



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

MOUNTAIN WATERSHED ASSOCIATION., INC.	:	
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	:	
v.	:	EHB Docket No. 2024-077-B
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COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and LCT ENERGY, L.P., Intervenor	:	Issued: July 7, 2026
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**OPINION AND ORDER ON
APPELLANT’S AND INTERVENOR’S MOTIONS FOR SUMMARY JUDGMENT**

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

The Board grants Mountain Watershed Association Inc.’s motion for summary judgment and denies LCT Energy, L.P.’s motion for summary judgment where we find that the Department’s decision to reject Mountain Watershed Association Inc.’s petition seeking to have certain acreage in Westmoreland County designated as unsuitable for mining was not consistent with the regulations governing the petition process. Mountain Watershed Association, Inc.’s petition is not frivolous as that term is defined in the regulations. We direct the Department to accept the petition and proceed with further review in accordance with the regulations addressing the disposition of petitions accepted by the Department.

OPINION

Introduction

This appeal arises from a petition filed on January 24, 2024 (“Petition”) by Mountain Watershed Association, Inc. (“MWA”), pursuant to Pennsylvania’s Unsuitable for Surface Mining Program (“UFM” or “UFM Program”). 25 Pa. Code §§ 86.101-86.130. MWA submitted the



Petition to the Department of Environmental Protection (“Department”) seeking to have approximately 11,000 acres in the area of Fourmile Run in Westmoreland County (the “Petition Area”) designated as unsuitable for surface mining operations. The Petition included areas associated with LCT Energy, L.P.’s (“LCT’s”) mining operations including an expansion to its Rustic Ridge #1 mine and the proposed Rustic Ridge #2 mine. On February 23, 2024, the Department issued a determination letter (the “Letter” or “Determination Letter”) returning MWA’s Petition as frivolous under 25 Pa. Code § 86.124(a)(2). The Department’s stated reason for rejecting the Petition was that it did not establish a causal relationship between the alleged harms and “surface mining activities” as defined in Section 86.101 of the UFM. In particular, the Department concluded that the Petition’s alleged impacts were associated with underground mining activities rather than with surface mining activities contemplated by the UFM Program.

On March 22, 2024, MWA appealed the Determination Letter to the Environmental Hearing Board (the “Board”). Two competing motions for summary judgment, filed by MWA and LCT, are now before the Board. MWA’s Motion for Summary Judgment argues that the Department’s frivolousness determination was legally erroneous and that the Petition should have been accepted for further review. LCT’s Motion for Summary Judgment argues that the Department properly rejected the Petition and that the appeal should be dismissed. On February 22, 2026, MWA and LCT filed their responses to one another’s motions. The Department did not file its own summary judgment motion, but it filed a Response in Opposition of MWA’s Motion, defending its decision to reject the Petition. On March 9, 2026, MWA and LCT filed their respective Reply Briefs. Upon completion of the briefing, the Board scheduled a conference call with the parties to discuss the possibility of holding an oral argument on the Motions. All three

parties agreed to participate, and the oral argument was held on May 14, 2026, before the full Board.

For the reasons that follow, we grant MWA’s Motion, deny LCT’s Motion, and remand this matter to the Department with direction to accept the Petition for further evaluation under the UFM regulations. We do not decide whether the Petition Area, or any portion of it, should ultimately be designated as unsuitable for mining. That determination belongs to the regulatory process that follows acceptance of a nonfrivolous petition.

Standard of Review

Summary judgment is appropriate when the record, including pleadings, depositions, answers to interrogatories, and other related documents, shows that there is no genuine issue of material fact in dispute and the moving party is, therefore, entitled to judgment as a matter of law. Pa.R.Civ.P. 1035.1-1035.2; *Barr Farms, LLC v. DEP*, 2025 EHB 256, 257-258. In evaluating whether summary judgment is appropriate, the Board views the record in the light most favorable to the non-moving party. *Sierra Club v. DEP*, 2023 EHB 97, 98–99. All doubts as to whether genuine issues of material fact remain must be resolved against the moving party. *Id.*, at 99 (citing *Eighty-Four Mining Co. v DEP*, 2019 EHB 585, 587). Summary judgment may only be granted in cases where the right to summary judgment is clear and free from doubt. *Scrubgrass Creek Watershed Ass’n v. DEP*, 2024 EHB 747, 749.

Discussion

In its Motion, MWA characterizes the appeal as posing a narrow legal question: whether the Department incorrectly interpreted the UFM regulations when it rejected the Petition as frivolous. MWA argues that the definition of “surface mining operations” includes not only traditional surface mining, but also “surface activities connected with underground mining.” (See

generally MWA’s Brief in Support of Motion (“Brief”) at 5-8). MWA contends that its Petition identified sufficient allegations of harm related to surface activities connected with underground mining to meet the initial frivolousness threshold. It asserts that the Petition was not required at the intake stage to conclusively prove that the alleged harms would occur. According to MWA, it only had to present allegations of fact and supporting evidence to establish serious merit. MWA also contends that the Department cannot avoid the UFM process by directing MWA’s concerns into the mine permitting process. MWA further emphasizes that the Department’s Determination Letter only offered a single basis for rejecting the Petition – the alleged failure to link anticipated impacts to surface mining activities. MWA therefore argues that the Department and LCT should not be allowed to defend the rejection of the Petition on broader or alternative grounds after the fact.

LCT’s Motion argues that the Petition is, in substance, an attempt to use the UFM Program to stop or restrict underground mining. LCT maintains that the UFM regulations apply to surface mining operations, not to underground mining activities of a coal mine. According to LCT, while the definition of “surface mining operations” may include a narrow category of surface activities connected with underground mining, it does not encompass all underground mining activities merely because they may have effects at the surface. The crux of LCT’s argument is that the harms alleged in the Petition such as ground water impacts, streamflow loss, water quality degradation, and acid mine drainage, are all tied to underground mining activities, and do not qualify as surface activities that the UFM Program is intended to address. LCT contends that MWA is attempting to recast alleged underground-mining impacts as surface-mining impacts by pointing to surface features or activities such as portals, blasting, construction, pumping, treatment facilities, or

discharge infrastructure. It further asserts that MWA has not produced evidence tying those surface activities to the level of harm required for an unsuitable-for-mining designation.

