COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

MIRANDA LANANGER, *et al.*, and EMMA WRIGHT, *et al.*, Intervenors	:	**EHB Docket No. 2024-016-B**
	:	**(Consolidated with: 2024-017-B,**
	:	**2024-018-B, 2024-019-B,**
v.	:	**2024-020-B, 2024-021-B,**
	:	**2024-026-B, 2024-027-B,**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and CATALYST ENERGY LLC, Permittee	:	**2024-028-B, 2024-029-B,**
	:	**2024-030-B, 2024-031-B,**
	:	**2024-032-B, 2024-033-B,**
	:	**2024-034-B, 2024-035-B,**
	:	**2024-037-B, 2024-038-B,**
	:	**2024-041-B, 2024-042-B,**
	:	**2024-043-B, 2024-044-B,**
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	:	
	:	**Issued: June 30, 2025**

OPINION AND ORDER ON
DEPARTMENT'S AND PERMITTEE'S MOTIONS FOR SUMMARY JUDGMENT

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

Under the unique procedural and factual circumstances of this case, the Board denies the Department's and the Permittee's motions for summary judgment. Despite having held an extensive post-discovery supersedeas hearing that resulted in a denial of the Appellants' and Intervenors' supersedeas petition, the Board's de novo review allows parties to present additional evidence related to actions arising after the supersedeas hearing. Based on the existing record, the Board cannot conclude that the Department and Permittee are entitled to summary judgment as a

matter of law, therefore, the motions for summary judgment are properly denied. The Board exercises its authority to set parameters for the merits hearing in light of the extensive litigation of issues that took place in the supersedeas hearing.

O P I N I O N

Background

The Appellants and Intervenors (collectively, "Ms. Lananger") appealed the Department of Environmental Protection's ("Department's") issuance of a change in use permit at Permit No. 37-083-46237-00-01 ("Permit") to Catalyst Energy, Inc. ("Catalyst"). The Permit authorizes Catalyst to convert an existing conventional oil and gas well to an underground injection well in Keating Township, McKean County ("Injection Well"). The Injection Well is located at 4505 State Route 646, Cyclone, PA (the "Site"). Between February 15, 2024, and February 26, 2024, the Board received, via U.S. mail, thirty-eight individual appeals of the Permit. On March 28, 2024, the majority of the appeals were consolidated under EHB Docket No. 2024-016-B, and the remainder of the appeals were eventually consolidated on April 18, 2024. On May 6, 2024, sixteen individuals collectively filed a petition to intervene and the Department subsequently filed an answer in opposition to their petition. On May 30, 2024, the Board issued an Opinion and Order granting the Intervenors' petition[1].

After several extensions of the pre-hearing deadlines, discovery ultimately concluded on October 11, 2024. On November 7, 2024, Ms. Lananger filed an Application for Temporary Supersedeas and a Petition for Supersedeas ("Supersedeas Petition"). On November 11, 2024, the Board granted in part and denied in part the temporary supersedeas. Our November 11th order, addressing the temporary supersedeas, allowed Catalyst to conduct activities related to the

[1] Some of the Appellants and Intervenors have subsequently withdrawn from the case.

preparation for injection, however, it prohibited injection of oil and gas related fluids and prevented Catalyst from conducting any earth disturbance activities. The supersedeas hearing was held over the course of five nonconsecutive days and concluded on December 10, 2024, after closing arguments. On December 27, 2024, we issued an order denying the Supersedeas Petition and lifting the Temporary Supersedeas (the "Order"). On January 17, 2025, we issued an Opinion in Support of the Order (the "Supersedeas Opinion").

Following the issuance of the Supersedeas Opinion and a conference call with the parties' counsel, we set the deadline for dispositive motions. On April 4, 2025, the Department and Catalyst each filed a Motion for Summary Judgment with supporting documents (collectively, the "SJ Motions"). Ms. Lananger timely filed Responses to each of the SJ Motions (collectively, "Lananger's Responses"). On June 3, 2025, the Department and Catalyst filed their respective replies to Lananger's Responses. We are now in a position to rule on the SJ Motions.

