



**Commonwealth Of Pennsylvania
Before The Environmental Hearing Board**

MOUNTAIN WATERSHED ASSOCIATION :
 :
 :
 v. : EHB Docket No.
 :
 :
 COMMONWEALTH OF PENNSYLVANIA, :
 DEPARTMENT OF ENVIRONMENTAL :
 PROTECTION and LCT Energy, LP, Permittee : Filed Electronically
 :
 :
 :

Notice of Appeal



**Notice Of Appeal Form
Appeal Information**

1. Name, address, telephone number, and email address (if available) of Appellant:

Mountain Watershed Association, Inc.
1414 Indian Creek Valley Road
P.O. Box 408
Melcroft, PA 15462

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

The Department's March 6, 2026 approval of informal Permit Revision No. 13 to Coal Mining Activity Permit No. 65131301 for the Rustic Ridge #1 Mine, which reduced the subsidence bond from \$3,141,450 to \$292,679 and released \$2,848,771, **and** the Department's April 2, 2026 issuance of Permit Revision No. 14 purporting to rescind Revision 13 via letter sent only to LCT and a redline edit to Section D of the permit. Copies are attached as Exhibit A and Exhibit B.

(b) Which Department official took the action?

Troy A. Williams, P.E.
District Mining Manager
Pennsylvania Department of Environmental Protection
California District Mining Office

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Donegal and Saltlick Townships
Westmoreland and Fayette Counties

(d) How, and on what date, did you receive notice of the Department's action?

Via email on March 10, 2026 (Revision No. 13 - Letter dated March 6, 2026) and via email on April 3, 2026 (Revision 14 - Letter dated April 2, 2026). See Exhibits A and B.

(e) Did you receive written notification of the Department's action (for example, letter, order or permit that you are appealing)? If yes, you must attach a copy of the notification to this Notice of Appeal. If you are appealing a permit, you may attach the first page rather than the entire document. In lieu of attaching the document, you may provide a link to the



notice of the action in the *Pennsylvania Bulletin*. See filing instructions for further information.

Yes. Please see Exhibits A and B.

3. Describe your objections to the Department’s action in separate, numbered paragraphs. (NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets if necessary.)

Please see attached objections.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

Mountain Watershed Association v. DEP and LCT Energy, L.P., EHB Docket Nos. 2025-076-B and 2025-108-B

MWA respectfully requests that this appeal not be consolidated with those matters at this time. While consolidation may be appropriate in the future particularly for a hearing on these matters, MWA believes that consolidation at this time would complicate the resolution of separate permit revisions.



**Commonwealth Of Pennsylvania
Before The Environmental Hearing Board**

MOUNTAIN WATERSHED ASSOCIATION	:	
	:	
v.	:	EHB Docket No.
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and LCT Energy, LP, Permittee	:	Filed Electronically
	:	
	:	
	:	

OBJECTIONS

Appellant Mountain Watershed Association (“MWA”), through counsel, objects to the Pennsylvania Department of Environmental Protection’s (“Department” or “DEP”) approval of Permit Revision No. 13 and its issuance of Revision No. 14 to Coal Mining Activity Permit (“CMAP”) No. 65131301 for the Rustic Ridge #1 Mine as follows:

I. General Background

1. On March 6, 2026, the Department approved “informal” Permit Revision No. 13, which reduced the subsidence bond from \$3,141,450 to \$292,679 and released \$2,848,771. Section D of the Permit states that \$2.8 million “was released” with Revision No. 13. See Exhibit A.

2. Between 2020 and 2022, documented subsidence damage occurred to at least five properties. See Exhibit C (Operator Reporting Forms). LCT resolved multiple claims by purchasing the properties outright: the Hawk property for \$600,000 (recorded January 2022), the Terretti property for \$600,000 (recorded January 2023), and the Ream property for \$350,000 (recorded July 2023), for a total of \$1.55 million. See Exhibit D (deeds). The Palmer property

was also the subject of a full settlement and release (Memorandum of Agreement, December 2020). See Exhibit D. The Fedor claim (Hellen Ridge Lane Property) remains unresolved. In the 2020 Operator Reporting Forms for the Fedor, Palmer, Terretti, and Hawk properties, LCT Energy expressly admitted: “LCT Energy does not deny mining operations have caused some of the issues outlined above.” See Exhibit C and Exhibit D.