LCT also argues that the permitting posture of the Rustic Ridge mines is independently important. LCT states that the Department approved the Rustic Ridge #1 Expansion Area permit on April 4, 2025, and that MWA appealed that permit on June 30, 2025. (See EHB Docket No. 2025-076-B). LCT further states that it submitted a full permit application for Rustic Ridge #2 on February 28, 2025; that the application was deemed administratively complete on April 17, 2025; and the Department is reviewing the application. LCT argues that the UFM Program either prohibits the Department from processing a petition covering areas already permitted or subject to an administratively complete permit application or allows the Department to exercise its discretion to decline to process a petition in those circumstances. LCT asserts that site-specific objections to mining activities are more appropriately addressed through the ongoing permit review process and any related permit appeals.

Finally, the Department posits that MWA is not entitled to summary judgment because the UFM does not allow the Department to designate land as unsuitable for surface mining based on the alleged effects of underground mining. The Department acknowledges that surface activities associated with underground mining may be considered under the UFM Program but maintains that the Petition failed to satisfy the criteria for further review as to those limited qualifying surface activities. The Department also highlights the structure of the UFM regulations. When a petition is submitted, the Department first determines whether coal resources exist in the area, and then whether the petition contains allegations of fact and supporting evidence meeting the regulatory requirements and having “serious merit.” The Department says it rejected MWA’s Petition

because the Petition alleged harm to public natural resources from underground coal mining rather than from surface mining operations.

Before addressing the parties' arguments, it is useful to provide a brief background of the UFM Program and an overview of its regulatory scheme. The UFM Program originated from the federal enactment of the Surface Control and Reclamation Act of 1977 ("SMCRA"). Congress enacted SMCRA after finding that surface coal mining could cause severe environmental harm. Because coal was an important national energy resource, SMCRA sought to regulate mining through permitting, reclamation obligations, enforcement and other means. Rather than evaluating a permit proceeding for a particular proposed operation, the UFM looks at whether there are certain lands on which surface coal mining should not be conducted at all even if an operator would otherwise meet all regulatory requirements. SMCRA required approved state programs to include a process for designating such areas as unsuitable.

The Department established its UFM Program in 1980, under Pennsylvania's Surface Mining Conservation and Reclamation Act. See 10 Pa. Bull. 4789 (Dec. 19, 1980); see 25 Pa. Code §§ 86.101–86.230. The UFM Program allows citizens to petition the Department to have an area designated as unsuitable for "surface mining operations." 52 P.S. § 1396.4e(f); 25 Pa. Code § 86.123(a). Pennsylvania's designation criteria are found at 25 Pa. Code § 86.122. The criteria closely track the federal framework. Section 86.122 lays out two different grounds for designating land as unsuitable for surface mining operations. The first type mandates the Department to designate land as unsuitable if reclamation is not technologically and economically feasible. By contrast, the second type of designation is discretionary, and the Department may deem that land is unsuitable if one or more specified categories of harm are present. Subsection (b) provides as follows:

(b) Upon petition, an area may be designated as unsuitable for all or certain types of surface mining operations if the surface mining operations will:

(1) Be incompatible with existing Commonwealth or local land use plans or programs.

(2) Affect fragile or historic lands in which the surface mining operations could result in significant damage to important historic, cultural, scientific or esthetic values or natural systems.

(3) Affect renewable resource lands in which the surface mining operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products.

(4) Affect natural hazard lands in which the surface mining operations could substantially endanger life and property, the lands to include areas subject to frequent flooding and areas of unstable geology.

25 Pa. Code § 86.122(b).

For the purposes of this appeal, subsections (b)(2) and (b)(3) are the relevant criteria. Section 86.122(b)(2) applies when surface mining operations will 1) affect fragile or historic lands and; 2) those operations could result in significant damage to one of the listed resources or values. The definitions in Section 86.101 give those terms considerable breadth. “Fragile lands” are defined as “[g]eographic areas containing natural, ecologic, scientific or esthetic resources that could be significantly damaged or destroyed by surface mining operations” and lists examples as, including but not limited to, “valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors, containing a concentration of ecologic and esthetic features and areas of recreational value due to high environmental quality.” “Historic lands” are defined as “[a]reas containing historic, cultural or scientific resources.” 25 Pa. Code § 86.101. Subsection (b)(2) does not require

a showing of certain harm. Its wording, “could result in significant damage,” is prospective and risk-oriented. However, the potential for harm must be more than trivial or generalized.

Section 86.122(b)(3) applies when surface mining operations will affect renewable resource lands and could result in substantial loss or reduction in the long-range productivity of water supplies, food, or fiber products. Pursuant to Section 86.101, “Renewable resource lands” are defined as “areas that contribute significantly to the long-range productivity of water supply or food or fiber products.” The definition expressly includes aquifers and aquifer recharge areas. In essence, this provision focuses more on the land’s continuing productive function. Like Subsection (b)(2), Subsection (b)(3) uses a prospective standard, but the required consequence for this type of designation is comparatively demanding. The anticipated loss must be both substantial and related to long-range productivity. Thus, a minor, temporary, or short-term loss is not enough to establish a substantial reduction in long-range productivity.

Sections 86.123 and 86.124 establish the threshold procedures for submitting and the initial processing of a petition to designate land as unsuitable for surface mining operations. Section 86.123 provides that a petition may be filed by any person whose interest is, or may be, adversely affected. The petitioner must identify the area proposed for designation, including its approximate size, boundaries, landmarks, and a USGS topographic map showing the perimeter. The petitioner must also identify the personal interest that may be affected and demonstrate an “injury in fact” by explaining the specific affected interest and how the petitioner is among those who may be injured. Substantively, the petition must contain: (1) allegations of fact and supporting evidence tending to establish that the area is unsuitable for all or certain types of surface mining operations; (2) an analysis made on the assumption that contemporary mining practices required by applicable

regulations would be followed and; (3) a description of how mining has affected, or may adversely affect, people, land, air, water, or other resources.

Thus, the petition must do more than express generalized opposition to mining. It must identify the area, the protected interest or resource, the relevant type of surface mining operation, the anticipated harm, and supporting evidence tending to connect the surface mining operation to that harm. At the same time, while Section 86.123 describes the contents of a petition, it does not require the petitioner to conclusively prove that designation is warranted before the petition is accepted for further review.¹

Section 86.124 governs the Department's initial processing of the petition. Within 30 days after receiving the petition, the Department must notify the petitioner by certified mail whether the petition is complete. During the same period, the Department must notify any applicant with a pending surface mining operation permit application in the petition area. The Department then conducts several threshold inquiries. First, it determines whether identified coal resources exist within the petition area. If no identified coal resources are present, the Department may return the petition with a statement of its findings. Second, the Department may reject a petition that is frivolous. The regulation defines a frivolous petition as one in which the "allegations of harm lack serious merit." 25 Pa. Code § 86.101. If the Department makes that determination, it must return the petition with a written statement explaining its reasons.²

¹ The regulation also permits a person to petition for termination of an existing UFM designation, but such a petition must rely on newly discovered facts and evidence that were unavailable during the original designation proceeding. 25 Pa. Code § 86.123(d). (See also Oral Argument, T. 79-80, where the Department explains that a UFM designation, while in place, prohibits mining opportunities, but that the UFM provides a mechanism to undo the designation).