Standard of Review

Summary judgment is appropriate when the record, including pleadings, depositions, answers to interrogatories, and other related documents, show that there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. 1035.1–1035.2; *Protect PT v. DEP*, 2024 EHB 683, 684 (citing *Amerikohl Mining Inc. v. DEP*, 2023 EHB 348, 351–52). Summary judgment may also be available "if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." *Pileggi v. DEP*, 2023 EHB 288, 290 (quoting Pa. R.C.P. No. 1035.2(2)). In other words, the party bearing the burden of proof must make out a prima facie case. *Dengel v. DEP*, 2024 EHB 605, 608. In a

motion for summary judgment challenging whether there is sufficient evidence to make out a prima facie case, the Board will not gauge the quality of the evidence but will simply determine whether there is enough evidence to form a prima facie case. *Sunoco Pipeline, L.P. v DEP*, 2021 EHB 43, 51 (citing *Diehl v. DEP and Angelina Gathering Company, LLC*, 2018 EHB 18, 24). Summary judgment may only be granted in cases where the right to summary judgment is clear and free from doubt. *Scott v. DEP*, 2024 EHB 318, 319. 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).

Analysis

In their SJ Motions, the Department and Catalyst raise the standard arguments. They assert that the record in this case demonstrates that there are no genuine issues of material fact and that they are entitled to prevail as a matter of law and/or that Ms. Lananger has failed to provide sufficient evidence to establish a prima facie case. However, the procedural stage that the Department and Catalyst filed their SJ Motions on is different than the usual one before us when evaluating summary judgment motions. We held a lengthy supersedeas hearing and, based on our determination that she was unlikely to succeed on the merits of her claim at a full hearing, denied Ms. Lananger's supersedeas petition. In most cases involving a supersedeas petition, our denial of a supersedeas request usually results in the appeal being withdrawn prior to summary judgment motions or a full merits hearing. Ms. Lananger, as is her right, decided to proceed with her appeal despite the unfavorable ruling on her petition. This is particularly notable since discovery was completed in this case, whereas in the majority of supersedeas cases, the supersedeas petition is

filed early in the proceedings prior to the completion of discovery. Her decision to move forward with the appeal, in addition to the Department's and Catalyst's subsequent decision to file the SJ Motions, create an unusual procedural setting in deciding the pending motions.[2]

The SJ Motions rely, at least in part, on the transcripts and exhibits from the supersedeas hearing as well as the Board's Supersedeas Opinion. Rule 1035.1 of Pennsylvania's Rules of Civil Procedure, which is incorporated into the Board's rule on summary judgment at 25 Pa Code §1021.94(a)a, provides the definition of "record" as used in the context of a motion for summary judgment. It states that:

> As used in Pa. R.C.P. 1035.1 et seq., the term "record" includes any
>
> (1) pleadings,
>
> (2) depositions, answers to interrogatories, admissions, affidavits and
>
> (3) reports signed by an expert witness […].

Pa. R.C.P. 1035.1.

Rule 1035.1 does not address whether hearing transcripts and/or exhibits should be included in the record for our consideration when evaluating summary judgment motions. It is our view that the transcripts and admitted exhibits from the supersedeas hearing are properly part of the record which we may consider in evaluating the SJ Motions. We reach this decision because the transcripts and exhibits from the supersedeas hearing are generally identical in both form and reliability to the testimony taken during a deposition, which Rule 1035.1 explicitly includes in the

[2] *Delaware Riverkeeper Network et al v. DEP and PennDOT,* Docket No. 2021-108-L was the only recent case we identified where the matter proceeded to a full hearing after the denial of the supersedeas petition following an opportunity to conduct discovery prior to the supersedeas hearing. Summary judgment motions were filed in the case and were denied in a Board order that was issued without a supporting opinion. The adjudication issued in this case on August 27, 2024 (2024 EHB 549) is currently on appeal to the Commonwealth Court. (Commonwealth Court Docket No. 1272 C.D. 2024)

term "record." The transcript testimony is presented under oath and recorded by a court reporter and, like a deposition, counsel for each party has an opportunity to question the witnesses.

