



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

DAVID KEPHART and THE ESTATE OF	:	
TIMOTHY L. KEPHART and	:	
KEPHART TRUCKING CO.	:	
	:	<b>EHB Docket No. 2024-132-BP</b>
v.	:	<b>(Consolidated with EHB Docket</b>
	:	<b>No. 2024-133-BP)</b>
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	<b>Issued: July 1, 2025</b>
PROTECTION	:	

**OPINION AND ORDER ON DISMISSAL OF PARTY FOR  
FAILURE TO OBTAIN COUNSEL**

**By Paul J. Bruder, Jr., Judge**

**Synopsis**

The Environmental Hearing Board (“Board”) dismisses Kephart Trucking Co. as a party appellant pursuant to 25 Pa. Code § 1021.161 as a sanction for the failure to obtain counsel in violation of Board Orders, Board Rules of Practice and Procedure, and Pennsylvania law.

**OPINION**

**Background**

This consolidated appeal concerns three appellants, David Kephart, the Estate of Timothy L. Kephart, and Kephart Trucking Co., contesting the Department of Environmental Protection’s (“Department”) August 28, 2024 Administrative Order (“Administrative Order”)<sup>1</sup> for violations of the Storage Tank and Spill Prevention Act, Act of July 6, 1989, P.L. 169, *as amended*, 35 P.S.

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<sup>1</sup> The Administrative Order is addressed to Kephart Trucking Co., David Kephart, individually, and Timothy L. Kephart, individually.

§§ 6021.101 – 6021.110. On September 26, 2024, Timothy L. Kephart<sup>2</sup> appealed the Administrative Order to the Board individually and on behalf of Kephart Trucking Co. On September 27, 2024, David Kephart appealed the Administrative Order to the Board individually and on behalf of Kephart Trucking Co. On October 15, 2024, the Board consolidated the appeals at docket no. 2024-132-BP.

Five months after the appeals were filed, on February 28, 2025, the Department filed a status report advising of Timothy L. Kephart's death. At that time, no counsel had yet entered an appearance for Kephart Trucking Co. On March 3, 2025, the Board issued an Order mandating that a successor be appointed for Timothy L. Kephart and that Kephart Trucking Co. obtain counsel by March 31, 2025, in compliance with the Board's Rules of Practice and Procedure and Pennsylvania law. *See* 25 Pa. Code § 1021.21(a). As of March 31, 2025, Kephart Trucking Co. had not complied with that Order.

On April 1, 2025, the Board issued a Rule upon Kephart Trucking Co. to show cause as to why the Board should not dismiss it for failure to obtain counsel. The Board ordered the entry of appearance by an attorney on behalf of Kephart Trucking Co. or the filing of a statement addressing Kephart Trucking Co.'s progress toward obtaining counsel on or before April 25, 2025. The Board further advised that failure to comply with the Rule could result in dismissal of the appeal for Kephart Trucking Co. On April 25, 2025, David Kephart electronically filed a letter stating that he made attempts to secure representation for himself and Kephart Trucking Co. through legal aid and the Pennsylvania Bar Association; however, he was told that this type of legal proceeding had

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<sup>2</sup> The appeal docketed at 2024-133-BP was initially filed by Timothy L. Kephart on September 26, 2024. Mr. Kephart passed away on January 2, 2025. Thereafter, a representative was appointed to substitute the Estate of Timothy L. Kephart for Timothy L. Kephart. The substitution of parties and the amendment of the caption was finalized by a June 20, 2025 Board Order.

no legal aid option for individuals or corporate entities. Mr. Kephart requested additional time to discuss settlement with the Department.

On April 28, 2025, the Department filed a status report with the Board outlining discussions it had with David Kephart. In the report, the Department re-stated that David Kephart confirmed he did not obtain counsel for Kephart Trucking Co. The Department also discussed the issues it had with reaching a mutually agreeable settlement agreement without a substitute successor for Timothy L. Kephart. On April 29, 2025, the Board issued an Order for the case to be stayed until June 3, 2025. The Order also mandated that a successor be named for Timothy L. Kephart and that counsel be obtained for Kephart Trucking Co. by June 3, 2025. On June 3, 2025, a Motion for Substitution was filed by the Estate of Timothy L. Kephart. No response was received by any party concerning efforts to obtain counsel for Kephart Trucking Co. On June 3, 2025, the Department filed a status report advising of settlement discussions had with both the Estate of Timothy L. Kephart and David Kephart. The Department respectfully requested that Kephart Trucking Co. be dismissed as a party.

On June 10, 2025, the Board issued a second Rule upon Kephart Trucking Co. to obtain counsel by June 23, 2025. The Rule stated that failure to comply would result in the dismissal of Kephart Trucking Co. As a follow up, on June 13, 2025, Judge Bruder's Assistant Counsel e-mailed David Kephart recapitulating to him that if Kephart Trucking Co. did not obtain counsel by June 23, 2025 it would be dismissed as a party appellant. Assistant Counsel also provided David Kephart with the name of a non-profit, Citizens for PennFuture, to contact. On June 23, 2025, no response was received by any party to the Rule.