² Completeness and frivolousness are distinct concepts. If the petition is incomplete, DEP must identify the categories of missing information and hold the petition while giving the petitioner 30 days to complete it. By contrast, a frivolousness determination concerns the merit of the alleged harm and results in the petition being returned with written reasons.

Section 86.124 separately addresses the relationship between UFM petitions and mine-permit applications. The Department must notify the petitioner when it receives a permit application proposing to include land covered by the petition. The Department may elect not to process a designation petition, to the extent it covers an area for which an administratively complete surface mining operation permit application has been filed, and the first newspaper notice for that application has been published. If the Department invokes this provision, it must give the petitioner written notice and state its findings. Once a petition has been returned under § 86.124, the Department may proceed to decide the permit application for mining within the petition area. This is an additional procedural basis for the Department to decline to process a petition separate from either incompleteness or frivolousness. The regulation therefore contemplates distinct decisional tracks, each with its own requirements and consequences.

Taken together, §§ 86.123 and 86.124 create a staged process. The petitioner identifies the land, its affected interest, the alleged harm, and supporting evidence. The Department then conducts an initial threshold review for coal resources, completeness, standing, serious merit, prior proceedings, and overlapping permit applications. A deficient or frivolous petition may be returned, but the Department must explain the applicable deficiency or basis. Finally, a complete and accepted petition proceeds to public notice, agency and stakeholder participation, record development, technical and policy analysis, and a recommendation to the Environmental Quality Board (“EQB”). Here, the principal dispute is whether MWA’s Petition has serious merit and where the line falls between the preliminary “serious merit” screening and the fuller technical evaluation that follows acceptance of a complete petition. Now that we have outlined the background and relevant regulations of the UFM Program, we turn to addressing the parties’ arguments.

The Department's Determination

The Department's Determination Letter rejecting MWA's Petition provided in part as follows:

The Department has found that the MWA's petition lacks sufficient allegations of facts and supporting evidence to establish that the petition area is unsuitable for all or certain types of surface mining operations, as required by 25 Pa. Code § 86.123(c)(2). The Department has determined that the allegations of harm lack serious merit and therefore deemed the MWA's petition frivolous, as defined in 25 Pa. Code § 86.124(a)(2). As per 25 Pa. Code § 86.124(a)(4), the petition is being returned (enclosed).

(MWA's Ex. B). In explaining its reasoning for the frivolous determination, the Department stated that:

The petition does not establish a causal relationship between the allegations of harm cited in the petition and surface mining activities in the petition area. The allegations of harm cited in the petition include impacts to surface water bodies; these impacts include the potential for changes in stream flow and the introduction of pollution from parameters such as temperature, pH, iron, and manganese. The petition provides facts and supporting evidence that only associate those impacts with underground mining activities; the petition does not adequately link those impacts to surface mining activities as defined in §86.101.

(Id.).

This explanation was the basis for the Department's action and the basis of this appeal. The Department acknowledges that its understanding of "surface mining operations" at the time it wrote the Determination Letter was too narrow. During the deposition of Greg Greenfield, the Bureau Director for the Department's Bureau of Mining Programs, Mr. Greenfield acknowledged that after the handling of MWA's Petition, the Department has since taken a broader reading of what activities constitute surface mining operations. (MWA Ex. D at 70). Mr. Greenfield also conveyed that given the Department's new position as to what activities qualify as "surface mining operations," the Department would opt to remove the following sentence from its Determination

Letter: “The petition provides facts and supporting evidence that only associate those impacts with underground mining activities; the petition does not adequately link those impacts to surface mining activities as defined in § 86.101”. (*Id.* at 72, 75). Additionally, at the oral argument, the Department again conceded that it would remove the challenged language from the Letter if it had to make the determination over again. (T. 15). Later in the argument, the Department again acknowledged that, during the course of this appeal, it came to understand that the definition of “surface mining operations” is broader than it had originally understood. (T. 77). These concessions are important as they show that the Department did not simply exercise its technical judgment about the weight of competing scientific evidence but instead rejected the Petition under a legal interpretation that failed to account fully for the regulatory language in the UFM. Section 86.101 defines “surface mining operations” to include “surface activity connected with surface or underground coal mining.” The Department’s Determination Letter treated MWA’s allegations of harm as outside the UFM Program because it concluded that the harms were associated with underground mining. But the fact that an activity has some connection with underground mining does not, by itself, remove that activity from the definition. The regulation expressly contemplates surface activity connected with underground mining. (See 25 Pa. Code § 86.101, that defines “surface mining operations” in part as “surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, drift, shaft and borehole drilling and construction and activities related thereto, coal refuse disposal, coal processing and preparation facilities.”).

The Department and LCT are correct that the UFM Program is not a program meant to cover general underground mining impacts. The UFM cannot be used to designate an underground mine itself as unsuitable, and surface effects of underground mining are not automatically surface

mining operations. However, the Petition does not succeed or fail merely because it concerns an underground mine. The relevant question is whether the Petition contains allegations of fact and supporting evidence tending to establish that certain surface activities connected with underground mining may satisfy the criteria in Section 86.122.

The Department's post-appeal position confirms the reason why the Petition should not have been rejected at the threshold stage. At oral argument, the Department agreed that the construction and operation of an impoundment is a surface activity (T. 69). It also agreed that the discharge of water from an impoundment is a surface activity. (*Id.*). The Department further agreed that, to the extent the Petition contains allegations of harm resulting from the discharge of water, those allegations are something the Department should have considered in determining whether the Petition was frivolous. (T. 70). That is enough to undermine the Department's original rationale. The Petition alleges harm associated with the collection, storage, treatment, management, and discharge of mine water at the surface. Those allegations may ultimately fail. But they cannot be rejected categorically on the ground that they concern only underground mining.