3. In connection with Revision No. 10 (approved April 2025), which added 1,452 underground acres and 1,411.5 subsidence control plan acres, the Department required the full \$3,141,450 subsidence bond. See Exhibit E (DEP August 8, 2023 Letter to LCT) and Exhibit F (Rev. 10 Approval). The approved Module 22 Subsidence Control Plan (approved with Revision 10 and last revised July 21, 2023) explicitly acknowledges Barr Engineering’s principle findings that floor instability (pillar punching into weak claystone) is the dominant subsidence mechanism and that these floor conditions are present in a significant portion of the underground permit area. See Exhibit K (Module 22). Barr Engineering also concluded that the claystone floor will lose 40–60% of its strength upon mine flooding. See Exhibit G (Barr Engineering Analysis). Mountain Watershed Association appealed Revision No. 10 to the Environmental Hearing Board (EHB Docket No. 2025-76-B).

4. On July 11, 2025, the Department issued Revision No. 11, which expanded the Subsidence Control Plan boundary by an additional 52.5 acres. Despite this further expansion, the Department maintained the full \$3,141,450 subsidence bond requirement. See Exhibit H (Revision 11 approval). Mountain Watershed Association appealed Revision No. 11 to the Environmental Hearing Board (EHB Docket No. 2025-108-B).

5. Prior to Revision No. 10, the subsidence bond for the Rustic Ridge #1 Mine stood at the regulatory minimum of \$10,000. On August 8, 2023, during its technical review of

Revision No. 10 (which added 1,452 underground acres and 1,411.5 subsidence control plan acres), the Department required LCT to post a subsidence bond of \$3,131,450 before the permit revision could be issued. See Exhibit E (DEP August 8, 2023 Letter to LCT). Despite documented subsidence damage occurring as early as 2020, the Department did not increase the bond until this major expansion triggered a full review.

6. Internal Department communications during the technical review of Revision 13 confirm that DEP had actual, contemporaneous knowledge of at least one unresolved subsidence damage claim. LCT's October 3, 2025 request for bond reduction falsely stated that the mine "has operated for more than 5-years without a subsidence claim." See Exhibit I. LCT's own Mine Operator Reporting Forms document subsidence damage as late as December 2022 (Ream property) and, for the Palmer property, damage that occurred on October 1, 2020 — nearly 5 years to the day before LCT's October 3, 2025 request. See Exhibit I (Technical Review Correspondence and BUMIS Reports) and Exhibit C (Operator Reporting Forms).

7. On April 2, 2026, DEP issued a letter that purported to rescind Revision No. 13's release of \$2,848,771 in subsidence bond through Minor Permit Revision No. 14. In the April 2, 2026 Revision 14 letter, the Department attempts to justify the rescission by explaining that on January 7, 2026 (before the approval of Rev. 13), the Department received a Subsidence Damage Claim Form for a property located on Hellen Ridge Lane, Acme, Pennsylvania ("Hellen Ridge Lane Property"). On March 25, 2026 (after Rev. 13 was approved), the Department issued a determination that the Rustic Ridge #1 mine caused subsidence damage to the structures on the property. See Exhibit B (April 2, 2026 Rev. 14 Letter). But, LCT had already admitted liability in the Operator Reporting Form submitted on October 26, 2020, and the Department was well aware of the current status before it approved a 90%+ reduction in subsidence bond. See Exhibit

C (Operator Reporting Forms) and Exhibit I (Technical Review Correspondence and BUMIS Reports). In February 2026 emails, Surface Subsidence Agent Supervisor Richard Kormanik repeatedly advised the permit reviewer that the BUMIS Damage Incidence Report “doesn’t appear to be correct since we still have one damaged house that they haven’t settled with the owners” and referenced the unsettled Fedor claim. DEP personnel ran multiple BUMIS reports (5-year and 10-year) showing inconsistencies, glitches, and up to five properties with damage liability. Despite this internal acknowledgment of outstanding liability and unreliable data, the Department approved the 90%+ bond reduction on March 6, 2026. See Exhibit I and Exhibit A.