## **Discussion**

Under Pennsylvania law, a corporation or limited liability company must be represented by legal counsel in a judicial proceeding and may not appear *pro se*. See *The Spirit of the Avenger Ministries v. Commonwealth*, 767 A.2d 1130 (Pa. Cmwlth. 2001); *Walacavage v. Excell*, 480 A.2d 281, 284-85 (Pa. Super 1984) (“a corporation may appear in court only through an attorney at law admitted to practice before the court. . . . The reasoning behind the rule is that a corporation can do no act except through its agents and that such agents representing the corporation in Court must be attorneys at law who have been admitted to practice, are officers of the court and subject to its control. . . . [A] person who accepts the advantages of incorporation for his or her business must also bear the burdens, including the need to hire counsel to sue or defend in court.”) Additionally, under Board Rules of Practice and Procedure, “[p]arties, except individuals appearing on their own behalf, shall be represented by an attorney in good standing at all stages of the proceedings subsequent to the filing of the notice of appeal or complaint[.]” and “[c]orporations shall be represented by an attorney of record.” 25 Pa. Code § 1021.21(a)-(b). As such, “this Board has regularly dismissed appeals filed by non-individuals for failure to obtain counsel once such entities have been given a reasonable opportunity to secure representation and have not done so.” *River Hill Coal Co., Inc. v. DEP*, EHB Docket No. 2024-173-CS, *slip op.* at 3 (Opinion issued May 16, 2025); *Lizabella Mining, LLC v. DEP*, 2024 EHB 783, 786-787; *Waroquier Coal Co. v. DEP*, 2024 EHB 396, 397- 398; *Earth First Recycling, LLC v. DEP*, 2018 EHB 819, 820-821; *Falcon Coal and Constr. Co. v. DEP*, 2009 EHB 209, 210.

Further, this Board may impose sanctions, including dismissal, for where an appellant demonstrates a clear lack of intent to comply with Board orders. 25 Pa. Code § 1021.161; *Waroquier*, 2024 EHB at 397; *Blackwood v. DEP*, 2020 EHB 442; *Scottie Walker v. DEP*, 2011 EHB 328; *K H Real Estate, LLC v. DEP*, 2010 EHB 151. The Board has imposed dismissal as a

sanction when entities required to be represented by an attorney in good standing have failed to retain counsel. *Waroquier*, 2024 EHB at 398 (dismissing an appeal as a sanction where a coal company failed to obtain counsel and ceased all communications with the Board); *Mann Realty v. DEP*, 2015 EHB 110 (dismissing an appeal as a sanction where a corporation refused to comply with Board orders requiring it to be represented by an attorney); *Falcon Coal & Constr. Co. v. DEP*, 2009 EHB 209 (dismissing an appeal of a company for failure to obtain legal representation in accordance with the Board's Rules of Practice and Procedure).

There is no dispute that Kephart Trucking Co. has been provided numerous opportunities over the past nine months to obtain counsel. This Board has exercised its discretion and exhibited leniency toward Kephart Trucking Co. by issuing several Orders and Rules upon it to obtain counsel, while no responsive action was received. While the Board acknowledges David Kephart's efforts to obtain counsel for Kephart Trucking Co., the Board cannot permit a party to engage in the unauthorized practice of law because of its failure to obtain non-profit assistance.

Moreover, based on the statements made by the parties, the Board understands that the Department is in active settlement discussions with David Kephart and the Estate of Timothy L. Kephart to resolve this matter. Given David Kephart's representations regarding Kephart Trucking Co.'s financially and operationally distressed condition,<sup>3</sup> we do not believe that the company can contribute meaningfully to any settlement negotiations or satisfy the obligations set forth in the Administrative Order.

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<sup>3</sup> David Kephart's April 25, 2025 letter addressed to the Board states that Kephart Trucking Co. has been in a highly distressed financial condition since 2011. In 2013, the board members resigned their positions and Kephart Trucking Co. ceased all motor carrier operations. At that point, Kephart Trucking Co.'s operating capital bank attempted to collect on their receivable assets and discovered that the company's receivables had been overstated by several million dollars. They immediately froze all assets. In 2014, the IRS levied a tax lien of over 1 million dollars on the property where the subject tanks are sited for unpaid 2013 trust fund taxes.



As the Board has not received any responses to its March 3, 2025 and April 29, 2025 Orders and its June 10, 2025 Rule to Show Cause, Kephart Trucking Co. has established a lack of intent to pursue its appeal by failing to comply with Pennsylvania law and Board Rules of Practice and Procedure. Thus, Kephart Trucking Co. shall be dismissed as a party appellant.

Accordingly, we issue the following order.



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**ORDER**

AND NOW, this 1<sup>st</sup> day of July, 2025, following Kephart Trucking Co.'s failure to comply with Board Orders, Board Rules of Practice and Procedure, and Pennsylvania law, it is hereby **ordered** that Kephart Trucking Co. is **dismissed** as a party appellant. The consolidated appeals will now be captioned as follows:

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**ENVIRONMENTAL HEARING BOARD**

s/ Steven Beckman  
**STEVEN BECKMAN**  
**Chief Judge and Chairperson**

s/ Sarah L. Clark  
**SARAH L. CLARK**  
**Judge**

s/ MaryAnne Wesdock \_\_\_\_\_

**MARYANNE WESDOCK**

**Judge**

s/ Paul J. Bruder, Jr. \_\_\_\_\_

**PAUL J. BRUDER, JR**

**Judge**

- \* **Judge Bernard A. Labuskes, Jr. is recused in this matter and did not participate in the decision.**

**DATED: July 1, 2025**

**c: DEP, General Law Division:**

Attention: Maria Tolentino

*(via electronic mail)*

**DEP, Office of Chief Counsel:**

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Glenn Masser, Esquire

*(via electronic filing system)*

**For Appellants:**

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*(via electronic filing system)*

Kephart Trucking Co.

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*(via first class U.S. mail)*

The Estate of Timothy L. Kephart

Martin R. Siegel, Esquire

*(via electronic filing system)*