Nor is this a circumstance in which the Department is entitled to deference. An agency interpretation is not entitled to deference when that interpretation is inconsistent with the plain language of the regulation. (See *Tri-State Transfer Co. v. Dep't of Env'tl. Prot.*, 722 A.2d 1129, 1133(Pa. Cmwlth. 1999). The Board has likewise declined to defer to Department interpretations that are not directly supported by the statutory or regulatory language or that have not been consistently applied. See *Telegraphis v. DEP*, 2021 EHB 279 (finding the Department's interpretation that a commercial building had to be in place at the time of mining to qualify for subsidence coverage was too narrow and unreasonable as applied where the phrase "in place at the

time of mining” did not appear in either the statute or regulation). Here, the Department has acknowledged that its initial reading of the definition was narrower than the regulation permits. That original reading of “surface mining operations” failed to give effect to the phrase “surface activity connected with surface or underground coal mining.” Because that reading is at odds with the language of Section 86.101, it is not entitled to deference. In addition, the operative terms, “serious merit,” “allegations of harm,” and “would tend to establish” are not defined with any precision in the regulations. The Department has not identified technical guidance, written standards, or a consistently applied framework that would allow us to defer to a settled agency construction of those terms. On the contrary, the record reflects that the UFM Program is rarely used. At oral argument, the Department represented that including the Petition at issue, only two UFM petitions had been filed in roughly the past 10-12 years. (T. 78). Mr. Greenfield’s deposition and an internal Department email further reflect that the Department had limited recent practical experience processing UFM petitions.³

The record does not reveal a settled Department standard for separating a petition whose allegations lack serious merit from one that warrants the technical study provided for in the regulations. The Department itself struggled at oral argument to articulate the precise threshold between a petition that lacks serious merit and one that warrants technical study. When asked what “serious merit” means, the Department responded that it did not have “a particular sort of

³ In a February 14, 2024 email attached as MWA’s Exhibit H, Department personnel indicate that the Department was “sitting on about 9 UFM petitions” dating back to the early 2000s with no action taken, and that the Department had not “taken any action on anything related to UFM in years.” (MWA Ex. H). Further evidence of the Department’s limited familiarity with the UFM can be found in Mr. Greenfield’s deposition where he explains that when a policy specialist or legal position is assigned to the mining program, “there’s not necessarily somebody that’s familiar with how the program works,” so the Department used the UFM overview meeting to help them understand the program. (MWA’s Ex. C, at 96-97).

quantum” of evidence that would satisfy the threshold. (T. 64). In a line of questioning conducted by Chief Judge Beckman, the Department was unable to articulate where it drew that line.

JUDGE BECKMAN: What do you think of Donan? Should we spend a lot of time thinking about Donan?

MR. MARCIL: I think Donan is relevant in the sense that it illustrates that there has to be more than a bare allegation made by the petitioner. You have to provide -- again, the language in that case is -- they said the petitioner needs to provide sufficiently persuasive evidence. It is clear there can't be a bare showing, here is our allegations. Therefore, we met our burden. Therefore, the department you have to proceed with a full technical analysis. You have to provide something more as a petitioner. Again, I said earlier --

JUDGE BECKMAN: The problem is really what is that something.

MR. MARCIL: Right.

JUDGE BECKMAN: What is serious merit.

MR. MARCIL: It is difficult because these petitions are always fact specific. Everyone is a unique species. It is about different land, different water. I mean, there is nothing clear --

(T. 84).

The Department also stated that MWA’s evidence was “absent or speculative at best” while acknowledging that a petition may have “some merit” yet still fail to show “serious merit.” (T. 75). The difficulty in distinguishing a frivolous petition from one that demonstrates serious merit when a petition falls somewhere in the gray area between those terms is not unique to the Department. The Board itself framed the issue as a “gatekeeper” question involving undefined and “fuzzy terms.” (T. 87). This absence of a defined standard reinforces our conclusion that the Department’s application of the frivolousness standard is not entitled to special deference here.

The Frivolousness Standard Is a Threshold Screening Device

The structure of the UFM Program demonstrates that the frivolousness review is intended to be a limited threshold inquiry rather than a full adjudication on the merits. A petitioner must submit allegations of fact and supporting evidence that would tend to establish that the area is unsuitable for all or certain types of surface mining operations, assuming contemporary mining practices required under applicable regulatory requirements would be followed. 25 Pa. Code § 86.123(a)(2). The Department then has 30 days to determine whether the petition is complete, whether coal resources exist in the petition area, and whether the petition should be rejected as frivolous. 25 Pa. Code § 86.124(a). If the petition is accepted, the Department conducts a technical study, provides notice, allows public participation, develops a record, and makes a recommendation to the EQB. The UFM Program's structure matters. Its regulations do not require a petitioner to prove at the outset that the petition area must ultimately be designated unsuitable. Nor do the UFM provisions require the Department, within 30 days, to resolve disputed expert questions concerning hydrology, groundwater movement, mine-water chemistry, streamflow, NPDES limits, reclamation feasibility, or long-term treatment strategies. Those questions belong primarily to the technical study that follows acceptance of the petition.

The 30-day review serves a gatekeeping function. It allows the Department to reject incomplete petitions, petitions concerning areas with no mineable coal resources, and petitions whose allegations are so lacking in factual or evidentiary support that further study would be unwarranted. It does not allow the Department to require the petitioner to complete the equivalent of the Department's technical study before the petition may be accepted. This conclusion is reinforced by the Department's own program materials. Those materials explain that, after a petition is accepted, the technical study evaluates the relevant physical, environmental, and cultural features of the petition area; documents the geology, hydrology, previous mining history, coal

reserves, and potential environmental impacts; and may result in geographic adjustment to the petition area. (LCT Ex. F, Department UFM Program Description, MWA-002803). Thus, instead of ending the Department’s detailed technical review, the accepted petition begins it.

At oral argument, the Board repeatedly explored this distinction. We questioned whether, in order for us to direct the Department to accept the Petition, we must decide that MWA’s expert is correct in his conclusions, or whether we need only determine that the Petition presents nonfrivolous allegations. (T. 76). The Department responded that we would have to pass judgment on the quality of the expert’s evidence. (T. 76-77). We disagree. To require a petitioner to win a battle of experts at the threshold stage would collapse the preliminary review into the later technical study. It would also make little sense in light of the 30-day deadline.

LCT argues that MWA’s expert report is scientifically flawed and, if we do not grant LCT’s Motion, a hearing is necessary to evaluate the parties’ competing technical evidence. But LCT’s argument proves too much. If we were to require a hearing with multiple experts merely to decide whether the Petition is serious enough to be studied, the Board would be performing the technical-review function before the Department had undertaken it. The regulations do not contemplate that result. The correct inquiry is narrower. We ask whether the Petition contains allegations of fact and supporting evidence that tend to establish that the Petition Area may be unsuitable for all or certain types of surface mining operations. We do not ask whether those allegations are more persuasive than the contrary opinions offered by the Department or LCT. Nor do we decide the ultimate technical merits at this stage. Our determination is limited only to whether the Petition clears the low but real threshold for further evaluation.