8. Despite the known floor instability and pillar punching subsidence mechanism documented in the Barr Engineering analysis and incorporated by reference into the approved Subsidence Control Plan (Module 22), the Department has failed to enforce Special Condition 32 of the underground mining permit, which requires LCT to identify and delineate soft floor strata on every six-month mine map. See Exhibits F-H, and K. LCT submitted five successive noncompliant maps since the issuance of Permit Revision 10: Projection 13 on April 10, 2025; Projection 13 – Revision 1 on July 3, 2025; Projection 13 – Revision 2 on August 11, 2025; Projection 13 – Revision 3 on August 22, 2025; and Projection 14 on October 1, 2025. See Exhibit J (six-month mine maps). The Department approved them all and then released \$2.8 million in subsidence bond.

9. The Department relied on the mere absence of recent claims within the TGD’s five-year window rather than verifying through rigorous, site-specific engineering analysis that the approved plan has actually lowered risk across the expanded subsidence control plan area. The identical risk profile that warranted a \$3,141,450 bond in April 2025 (Rev. 10) and July

2025 (Rev. 11) remains essentially unchanged today. The approved subsidence control plan (Module 22) has not reduced the risk of subsidence in any meaningful, enforceable manner.

II. Legal Framework

10. Subsidence bonds are mandated by the Bituminous Mine Subsidence and Land Conservation Act (“Mine Subsidence Act”), 52 P.S. §§ 1406.1 et seq., and implemented through 25 Pa. Code Chapter 86, Subchapter F. Section 6(b) of the Mine Subsidence Act states:

The Department **shall** require the applicant to file a bond ... in a **reasonable amount as determined by the department**. Liability under such bond shall continue for the duration of the mining or mining operations, **and for a period of ten years thereafter**.

52. P.S. 1406.6(b) (emphasis added); *People United to Save Homes v. DEP*, 789 A.2d 319, 332-333 (Pa. Cmwlth. 2001). The plain purpose of the statute is to ensure that financial assurance is always adequate to guarantee the operator’s obligation to prevent, minimize, repair, or compensate for subsidence damage for the full period of liability – including delayed subsidence that may occur years after mining ends with the mine floods. The “reasonable amount” requirement is not a ministerial or mechanical calculation; it is a substantive command that the bond must actually protect surface owners given the specific risks at the mine. *People United to Save Homes v. DEP*, 789, A.2d 319, 333 (Pa. Cmwlth. 2001) (“It is clear from the factors enumerated in subsection (b) that such determinations were intended to be made on a case-by-case basis, taking into consideration factors specific to each proposed mining area.”)

11. Section 86.152 governs bond adjustments. Subsection (d) expressly requires that “[t]he Department will notify the permittee, the surety and any person with a property interest in collateral who has requested the notification, of any proposed adjustment to the bond amount.” 25 Pa. Code § 86.152(d). Subsection (a) further provides that any bond increase “shall only be

binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage.” 25 Pa. Code § 86.152(a).

12. Revision No. 14 consists only of a letter to LCT and an internal redline note; there is no evidence that Rockwood Casualty Insurance Company received the required notice or issued any rider restoring Surety Bond ISM-3624 to \$3,141,450.

13. The Department’s methodology appears in Technical Guidance Document 563-2504-101 (“TGD”). That TGD is interpretive only and has no force of law. See Exhibit L.

III. Specific Objections

A. The Bond Reduction Occurred Despite No Change In Mining Operations or Risk

14. The sole basis for the drastic reduction was that certain older claims had aged out of the five-year look-back period in the TGD. Yet, the risk profile that justified the full \$3,141,450 bond in revision Nos. 10 and 11 has not meaningfully changed.

