COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

PROTECT PT	:	
	:	
v.	:	**EHB Docket No. 2023-085-W**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and OLYMPUS ENERGY, LLC, Permittee	:	**Issued: July 23, 2025**

OPINION AND ORDER ON
MOTIONS FOR SUMMARY JUDGMENT

By MaryAnne Wesdock, Judge

Synopsis

Motions for summary judgment are denied where the issues involve complex questions of law and fact. Additionally, the Appellant's motion is denied because the Appellant did not file a reply to the Department's and Permittee's responses and, therefore, did not address arguments raised by them in opposition to the Appellant's motion.

O P I N I O N

This matter involves an appeal filed with the Environmental Hearing Board (Board) by Protect PT seeking recission of permits for five unconventional gas wells issued to Olympus Energy, LLC (Olympus) by the Department of Environmental Protection (Department) in connection with Olympus' Aphrodite well pad in Penn Township, Westmoreland County.

Background

On August 21, 2023, Olympus submitted permit applications to the Department for five unconventional gas wells to be drilled at its Aphrodite well pad in Penn Township, Westmoreland County. On September 25, 2023, the Department issued permits for the 1M, 2M, 3M, 4M, and 6M

wells (Aphrodite wells or permits). On October 24, 2023,[1] Protect PT filed an appeal of the issuance of the five well permits with the Board.

Pursuant to 58 Pa. C.S. § 3211(i), a well permit expires one year after issuance if drilling has not commenced or if the permit has not been renewed in accordance with Department regulations. To obtain a renewal, an operator may submit a request accompanied by a fee, a surcharge, and an affidavit affirming that the information in the original application is still accurate and complete. 25 Pa. Code § 78a.17(b). If issued, the renewal is valid for two years. *See id.*

On August 6, 2024, Olympus submitted renewal applications for the 2M, 4M, and 6M wells, and on August 29, 2024, the Department issued the renewal permits for those wells. Because drilling had not commenced for the 1M and 3M wells and Olympus did not seek renewal of those permits, the 1M and 3M well permits expired on September 25, 2024.[2] (Olympus Statement of Undisputed Material Facts, para. 6.) Protect PT did not appeal the issuance of the renewal permits for the 2M, 4M, and 6M wells.

On February 19, 2025, the parties filed a Stipulation with the Board providing that "Appellant is limiting the scope of this Appeal and is proceeding only on the objections stated in Paragraphs 46–50 of the Notice of Appeal." (Stipulation, EHB Docket No. 2023-085-W, Docket Entry No. 25, p 3). Pursuant to this stipulation, the five objections remaining in this appeal are as follows:

> 46. Protect PT objects to the Department's approval of the Well Permit [sic] which allow hydraulic fracturing, well drilling, and natural gas production in close proximity to sensitive receptors and populations such as residential homes, and a school, without taking

[1] The appeal was filed on October 24, 2023, although docketed on October 25, 2023 due to technical issues.

[2] While the permits for the 1M and 3M wells have expired, Protect PT has not withdrawn its claims pursuant to those permits.

> into account the cumulative effects of all well permits in the area, in violation of the Department's responsibilities under Article I, Section 27 of the Pennsylvania Constitution.
>
> 47. The Department has failed to consider all related facilities in the area as a single facility, and failed to review them in the aggregate, and is therefore in violation of applicable law.
>
> 48. Additionally, the existence of, and proximity of the compressor station, and associated pipelines, to the well pads must be considered, in the aggregate with all of the drill and operate permits that were issued, and are currently the subject of this appeal.
>
> 49. Because the Department has failed in its obligation to enforce Federal Regulations as they apply to NSPS and as described above, the permit applications must be denied, and/or subject to further review.
>
> 50. The Permits do not place limits on or require a permit for air emissions of Hazardous Chemicals or TENORM, as the activities authorized under the Permits are exempt from regulation by 25 Pa. Code § 127.14(8)(38c). This exemption violates the ERA.

(Notice of Appeal, EHB Docket No. 2023-085-W.)

Pending before the Board are motions for summary judgment filed by all three parties. The Department and Olympus each filed a response in opposition to Protect PT's motion, but Protect PT did not file a reply. Additionally, while Protect PT filed a brief in response to the Department's and Olympus' motions, it did not respond to the Department's and Olympus' statements of undisputed material facts and, therefore, we may deem certain facts admitted by Protect PT. *Merck Sharp & Dohme Corp. v. DEP*, 2016 EHB 411, 411, n.1; *Macyda v. DEP*, 2011 EHB 526, 531–32 (citing *Blue Marsh Labs. v. DEP*, 2007 EHB 777, 779); *Kraft v. DEP*, 2011 EHB 50, 51, n.2.