Donan

LCT heavily relies on *Donan v. DEP*, 1990 EHB 990, the only prior Board decision identified as directly addressing a UFM petition that the Department rejected as frivolous. In *Donan*, the petitioners sought to designate an area of land, including 40 acres owned by Petitioner, as unsuitable for surface mining after an application was filed to conduct surface mining in the area. The petition alleged that, amongst other things, the mining would degrade springs and brooks on petitioners' property. The Board held a merits hearing with both the petitioner and the Department presenting multiple expert witnesses.⁴ The Board held that the petitioner bears the burden of proof when challenging the Department's determination that a UFM petition is frivolous. *Donan v. DEP*, 1990 EHB 990, 999. The Board went on to define a frivolous petition as one that "lacks serious merit" consistent with the definition in the regulations (*Id.*). It further stated that "[a]n application which passes the frivolous test, however, must be supported by evidence which is not only relevant, but which is sufficiently persuasive that the reviewer concludes that it has serious merit. This requires a preliminary review of the merits – the substance – of the petition." *Donan*, 1990 EHB, 1000 n. 5.

LCT urges us to follow the course that the Board took in *Donan*. In LCT's view, if we do not grant its Motion, then we should conduct an evidentiary hearing at which the parties' experts would testify, the Board would decide what weight to attribute to that testimony, and then we would determine whether Mr. Johnson's opinions have serious merit. Because *Donan* is the principal Board precedent in this area, we address carefully the portions of that decision we follow now and those we decline to follow. First, we agree that the party appealing the Department's rejection of a UFM petition as frivolous bears the burden of proof and must show, by a

⁴ It is unclear from the adjudication in *Donan* whether any party sought summary judgment from the Board prior to the matter going to a hearing.

preponderance of the evidence, that the Department erred in its determination. That rule is consistent with the Board's ordinary *de novo* review of Department actions and with the principle that the party challenging the action bears the burden. Second, we agree that the phrase "frivolous petition" refers to a petition whose allegations of harm lack "serious merit." That formulation comes from the governing regulatory structure and remains useful. The Department is not required to accept a petition simply because it is lengthy, sincere, and offers some degree of supportive materials. A petition must contain allegations of fact and supporting evidence that tend to establish the unsuitability of the petition area and give the Department a reasoned basis to proceed to further review.

We do not, however, follow *Donan* to the extent it suggests that we adopt a formulation that requires the petitioner, at the initial frivolousness review, to present evidence that either the Department or the Board finds "sufficiently persuasive" after weighing competing technical evidence. That phrase does not appear in the regulations. Nor do the regulations require the petitioner, at the filing stage, to prove the scientific veracity of the petition's allegations. The regulatory phrase "would tend to establish" is not merely a test of bare relevance, but neither is it a demand for ultimate proof. It requires allegations of fact and supporting evidence that, if credited and further substantiated through the Department's technical study, could support a determination that the area at issue is unsuitable for all or certain types of surface mining operations. That standard requires more than speculation or conclusory assertions. It does not require the petitioner to win a battle of experts before the Department conducts the technical study contemplated by the regulations.

That procedure imposes too demanding a level of scrutiny at the threshold stage. The question before us is not whether Mr. Johnson's opinions are ultimately correct, if they are more

persuasive than the opinions of the Department's or LCT's experts, or whether the Petition Area should be designated as unsuitable. The question is whether MWA's Petition contains allegations of fact and supporting evidence sufficient to require the Department to carry out the next stage of the UFM Program which is to conduct the technical study.

To the extent *Donan* can be read as requiring a petitioner to establish the ultimate scientific correctness of its allegations before a petition may proceed to technical review, we decline to follow it. That reading would invert the regulatory process. A hearing in which the Board receives and weighs competing expert testimony on hydrology, mine-water chemistry, treatment efficacy, groundwater movement, acid mine-drainage, streamflow, and reclamation feasibility would substantially duplicate the function of the Department's technical study. The preliminary frivolousness inquiry should not be subsumed by an in-depth merits determination. The Department's technical study, public participation process, and recommendation to the EQB exist precisely because the preliminary petition is not the final merits record. It is these procedures and processes, not the initial screening of a petition, through which the Department is to evaluate the disputed technical questions in depth. This does not mean that any petition containing environmental allegations must be accepted. A petition based on speculation, unsupported conclusions, irrelevant harms, or allegations disconnected from surface mining operations may be rejected as frivolous. But where, as here, the petition identifies specific resources, specific surface activities, specific alleged mechanisms of harm, and supporting technical analysis, the petition does not lack serious merit merely because the Department and LCT dispute the expert's conclusions.

Here, LCT's criticisms of Mr. Johnson's report are substantive and those criticisms may ultimately carry the day in LCT's favor. But that is not the question at this stage. Mr. Johnson

identified specific alleged impacts, described mechanisms by which those impacts could occur, and connected those impacts to surface activities associated with the proposed underground mining operations, including surface facilities for the management, treatment, and discharge of mine water. That showing is adequate to require further evaluation by the Department. It is not necessary, and it would be inconsistent with the regulatory structure, for the Board to convene a battle of experts simply to decide whether the Department must conduct the technical study that the regulations prescribe. In sum, *Donan* involved a full adversarial evidentiary hearing with competing technical testimony, and the Board now declines to require that same level of evaluating the weight of expert testimony to merely conclude whether the Department should accept a petition as non-frivolous.

MWA's Petition Does Not Lack Serious Merit

Having reviewed the Petition and its supporting technical materials, we conclude that MWA's allegations do not "lack serious merit" within the meaning of 25 Pa. Code § 86.124(a)(2). The Petition contains substantially more than generalized concerns about the effects of coal mining. It identifies particular environmental resources, particular proposed mining activities and facilities, particular mechanisms of alleged harm, and particular consequences that MWA contends may satisfy the criteria for designation under Section 86.122. Whether those allegations will withstand a complete technical study is a separate question. They are nevertheless sufficient to pass the preliminary frivolousness review.