15. The approved Subsidence Control Plan (Module 22) continue to identify pillar punching into weak claystone as the dominant subsidence mechanism. The Barr Engineering analysis, which was incorporated by reference into Module 22, predicts that the claystone floor will lose 40-60% of its strength upon mine flooding – a post-closure condition that the ten-year liability period expressly covers. The subsidence control plan area remains significantly expanded, and active mining continues. Special Condition 32, which requires identification and delineation of soft floor strata on every six-month mine map, has not been enforced, and LCT has submitted multiple noncompliant maps. See Exhibits F-H, J, and K.

16. Because the geologic conditions, mining method, and protected surface features that created the need for the full \$3.14 million bond remain identical, the sudden 90%+ reduction is unreasonable under the plain text of Section 6(b) of the Mine Subsidence Act.

17. DEP may reevaluate bonds at any time. Yet, even after the damage in 2020 and 2022, it waited until the 2023 technical review of the Revision No. 10 expansion to exercise that discretion upward to reflect the increased risk evidenced by significant subsidence damage that had already occurred. See Exhibit E. Then, once those same claims aged out of the five-year window in the TGD, it exercised its discretion again — downward — in less than 12 months from the issuance of Rev. 10 and Rev. 11, both of which expanded the mining operations at the Rustic Ridge #1 Mine. This pattern has benefited only the operator, LCT Energy, by first delaying any meaningful bond increase then immediately slashing the bond the moment the five-year clock provided a mechanical justification.

B. The Reduced Bond Amount is No Longer Reasonable under BMSLCA § 6(b)

18. Section 6(b) of the Mine Subsidence Act requires the Department maintain a bond in a “reasonable” amount that is sufficient to guarantee the operator’s statutory duties for the entire period of liability. 52 P.S. § 1406.6(b). The amount of \$292,679 is not reasonable given the continued active mining, documented floor instability, pillar-punching mechanism, and the unresolved Fedor/Hellen Ridge Lane claim.

19. LCT’s own Barr Engineering analysis (incorporated by reference into the approved Module 22) concludes that the claystone floor will lose 40–60% of its strength upon mine flooding — a post-closure condition that will materially increase the risk of pillar punching and subsidence. See Exhibit G. Module 22 acknowledges floor instability (pillar punching into weak claystone) as the dominant subsidence mechanism and acknowledges that thick “soft” claystone floor rock is present in significant portions of the underground permit area. See Exhibit G and Exhibit K. The approved plan acknowledges the need for coal pillar safety factors greater

than 2.0 based on the floor conditions. These commitments and known risks were the basis for the full \$3,141,450 bond in Revisions 10 and 11. See Exhibit E.

20. LCT's own actions confirm the severity of subsidence damage at this mine. The operator paid \$600,000 for the Hawk property, \$600,000 for the Terretti property, and \$350,000 for the Ream property after subsidence damage rendered repair uneconomical. See Exhibit D (recorded deeds). These substantial buyouts demonstrate that individual claims can easily exceed the entire remaining \$292,679 bond amount. The Ream property further demonstrates delayed subsidence at the Rustic Ridge #1 Mine under dry conditions. See Exhibit C (damage appeared nearly **three years** post-undermining).

21. The Department failed to enforce Special Condition 32 and never required updated site-specific engineering data. The identical risk profile that warranted the full \$3,131,450 bond in April and July 2025 remains essentially unchanged today. See Exhibits F-H and Exhibits J-K. Reducing the bond under these circumstances violates the statutory command that the bond be maintained in a reasonable amount. 52 P.S. 1406.6(b).

C. The Bond Recalculation is Unsupported and Arbitrary

22. The Department's official Subsidence Bond Calculation Worksheet for Revision 13 (Exhibit A) applies an incidence-of-damage factor of exactly 1 property damaged ÷ 121 properties mined. The recalculation rested on LCT's own false representation that the mine had operated for more than five years without a subsidence claim — a statement directly contradicted by LCT's Operator Reporting Forms and the very damage the Department had already acknowledged internally. See Exhibit C. Internal BUMIS reports and emails generated during the technical review showed far fewer properties undermined, subsidence damage that occurred

in 2022, and confirmed ongoing damage liability, revealing significant inconsistencies and glitches in record keeping. See Exhibit I.