Standard of Review

Summary judgment may be granted 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 entitled to judgment as a matter of law. Pa. R.C.P. 1035.1–1035.2; *Scrubgrass Creek Watershed Association v. DEP*, 2024 EHB 747, 748 (citing *Beech Mountain Lakes Ass'n v. DEP*, 2023 EHB 221, 223). In evaluating whether summary judgment is appropriate, the Board views the record in the light most favorable to the non-moving party. *Liberty Township v. DEP*, 2024 EHB 872, 874 (citing *Stedge v. DEP*, 2015 EHB 31, 33); *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. *Barr Farms, LLC v. DEP,* EHB Docket No. 2023-034-B, *slip op.* at 3 (Opinion and Order on Motion for Summary Judgment (issued Apr. 4, 2025)) (citing *Sierra Club*, 2023 EHB at 99). 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; *Amerikohl Mining Inc. v. DEP,* 2023 EHB 348, 352 (citing *Tri-Realty Co. v. DEP*, 2016 EHB 214, 217).

The Board's rules specify that a summary judgment record shall contain a motion, supporting brief, statement of undisputed material facts, and evidentiary materials relied upon by the movant. 25 Pa. Code § 1021.94a(b). A party opposing the motion shall file a response to the motion, a response to the statement of undisputed material facts and a brief containing legal argument in opposition to the motion. *Id.* at § 1021.94a(g). Pursuant to § 1021.94a(k), the moving party may file a reply brief to the opposing party's response. *Kazmierczak v. DEP*, 2016 EHB 124, n. 2. Although a reply brief is not required by the Board's rules, it is strongly encouraged since it provides the moving party with an opportunity to address the arguments raised in opposition to the motion and to demonstrate that there are no material issues in dispute. As former Judge Coleman stated, "[t]he reply brief is intended as the 'last word.'" *Williams v. DEP*, 2019

EHB 764, 771. Where the moving party chooses to forego having the "last word," it runs a greater risk of having its motion denied.

1M and 3M Wells

Before turning to the specific arguments made by the parties in their motions, we first address an argument highlighted by Olympus in a footnote. As noted earlier, according to Olympus, the 1M and 3M well permits were not renewed and expired on September 25, 2024. In footnote 2 of its brief in support of its motion for summary judgment, Olympus requests that the Board find Protect PT's appeal moot as to the 1M and 3M permits. While the appeal of these permits does appear to be moot, raising this issue in a footnote is not the proper procedure for seeking dismissal of the appeal as to these permits. If Olympus wishes to dismiss the appeal as to the 1M and 3M wells, it must set forth this argument in a properly supported motion as required by 25 Pa. Code §§ 1021.94 and 1021.94a.

We now turn to the issues on which the parties seek summary judgment.

Public Resources

In its motion for summary judgment, Protect PT argues that the Department violated Article I, Section 27 of the Pennsylvania Constitution, commonly referred to as the Environmental Rights Amendment, as well as 25 Pa. Code § 78a.15(g),[3] by failing to consider "potential impacts on public resources from the issuance of the Permits, whether privately or publicly owned, including those resources that are essential to the quality of life, including areas of purely aesthetic

[3] While Protect PT's motion refers to 25 Pa. Code § 78(g), we believe it to mean 25 Pa. Code § 78a.15(g) given the context regarding consideration of public resources. Section 78a.15(g) sets forth a number of items that the Department must consider prior to adding conditions to a well permit based on impacts to public resources

or historical concern." (Brief in Support of Protect PT's Motion, p. 4.) In response, the Department and Olympus argue that the public resources argument is outside the scope of this appeal because it was not included in the notice of appeal. They further assert that the argument is not supported by record evidence.

Allegations and issues that are not raised in a notice of appeal are generally waived. *Citizens for Pennsylvania's Future v. DEP*, 2024 EHB 624, 630 (citing *Benner Twp. Water Auth. v. DEP*, 2019 EHB 594, 637). However, objections raised in general terms are typically sufficient to avoid waiver. *Clean Air Council v. DEP*, 2022 EHB 291, 294 (citing *Croner, Inc. v. Department of Environmental Protection*, 589 A.2d 1183, 1187 (Pa. Cmwlth. 1991)). Notices of appeal are to be read broadly. *Citizens for Pennsylvania's Future v. DEP*, 2024 EHB 232, 234. "So long as an issue falls within the scope of a broadly worded objection found in the notice of appeal, or the 'genre of the issue' in question was contained in the notice of appeal, we will not readily conclude that there has been a waiver." *Protect PT v. DEP*, 2024 EHB 838, 843 (quoting *Rhodes v. DEP*, 2009 EHB 325, 327).