MWA's Petition concerns an area of approximately 11,000 acres located principally within the headwaters of Fourmile Run, with a smaller portion located in the Jacobs Creek watershed. The Petition describes the area as containing extensive stream resources, Donegal Lake, trout-stocked waters, wetlands, groundwater supplies, agricultural lands, rural residences,

and numerous wells and springs. It alleges that these resources may be affected by the Rustic Ridge No. 1 expansion and the proposed Rustic Ridge No. 2 mine. (MWA Ex. A at 6–10). The Petition also identifies surface facilities and activities associated with those underground mines. Among other things, it identifies an approximately 70-acre portal and surface-support area proposed for Rustic Ridge No. 2. The materials reviewed by MWA’s expert describe proposed mine entries and access pits, surface blasting, ventilation facilities, coal stockpile and processing areas, mine-water treatment facilities, ponds, discharge structures, electrical facilities, supply and equipment-storage areas, and office and bathhouse facilities. (MWA Ex. A at 6, 33–36; MWA Ex. E, at 3-1 to 3-4). These are not allegations directed solely at the physical removal of coal underground. At least some of the allegations concern activities occurring at the surface in connection with the proposed underground mines.

MWA supported its Petition with the report of Gordon Johnson (“Mr. Johnson”), a professional engineer with experience in hydrogeology and mining-related environmental impacts. Mr. Johnson reviewed available materials relating to the Rustic Ridge mines, the geology and hydrology of the Petition Area, historic and existing mining conditions, watershed boundaries, anticipated mine-water movement, proposed pumping and discharge arrangements, and analogous mining impacts. He then identified five principal categories of anticipated effects: loss of water in Fourmile Run and its tributaries, degradation of water quality in Jacobs Creek, degradation of water quality in Fourmile Run, reduced groundwater quantity, and acid mine drainage. (MWA Ex. E at 2-9, 5-1 to 5-8).

Mr. Johnson did not merely list those potential harms. He assigned each a likelihood, magnitude, duration, and degree of reversibility or mitigation. He characterized the loss of water in Fourmile Run, degradation of water quality in Jacobs Creek and Fourmile Run, and reduction

in groundwater quantity as “definite,” and acid mine drainage as “likely.” He further opined that each impact would be indefinite in duration. Mr. Johnson assessed the anticipated loss of water and groundwater reduction as moderate in magnitude, the water-quality impact to Jacobs Creek as large to moderate, the water-quality impact to Fourmile Run as small, and the potential acid mine drainage impact as large. (MWA Ex. E at 2-9).

We emphasize that the Board does not adopt those predictions as proven facts. Mr. Johnson’s characterization of an impact as “definite” does not make it so, and his estimates remain subject to testing through technical review. But the specificity of his analysis is relevant to the limited question before us. The report identifies the predicted impacts, explains the asserted mechanisms, estimates their relative likelihood and magnitude, and identifies the information on which the predictions are based. That is inconsistent with a conclusion that the allegations lack serious merit.

Mr. Johnson’s analysis of streamflow provides one example. He opines that mine dewatering would intercept groundwater that presently contributes to Fourmile Run and its upper tributaries. He predicts that some of that water would then be collected, treated, and discharged at surface outfalls in a different portion of the watershed. According to Mr. Johnson, this could reduce flow in Fourmile Run and its tributaries while increasing flow in tributaries to Jacobs Creek. He estimates that, during normal-flow conditions, flows in certain tributaries to Jacobs Creek could approximately double as a result of mine-water discharges. (MWA Ex. E at 5-2 to 5-4). The Petition then connects those predicted changes in flow to alleged surface effects. It asserts that increased discharge flows could cause streambank erosion, scouring, sedimentation, embeddedness, and the loss or displacement of benthic organisms and fish habitat. It separately alleges that reduced flow in Fourmile Run and its tributaries could diminish aquatic habitat, impair

wetlands, reduce groundwater contributions to streams, and affect wells and springs. (MWA Ex. A at 9–16, 22–24; MWA Ex. E at 5-1 to 5-5).

The Petition also identifies the surface discharge of pumped and treated mine water as a potential source of temperature-related effects. It compares anticipated discharge temperatures stated in LCT’s materials with naturally occurring groundwater temperatures and alleges that sustained discharges could alter natural seasonal temperature variation. The Petition asserts that such changes may affect benthic macroinvertebrates, fish reproduction, egg development, habitat use, and the ability of aquatic organisms to recolonize affected reaches. (MWA Ex. A at 10–13). Again, these propositions may be disputed, but they are linked to identified surface outfalls and the physical discharge of mine water into surface waters.

Mr. Johnson further evaluates the potential for water-quality degradation. His report discusses the possibility that water collected in the mine may acquire elevated concentrations of acidity, iron, manganese, dissolved solids, or other constituents before it is pumped, treated, and discharged. He relies in part on historic and existing mine-water conditions in the region and on his assessment of the geologic and hydrologic setting. He also expresses concern that, after mining and flooding of the mine workings, mine water may eventually migrate through preferential pathways and emerge as uncontrolled discharges. (MWA Ex. E at 4-1 to 4-15, 5-4 to 5-8).

MWA’s reliance on historic mining impacts may ultimately prove to be of limited predictive value. Modern permitting, mining, treatment, reclamation, and bonding practices may materially distinguish the Rustic Ridge operations from older mines. That is one of the principal criticisms offered by the Department. Nevertheless, a disagreement about the predictive value of historical examples is not the same as an absence of serious merit. It presents a technical question concerning the weight and applicability of the evidence.

The same is true of Mr. Johnson’s groundwater analysis. He opines that mine dewatering could alter groundwater gradients and reduce groundwater availability in shallow aquifers, wells, springs, streams, and wetlands. He further questions whether those effects would necessarily cease when active pumping ends, reasoning that the completed mine could create or enlarge preferential pathways for groundwater movement. (MWA Ex. E at 5-5 to 5-7). The Department disputes both the likelihood and permanence of those impacts, relying on the depth of the Lower Kittanning coal seam, the amount of overburden, and the anticipated use of room-and-pillar mining. (DEP Ex. D at 4–6). That disagreement is appropriately examined during technical study; it does not establish that Mr. Johnson’s contrary analysis is frivolous.

The Department’s expert, Laura Mensch (“Ms. Mensch”), organizes her response around the same four general categories identified in the Johnson Report: flow loss in streams and wetlands, water-quality impacts to streams, impacts to groundwater, and acid mine drainage. (DEP Ex. D at 3). Ms. Mensch disputes Mr. Johnson’s conclusions and offers several reasons why she believes the alleged harms either fall outside the UFM Program or are unlikely to occur.

A substantial portion of Ms. Mensch’s report, however, rests on the legal premise that groundwater pumping and mine dewatering occur underground and therefore cannot constitute surface activity connected with underground mining. On that basis, she excludes alleged flow loss, groundwater impacts, and some water-quality effects from consideration under the UFM Program. (DEP Ex. D at 3–6). She ultimately concludes that harms related to pumping water from the underground mine are not caused by “surface mining operations” and therefore cannot support a designation. (*Id.* at 8).