It is a more difficult question whether we should consider the Supersedeas Opinion as part of the record in reviewing a motion for summary judgment. The supersedeas hearing and decision had many, but not all, of the features of a full merits hearing by the Board. As such, that tips the scale in favor of finding that the Supersedeas Opinion as something we can rely on in reaching our summary judgment decision. However, there are at least two points that suggest we should not give it significant weight. First, the term "record," as defined by Rule 1035.1, does not explicitly include an opinion as a part of its definition and the items that Rule 1035.1 identifies as making up the record are unlike a judicial decision. The more important point is the nature of a supersedeas decision. The Board has repeatedly pointed out that a decision in a supersedeas is a limited decision, where a single judge makes a reasoned decision that attempts to predict the likely outcome of an adjudication decided by the entire Board following a merits hearing. We have stated that, "a Board ruling on a petition for supersedeas is a limited decision that addresses the status of the Department's action during the time interval between the filing of the appeal and the full Board's final ruling on the merits of the appeal. It is not, nor is it intended to be, the final word on the legality of the Department's action." *Erie Coke v. DEP*, 2019 EHB 481, 484; See 25 Pa. Code § 1021.2. When we view the inherent limitations of a supersedeas decision while also considering the specific facts surrounding the supersedeas proceeding in this case, we hold that we should not put significant weight on the Supersedeas Opinion as part of the record for deciding the SJ Motions.

Our decision on the Department's and Catalyst's SJ Motions is a close call in light of the extensive record, however, we hold that the SJ Motions must be denied. Viewing the record in the

light most favorable to Ms. Lananger, there are genuine issues of material fact remaining, therefore, the Department and Catalyst are not entitled to judgment as a matter of law. Further, we conclude that Ms. Lananger, who bears the burden of proof in her appeal, has produced evidence of fact that is sufficient to establish a prima facie case. We are not to gauge the quality of the evidence in the record at this point. The record contains just enough uncertainty that we are unable to rule in the Department's and Catalyst's favor absent a full hearing and without having the benefit of the entire Board's consideration of the record before making our final decision as to the legality of the Department's permit decision.

A significant factor in reaching this decision is that our rulings are de novo. The Board's de novo review means that the Board can consider evidence that was not considered by the Department at the time it took the action that is being challenged in the appeal. *PennEnvironment et. al, v. DEP*, 2024 EHB 254, 279; *Reed v. DEP*, 2024 EHB 417, 426; *Logan v. DEP*, 2018 EHB 71, 90; *Friends of Lackawanna v. DEP*, 2017 EHB 1123, 1156. In third-party permit appeals, such as here, each party to the dispute may present evidence of things that occurred between the filing of the appeal and the start of the hearing. Rather than waiting until the Board makes a final decision, permittees, as is their prerogative including in cases where the Board denies a supersedeas, frequently begin construction and/or operations of the permitted project while the challenge to the permit is ongoing. Where a permitted project has begun, evidence is routinely presented to the Board concerning the impacts caused by construction and/or operation activities. How that evidence plays out in our ultimate decision obviously depends on the facts of the case. When the facts show the permit is functioning as intended, i.e., protecting the environment, and/or the harms anticipated by the permit opponents have not come to fruition, such evidence can help the Department and permittee defend the permit decision. Alternatively, if the facts demonstrate

that there are actual environmental problems arising from the permittee's activities, the appellant can raise those issues to support their challenge to the permit. In the end, our de novo review allows the Board to weigh all of the relevant evidence in deciding the appeal.

In this case, in late December 2024, following the Board's denial of the Supersedeas Petition, Catalyst undertook several actions at the Site including the disposal of waste fluids into the Injection Well. Ms. Lananger asserts that these actions constitute "New Issues" and thereby defeat the SJ Motions. Among the alleged actions she argues create new issues are 1) circumstances that arose in late January/early February regarding a slipped packer and its impact on the mechanical integrity of the Injection Well; 2) construction of a French drain at the Site; 3) installation of two additional 500 bbl fluid tanks; and 4) loss of power at the seismic monitoring station for a period of time in December 2024. Ms. Lananger states that under our de novo review standard, she should have the opportunity to present the facts on each of these actions as they, according to her, constitute material facts that are in dispute and, therefore, properly prevent us from granting summary judgment.

