Jeffrey Richardson and Dr. Mujahid Nyahuma (“the Individual Appellants”) appeared pro se. Appellant Marie Reed did not appear. Appellant Delaware Community Benefits Agreement Coalition (“DCBAC” or the “Organizational Appellant”) was not represented by counsel. Deputy Attorneys General Devera Scott and Jameson Tweedie represented Appellee Delaware Department of Natural Resources and Environmental Control (“DNREC”). William J. Burton, Esquire represented Intervenor Diamond State Port Corporation (“DSPC”).

STATEMENT OF THE CASE AND PROCEEDINGS

On October 18, 2021, DCBAC and the Individual Appellants appealed Secretary’s Order No. 2021-CZ-0019 (“Order 2021-W/CCE-0026” or the “Secretary’s Order”) issued by DNREC. The Secretary’s Order authorized the issuance of a subaqueous lands permit associated with the construction of a new container port on the Delaware river at the DSPC Edgemoor property, located at 4600 Hay Road, Edgemoor, New Castle County, Delaware.

On March 1, 2022 DNREC filed a Motion to Bifurcate Proceedings in which it moved that the appeal be separated into two proceedings: 1) a hearing on potentially dispositive motions; and 2) a hearing on the merits. The Board granted DNREC’s Motion to Bifurcate by Order dated March 3, 2022. Also on March 1, 2022 DNREC filed a Motion to Dismiss, joined by DSPC, contending that the Appeal should be dismissed for lack of standing and for lack of legal representation of the Organizational Appellant.

POSITIONS OF THE PARTIES

DNREC contends that the appeal of the Organizational Appellants must be dismissed because the organization is not represented by Delaware counsel in violation of Delaware law and the Environmental Appeals Board enabling statute and regulations.

The Individual Appellants argue that the requirement that the Organizational Appellant be represented by counsel is unfair. They also posit that they are concerned for their neighborhood and are just trying to exercise their rights as citizens.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Prior to the April 12, 2022 hearing and in accordance with the Board's Regulations, DNREC provided the Board the Chronology consisting of the record before the Secretary with respect to Secretary's Order No. 2021-CZ-0019. In deciding this Motion to Dismiss, in addition to considering the Chronology, the Board considered the written submissions of the Parties, the testimony presented and the oral argument from the Parties. Following the closing arguments by each of the Parties, the Board entered into executive session as permitted by 7 *Del. C.* § 6008(a) to deliberate and receive legal advice.

After deliberation and careful review of Parties' respective arguments, the Board, for the reasons that follow, (1) by a vote of 4 to 0, granted the Motion to Dismiss the Organizational Appellant for lack of legal representation. The Board agrees with DNREC's stated position that the issue of standing is not yet ripe for decision and will be deferred until a later time.

In Delaware, the "unauthorized practice of law occurs where there is an exercise of judgment on a legal matter by someone acting in a representative capacity... if it occurs in Delaware, on a matter of Delaware law, by someone not admitted to the Delaware bar." *Chang v. Children's*

Advocacy Center of Delaware, Inc., 2016 WL 7188105, at*4 (Del. Super. Dec. 9, 2016) (quoting *Townsend v. Integrated Mfg. & Assembly*, 2013 WL 4521087, at *1 (Del. Super. July 30, 2013)). Since the Organizational Appellant is not represented by counsel the Board must dismiss the appeal of the DCBAC.

IT IS SO ORDERED, this 28th day of April, 2022 that;

- 1) The appeal of the DCBAC is dismissed because they are not represented by counsel;
- 2) The Individual Appellants may proceed with the prosecution of their appeals contingent upon the filing of 1) individual amended Statements of Appeal and 2) Affidavits or Declarations designed to establish their basis for standing to prosecute the appeal. Such filings shall be made within 30 days of the date of this Order. Failure to make such filings shall constitute grounds for dismissal of an Individual Appellant's appeal without further hearing;
- 3) All parties are hereby reminded of their obligation under Board Regulation 3.2 to submit, "a list of the witnesses they intend to call at the hearing and a list of the documents, including relevant portions of those documents, and other evidence they intend to submit into evidence at the hearing" no fewer than 10 days prior to the date set for the pre-hearing conference.

/s/Dean Holden

Dean Holden, Chairperson

The following three Board members concur in this decision:

Date: 4/25/22

/s/Robert Mulrooney

Robert Mulrooney
Board Member

Date: 4/28/22

/s/ Michael Horsey

Michael Horsey
Board Member

Date: 4/21/22

/s/ Frances Riddle

Frances Riddle
Board Member