As discussed above, that analysis is incomplete because it treats the location at which water is initially intercepted or pumped as dispositive. The Petition does not concern pumping in isolation. It also concerns the collection, conveyance, treatment, storage, management, and discharge of mine water through facilities located at the surface. The regulatory definition includes surface activity connected with underground mining. The Department therefore could not reject the allegations categorically without examining whether the identified surface facilities and discharges are qualifying surface activities and whether the alleged harms are sufficiently connected to them.

Ms. Mensch also relies repeatedly on the protections afforded by the permitting process. She explains that Chapter 89 requires baseline hydrologic information, predictions of probable hydrologic consequences, monitoring, measures to minimize changes to the hydrologic balance, protection of streams and wetlands, mitigation of adverse effects, reclamation plans, bonding, and NPDES limitations on mine-water discharges. (DEP Ex. D at 2, 4–8). These requirements may be highly relevant to the Department’s ultimate technical evaluation. They may demonstrate that the alleged impacts can be avoided, controlled, mitigated, or reclaimed. They do not, however, establish at the preliminary stage that the Petition’s allegations of harm lack serious merit.

Indeed, Ms. Mensch’s report illustrates the extent to which the dispute presents technical questions rather than frivolous assertions. She opines that permanent hydrologic effects are unlikely because the proposed mines will have more than 100 feet of overburden and will employ room-and-pillar rather than full-retreat mining. She states that pumping effects should be temporary and should cease after dewatering ends. She distinguishes the historic mines relied upon by Mr. Johnson on the grounds that they predate current permitting, reclamation, treatment,

and bonding requirements. She also maintains that any adverse effects would be subject to mitigation or restoration obligations. (DEP Ex. D at 4–8).

Those are substantive responses to Mr. Johnson’s analysis. Their existence does not show that Mr. Johnson’s report lacks serious merit. To the contrary, they identify matters requiring evaluation: the actual depth and geologic characteristics of the proposed workings; the anticipated extent and duration of dewatering; the likely pathways of groundwater movement; the effects of room-and-pillar mining in this particular setting; the expected quantity and quality of mine water; the location and operation of treatment and discharge facilities; the effectiveness and durability of proposed mitigation; and the extent to which historical mining experience is comparable to the proposed operations.

Ms. Mensch’s report also acknowledges allegations concerning surface phenomena, including increased flow to Jacobs Creek, the discharge of cooler groundwater through permitted outfalls, effects on benthic communities and fish, blasting, and impacts to prime farmland and species of concern. (DEP Ex. D, at 7–8). Her principal response is that these matters are addressed through the permitting process. But the existence of another regulatory program does not by itself demonstrate that an allegation of harm lacks serious merit under the UFM regulations. The designation criteria expressly contemplate circumstances in which mining and reclamation may otherwise be regulated but the characteristics of the area warrant a broader determination concerning whether certain surface mining operations should occur there.

The record also confirms that the Department did not technically evaluate several central allegations of harm during its initial review. In discovery, the Department stated that it did not evaluate the alleged surface-water impacts, changes in streamflow, temperature-related pollution, changes in pH, or changes in iron and manganese because it had determined that those impacts

were beyond the scope of the UFM Program. (DEP Ex. C Nos. 22–27). Thus, the Department did not reject those allegations after conducting a technical inquiry and determining that they lacked factual or scientific support. It excluded them based on its interpretation of the program’s legal scope.

The limited nature of the initial review is further reflected in the testimony of the Department’s corporate designee, Greg Greenfield. Mr. Greenfield testified that he read the Petition from beginning to end once during the 30-day review period, did not perform a detailed independent analysis, and relied in material part on his general knowledge of the proposed mines and mining practices. (MWA Ex. C at 45–48). Mr. Greenfield’s testimony does not suggest that the Department acted in bad faith or ignored the Petition. It does confirm, however, that the Department did not perform the detailed technical study contemplated after acceptance.

The Department cannot rely on the absence of a completed technical demonstration when its legal interpretation prevented that technical evaluation from occurring. Nor can technical disagreements later articulated in an expert report transform the original Petition into one whose allegations of harm lacked serious merit when filed. The post-appeal expert reports show that the parties disagree about causation, hydrology, mining methods, mitigation, reclamation, and the legal significance of surface mine-water facilities. Those disagreements warrant study; they do not justify terminating the process as frivolous.

We therefore conclude that MWA satisfied the preliminary requirement to submit allegations of fact and supporting evidence tending to establish that the Petition Area may be unsuitable for all or certain types of surface mining operations. In reaching that conclusion, we do not decide that all of MWA’s allegations concern qualifying surface activities. Some may relate exclusively to underground extraction or underground effects and may ultimately be outside the

proper scope of the UFM proceeding. Neither do we determine Mr. Johnson's predictions are correct, that Ms. Mensch's criticisms are unpersuasive, or that the statutory and regulatory criteria for designation have been met. We hold only that the Petition: 1) identifies several surface mining operations that will take place with the Petition Area; 2) alleges sufficiently specific connections between those surface mining operations and protected resources; and 3) supplies enough technical support to require further evaluation. On this record, the Petition cannot reasonably be characterized as one in which the allegations of harm lack serious merit.

Surface Activities Connected With Underground Mining

The most obvious difficulty this case presents is that several of the harms alleged by MWA arise from the interaction between underground mining and surface facilities and/or activities. For instance, the Department and LCT repeatedly emphasize that the mining-water is first intercepted or pumped underground. MWA, in turn, emphasizes that the water is then collected, stored, managed, treated, and discharged through surface facilities. The UFM does not require us to draw the line as narrowly as the Department initially did. The definition of surface mining operations includes "surface activity connected with surface or underground mining." 25 Pa. Code § 86.101. The phrase "connected with" is broad enough to potentially include surface facilities that exist because of, and function in connection with underground mining. We need not decide the outer limits of that phrase. Nor do we hold that every surface consequence of underground mining is a surface mining operation. We hold only that MWA identified enough qualifying or potentially qualifying surface activities to require further evaluation.

Those activities included the proposed Rustic Ridge No. 2 surface facility, portals, slope construction, blasting, impoundments, treatment or settling ponds, and discharge structures. They also include the operation of surface facilities that are used to manage and discharge mine water.

The Department itself acknowledged during the oral argument that impoundments and discharges are surface activities. (T. 67-70). The Department's supplemental discovery responses also admit that blasting occurring on the surface to develop a portal to an underground mine is conducted on the surface and could, under some circumstances, be surface activity connected to underground coal mining. (MWA's Ex. F, DEP Supplemental Responses to RFAs 42-43).