23. The complete absence of any documented, reliable basis for the 121-property denominator renders the recalculation arbitrary and contrary to the requirements 52 P.S. § 1406.6(b) and 25 Pa. Code §§ 86.149, 86.151(b)(2) and 86.152.

D. Revision No. 14 Is Procedurally Defective and Does Not Deprive the Board of Jurisdiction Over Revision No. 13

24. Revision No. 14, issued shortly before the appeal deadline for Revision No. 13, is both procedurally defective and legally insufficient to moot this appeal or deprive the Board of jurisdiction.¹

25. First, Revision 14 is invalid because the Department failed to provide the mandatory notice to the surety required by 25 Pa. Code § 86.152(d). The April 2, 2026 letter was sent exclusively to LCT; there is no evidence it was ever sent to Rockwood Casualty Insurance Company. See Exhibit B. This procedural violation renders the attempted rescission ineffective. Even if somehow valid, Section 86.152(a) confirms that any bond increase binds only the permittee and does not compel the surety to restore coverage. There is no evidence that Rockwood Casualty Insurance has restored the bond. 25 Pa. Code § 86.152(a).

26. Second, even assuming *arguendo* that Revision 14 were fully effective (it was not), it would not moot the appeal of Revision 13. The EHB has recognized that the “rescission of a Department action will not always moot an appeal: for example, where concrete continuing obligations exist.” *Consol Pennsylvania Coal Co. v. DEP*, 2015 EHB 48, 55. Concrete continuing obligations plainly exist: the surety was never notified or bound, the mine operated

¹ The Department processed both Rev. 13 and Rev. 14 as minor or “informal” permit revisions. As a result, these actions were not noticed in the PA Bulletin. MWA received actual notice of Revision 13 on March 10, 2026 and actual Notice of Revision 14 on April 3, 2026.

for nearly a month under the drastically reduced subsidence bond, the legality of the original reduction remains at issue, and DEP’s own letter demonstrates that the purported restoration is temporary and conditional. See *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (“It is well settled that ‘a defendant’s voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. If it did, courts would be compelled to leave the defendant free return to its old ways.’ In accordance with this principle...a case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to reoccur.”) (internal citations omitted). DEP expressly states that it “will consider an adjustment to the subsidence bond amount” after it determines the reasonable cost to repair the Hellen Ridge Lane Property.² Exhibit B. This confirms the subsidence bond issue is not finally resolved, and DEP will reduce the subsidence bond amount again soon.

27. Moreover, all three recognized exceptions to mootness apply (any one suffices). See *Consol Pennsylvania Coal Co. v. DEP*, 2015 EHB 48, 56. First, the issue is capable of repetition yet evading review: the Department has already demonstrated a pattern of iterative bond adjustments followed by rapid, last-minute attempted rescissions on the eve of appeal deadlines, with promises of future recalculations. Second, the matter is of great public importance because proper subsidence bonding is essential to protect surface owners under the Mine Subsidence Act from uncompensated damage. Third, adjudication is necessary to avoid detriment to a party absent a decision: surface owners, including MWA’s members, would suffer ongoing risk of inadequate financial assurance if whether the original bond reduction was

² The Department misleadingly presents the “Hellen Ridge Lane Property” claim as a new development when LCT had already admitted liability in 2020 and DEP had received the formal Subsidence Damage Claim Form in early January 2026 before approving Revision No. 13. There is nothing new about this claim.

unlawful, arbitrary, capricious, or an abuse of discretion is not resolved. Resolving this question is essential because it will determine whether surface owners will receive the meaningful financial protection the Mine Subsidence Act was enacted to provide. The Department has already established a pattern of using its discretion to benefit the operator through roller-coaster bonding: maintaining the bond at the \$10,000 minimum for years despite documented subsidence damage, suddenly raising it to \$3.14 million during the Revision 10 expansion review, and then releasing over 90% once claims aged out of the five-year window — despite known outstanding liabilities, demonstrated delayed subsidence, LCT’s repeated failure to comply with Special Condition 32, and the absence of any enforceable measures to actually reduce subsidence risk at the Rustic Ridge #1 Mine.