The Department and Catalyst do not dispute that the activities described by Ms. Lananger as "new issues took" place at the Site but contest some of the particulars of the surrounding facts as well as Ms. Lanager's and her counsel's interpretation of the facts. The Department and Catalyst argue that the events Ms. Lanager points out as problematic are merely typical operational issues that the Board should not consider at this point since they were not part of the Department's permit decision. They also challenge whether the facts that Ms. Lananger describes as "new issues" are material and relevant. Our de novo review standard makes short work of the argument that the Board should not consider these new facts/issues since they were not part of the Department's permit decision. By way of analogy, if the Department issued a permit for a dam that was then

constructed and subsequently failed prior to the Board holding a hearing on the challenged permit, no one would argue that the Board should not review evidence surrounding the dam failure when determining whether the Department's permit decision was reasonable, consistent with the law and supported by the facts. We are not saying that any failure did or did not occur here, but instead that the facts concerning the actions at the Injection Well post the Board's decision on the Supersedeas Petition are fair game for our consideration so long as Ms. Lananger shows that they are material and relevant.

The materiality and relevance of the so-called New Issues is difficult to judge at this point. In her Responses, Ms. Lananger attached correspondence, inspection reports, and other documents that relate to her new issues and her counsel offered an interpretation of that information. In their Replies, the Department and Catalyst respond to that information and their counsel puts their own spin on how the Board should view that information. None of the parties provide affidavits or other sworn testimony supporting their reading of the evidence. At this point, the Board is faced with opposing views of how this information should be read and whether it is material and relevant. In light of the evidence and the contrasting interpretations offered by the parties, it is not clear and free from doubt that this information should be excluded as immaterial and/or not relevant and, as a result, the Department and Catalyst are not entitled to summary judgment as a matter of law. Further testimony under oath will assist the Board in its understanding of the significance of this evidence to the issues on appeal.

In the same way that these post-supersedeas developments create a dispute of material facts sufficient to deny the SJ Motions, these facts, along with the record evidence, are supportive of Ms. Lananger's prima facie case. To establish a prima facie case, Ms. Lananger must put forward sufficient evidence for a trier of fact to find in her favor. It is not clear and free from doubt that

the full Board viewing the current record, including the supersedeas hearing transcripts and exhibits, would reach the same conclusion as the single judge who presided over that hearing. Further, at this point, there has been no sworn testimony presented about the activities that have taken place at the Site since the supersedeas hearing. Ms. Lananger argues that some of that evidence calls into question the mechanical integrity of the Injection Well and a concern for a potential release of waste fluid. She also takes issue with the installation of a French drain and what it may mean for the development of the Site as well as its potential impact on the surrounding watershed. Catalyst and the Department contest her arguments but at this point the Board lacks a sufficient record to evaluate these issues. If, and it may be a big if, Ms. Lananger can prove that this evidence supports her positions, the evidence would help establish her prima facie case and arguably allow the trier of fact to rule in her favor. It would not be appropriate for the Board to pre-judge that evidence prior to taking actual testimony.

Much of this decision relies on the rather singular procedural and factual circumstances presented by this case. This decision should not be read to mean that summary judgment can never be granted following a supersedeas decision because of our de novo review standard. Instead, reading the record in this case in the light most favorable to Ms. Lananger, as we are required to do when considering a summary judgment motion, we deny the SJ Motions. Ms. Lananger has presented sufficient evidence setting forth a prima facie case and there are material facts that remain in dispute at this point. In light of those findings, the better course of action is to proceed to a merits hearing where Ms. Lananger will be given an opportunity to present her case, including any new information from activities after the supersedeas hearing, for the full Board's consideration.

At the same time, given that we held an extensive supersedeas hearing and in light of our inherent authority to control the scope of our hearings, we intend to place constraints on the testimony at the upcoming hearing, specifically, by limiting the number of witnesses upon an issue as set forth in the Board's Rules of Practice and Procedure. See 25 Pa. Code § 1021.126. For the sake of efficiency, and in fairness to all parties, we shall incorporate the transcript and evidence from the supersedeas hearing into the record of the merits hearing and to set limits on repetitive testimony addressing issues that have already been extensively litigated in the supersedeas hearing. The Board will work out the exact nature of the limiting parameters in consultation with the parties as we proceed to a merits hearing.

Therefore, we issue the following Order:

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

E-FILED
06/30/2025

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O R D E R

AND NOW, this 30th day of June 2025, following review of the Department's and Catalyst's Motions for Summary Judgment, Ms. Lananger's Responses and the Replies thereto, it is hereby ORDERED that the Motions for Summary Judgment are **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman
STEVEN C. BECKMAN
Chief Judge and Chairperson

DATED: June 30, 2025

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