That does not mean the Department must ultimately recommend designation. The Department may conclude, after study, that the alleged harms are too attenuated from qualifying surface activities, that they are adequately prevented by permit conditions, that they do not satisfy Section 86.122, or that only certain activities or areas warrant further consideration. But the Petition cannot be rejected as frivolous on the theory that it contains no cognizable surface activity connected with underground mining.

Existing Permits and Pending Permit Applications

LCT also argues that existing permits and pending permit applications independently justify rejection of the Petition. We are not persuaded that the permitting situation supports summary judgment in LCT's favor or affirmance of the Department's frivolousness determination. The record reflects that LCT operates Rustic Ridge No. 1 under existing CMAP and NPDES permits, that Rustic Ridge No. 1 expansion application was accepted as administratively complete in December 2021, that first newspaper notice for the expansion was published in February 2022, that the Department's approved the expansion in April 2025, and that mining in the expansion area is ongoing. (LCT Ex. A ¶¶ 3-7, 10). The record also reflects that LCT submitted a full application for Rustic Ridge No. 2 in February 2025, that the Department accepted it as administratively complete in April 2025, that it is currently under technical review, and that the first newspaper notice was published in May 2025. (*Id.* at ¶¶ 8-12).

Those facts may affect the scope of any further review. Section 86.121(2) provides that the UFM provisions do not apply to areas where surface mining operations were authorized by valid permits. Section 86.124(a)(6) also provides that the Department may determine not to process a petition insofar as it pertains to an area for which an administratively complete surface mining operation permit application has been filed and the first newspaper notice has been published. In reviewing these provisions, we recognize two points. First, the language in Section 86.124(a)(6) does not mandate the rejection of a petition. It states that the Department *may* determine not to process a petition, and only “insofar as” the petition pertains to the covered area. Second, the provision does not transform a petition into a frivolous petition. It may provide a basis to limit processing of the petition as to particular lands or operations, but it does not establish that all allegations in the Petition lack serious merit.

The oral argument confirmed the practical importance of this distinction. LCT stated that the surface facility for Rustic Ridge No. 1, including the expansion, is not in the Petition Area, while the underground portion of the expansion is in the Petition Area. LCT also stated that most of Rustic Ridge No. 2 and the proposed Rustic Ridge No. 2 surface facilities are in the Petition Area. (T. 81-82). The parties further discussed whether pending permit applications are stayed by acceptance of a UFM petition, and no party identified current regulatory language imposing an automatic stay. (T. 50-51). The effect of existing permits and pending applications is therefore a scope issue for the Department to address during further review. It is not a basis for us to hold that the Petition was frivolous when filed. The Department may determine on remand that some lands, facilities, or operations are excluded from the UFM process by Section 86.121(2) or Section 86.124(a)(6). But those provisions do not justify rejecting the entire Petition as frivolous.

The Proper Disposition

The remaining question is whether we should merely remand the Petition for the Department to reconsider it under the correct legal standard, or whether we should direct the Department to accept the Petition. We conclude that acceptance is the appropriate remedy. The Department's original rationale was legally flawed. The Department now acknowledges that the definition of "surface mining operations" is broader than it originally understood. The Department did not return the Petition to MWA as incomplete as provided for by the regulations. The Petition contains allegations of fact and supporting evidence. It satisfies the definition of surface mining operations and identifies surface activities connected with underground mining and alleges harms connected to those activities. Furthermore, it is supported by an expert report that, while disputed by the Department and LCT, provides more than bare-boned assertions or speculation. The Department and LCT contend that Mr. Johnson's analysis lacks serious merit but the arguments they make are themselves merit arguments. They challenge Mr. Johnson's assumptions, his reliance on historic mining, his understanding of current mine-water discharges, his use of permit-application data, his predictions concerning groundwater movement, and his assessment of AMD risks. Those are precisely the kinds of issues that the Department should evaluate during the technical study.

The Department also relied at times on concepts that do not appear in the regulations. These include "irreparable harm" and "irreparable harm to important natural resources." At oral argument, the Department acknowledged that those phrases do not appear in the regulations and were being used as shorthand. (T. 92). We decline to impose such extra-regulatory phrases that would heighten the threshold burden imposed by Sections 86.123 and 86.124 of the UFM Program. MWA's Petition does not need to prove irreparable harm at filing or that designation is ultimately warranted. The Petition need only contain allegations of fact and supporting evidence tending to

establish that the Petition Area may be unsuitable for all or certain types of mining operations. MWA has made that showing.

Conclusion

We hold that MWA’s Petition does not lack serious merit. The Department erred in rejected it as frivolous under 25 Pa. Code § 86.124(a)(2). MWA’s Petition identifies surface activities connected with underground mining, including Rustic Ridge No. 2’s surface facility, portals, slope construction, blasting, impoundments, treatment or settling facilities, and discharge structures. It also identifies alleged harms to groundwater, streamflow, water quality, aquatic life, wetlands, and related resources, and supports those allegations with a technical report. Our ruling does not resolve the question as to whether all or any of MWA’s allegations are correct. Further, our decision makes no determination to the extent that existing permits or pending permit applications exclude or limit particular areas of land from further review. Lastly, our decision has no bearing on what recommendation the Department should make to the EQB. We decide only that the Petition clears the preliminary threshold for further evaluation by the Department. The Department shall accept the Petition and proceed in accordance with the UFM regulations.

Accordingly, we issue the following order:



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

MOUNTAIN WATERSHED ASSOCIATION., INC.	:	
	:	
	:	
v.	:	EHB Docket No. 2024-077-B
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and LCT ENERGY, L.P., Intervenor	:	
	:	
	:	

ORDER

AND NOW, this 7th day of July, 2026, it is hereby ORDERED as follows:

1. MWA’s Motion for Summary Judgment is **granted**.
2. LCT’s Motion for Summary Judgment is **denied**.
3. The Department’s February 23, 2024 determination is **vacated** and this matter is **remanded** to the Department with direction to accept MWA’s Petition for further review.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman

STEVEN C. BECKMAN
Chief Judge and Chairperson

s/ Bernard A. Labuskes, Jr

BERNARD A. LABUSKES, JR.
Judge

s/ Sarah L. Clark

SARAH L. CLARK
Judge



s/ MaryAnne Wesdock

MARYANNE WESDOCK
Judge

s/ Paul J. Bruder, Jr.

PAUL J. BRUDER, JR.
Judge

DATED: July 7, 2026

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

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