E. Consequences of Inadequate Bonding

28. The reduced bond of only \$292,679 creates a material risk that, in the event of future subsidence damage, available financial assurance will be quickly exhausted. LCT has already spent \$1.55 million purchasing three damaged properties outright after subsidence rendered repair uneconomical. A single comparable future claim could easily exceed the entire remaining bond amount.

29. If LCT becomes insolvent or judgment-proof, surface owners would have limited recourse. They can file a subsidence damage claim with DEP, which investigates and can order the operator to repair the damage or pay compensation. 52 P.S. § 1406.5; 25 Pa. Code § 89.143a. The bond is the financial guarantee for that obligation. Importantly, the Department has no authority to use public taxpayer funds to supplement an inadequate bond or pay for subsidence damage. Pennsylvania maintains no general state-funded insurance pool or backup mechanism for damage from active, permitted mines. The very risk the Mine Subsidence Act was enacted to

prevent — uncompensated harm to surface owners — would fall directly on homeowners and local communities. This is exactly why the statute demands a “reasonable” bond amount. 52 P.S. 1406.6(b).

WHEREFORE, Mountain Watershed Association respectfully requests that the Environmental Hearing Board:

- (1) retain jurisdiction over Revision No. 13 and declare Revision No. 14 procedurally defective and ineffective;
- (2) vacate Permit Revision No. 13;
- (3) reinstate the \$3,141,450 subsidence bond requirement; and
- (4) grant such other and further relief as the Board deems just and proper.

In the alternative, MWA requests remand to the Department with instructions to recalculate the bond using a documented, site-specific, forward-looking analysis that accounts for the unchanged risk profile at the Rustic Ridge #1 Mine and satisfies the “reasonable amount” requirement of the Mine Subsidence Act.

By filing this Notice of Appeal with the Environmental Hearing Board, the undersigned hereby certify that the information submitted is true and correct to the best of our information and belief.

Date: April 9, 2026

Respectfully submitted,

/s/ Sarah E. Winner
Sarah E. Winner, Esq.
PA ID: 317178
Law Office of Sarah Winner LLC
PO Box 92



Bethel Park, PA 15102
(412) 206-6490
sarah@swinnerlaw.com

Melissa Marshall, Esq.
PA ID No. 323241
Melissa@mtwatershed.com

Sarah Thomas, Esq.
PA ID No. 331733
Sarahthomas@mtwatershed.com

Mountain Watershed Association
P.O. Box 408
1414-B Indian Creek Valley Road
Melcroft, PA 15462
(724) 455-4200

Counsel for Appellant

Certificate Of Service

I, the undersigned, certify that a true and correct copy of the foregoing Notice Of Appeal was filed by Electronic Filing with the Pennsylvania Environmental Hearing Board and was served on the following on the date listed, and in the manner indicated, below:

By Electronic Service

Office of Chief Counsel, Litigation Support Unit
Department of Environmental Protection
Commonwealth of Pennsylvania
Attention: Glenda Davidson
16th Floor Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

By Email

LCT Energy, LP
Attn: Mark Tercek, President
938 Mt. Airy Drive, Suite 200
Johnstown, PA 15904
mark.tercek@lctenergy.com

James V. Corbelli, Esq.
Nicholas McDaniel, Esq.
Babst, Calland, Clements, Zomnir, P.C.
jcorbelli@babstcalland.com
NMcDaniel@babstcalland.com
Counsel for LCT Energy, LP

Jeffrey R. Bailey, Esq.
Forrest M. Smith, Esq.
Richard Marcil, Esq.
Brian Greenert, Esq.
PA Department of Environmental Protection
Southwest Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222
jefbailey@pa.gov
forsmith@pa.gov
rmarcil@pa.gov
Counsel for DEP

/s/ Sarah E. Winner

Sarah E. Winner, Esq.

Date: April 9, 2026