It is true that none of the objections set forth in paragraphs 46-50 of the notice of appeal discuss "public resources." However, in paragraph 46 of its notice of appeal, Protect PT states that it objects to the issuance of the permits because the Department failed to consider the proximity of the wells to "sensitive receptors." It is unclear whether this objection is intended to include "public resources" since Protect PT does not expand on this term in its notice of appeal or its motion. Nor did Protect PT file a reply addressing the arguments made by Olympus and the Department in their responses to its motion. For this reason alone, we may deny summary judgment to Protect PT on this issue since questions of law and fact remain. Moreover, even if we

were to find that the public resources argument is subsumed within Objection 46 of the notice of appeal, Protect PT has not presented the level of analysis or factual detail in its motion that is necessary to obtain summary judgment on its claim. Protect PT did not identify the potential impacts on public resources it believes the Department failed to consider, nor which public resources it believes will be impacted. It simply makes a general argument that public resources should have been considered, which is insufficient to carry its motion. Accordingly, we deny summary judgment on this issue.

Cumulative Impact

In paragraph 46 of its notice of appeal, Protect makes the following claim:

> Protect PT objects to the Department's approval of the Well Permit [sic] which allow hydraulic fracturing, well drilling, and natural gas production in close proximity to sensitive receptors and populations such as residential homes, and a school, without taking into account the cumulative effects of all well permits in the area, in violation of the Department's responsibilities under Article I, Section 27 of the Pennsylvania Constitution.

(Notice of Appeal, para. 46.)

In their motions, the Department and Olympus contend that Protect PT's claim regarding cumulative effects should be dismissed due to lack of evidentiary support. The Department argues that Protect PT's cumulative effects claim is not tethered to any evidence. Per the Department, Protect PT failed to "produce actual evidence as to *what* are the cumulative effects specifically, or *how* the cumulative effects from the well site will combine in any cumulative detrimental effect to sensitive receptors, much less cause unreasonable degradation, diminution, depletion or deterioration of the public natural resources of the Commonwealth." (Brief in Support of the Department's Motion for Summary Judgment, p. 19) (emphasis in original). Olympus also argues

that the cumulative effects claim should be dismissed due to a lack of evidence supporting the claim. Olympus notes that while Protect PT identified other permitted well sites in the area that it believes should have been considered in its cumulative effects argument,[4] Protect PT did not provide evidence regarding emissions from the Aphrodite well site or any other oil and gas facility in the vicinity, the fate and transport of contaminants from those sites, or the environmental or health impacts associated therewith. (Brief in Support of Olympus' Motion for Summary Judgment, p. 8.) Additionally, Olympus points out that Protect PT did not depose anyone from the Department or Olympus on this topic.

In its response brief, Protect PT argues that it is the Department's duty under the Environmental Rights Amendment "to review the entirety of the proposed development and not allow piecemeal application[s] for permits." (Protect PT's Brief in Response to Olympus' and DEP's Motions for Summary Judgment, p. 5.)[5] It asserts that the permits issued by the Department allow introduction of heavy-duty industrial activities, including hazardous and radioactive waste, noise, dust, the presence of drilling equipment, 24-hour operation of the site, and truck traffic, among others.

This Board has previously held that, under certain circumstances, it may be appropriate to take other nearby sites or operations into consideration when assessing a new project's potential impact on natural resources. *See, e.g., New Hanover Township v. DEP*, 2020 EHB 124, *rev'd sub*

[4] Olympus identifies the other permitted well sites as: Metis, Gaia, Titan, Poseidon, Potts, Stewart, Quest, Drakulic, Fatur, and McIlvaine. (Brief in Support of Olympus' Motion for Summary Judgment, p. 7, n. 3.)

[5] Protect PT's brief in response to the Department's and Olympus' motions does not contain page numbers, which would have been helpful in citing thereto. The page reference herein is derived from counting the number of pages in Protect PT's brief. *See Karnick v. DEP*, 2018 EHB 346, n. 15; *West Norriton Township v. DEP*, 2009 EHB 9, n. 6.

nom. Gibralter Rock, Inc. v. Pa. Dep't of Envtl. Prot, 258 A.3d 572 (Pa. Cmwlth. 2021), *vacated and remanded*, 286 A.3d 713 (Pa. 2022), *aff'd*, 316 A.3d 668 (Pa. Cmwlth. 2024) (finding that the Department did not consider the full environmental effects of its action where it did not consider the impact a proposed quarry would have on a nearby site undergoing remediation under the Hazardous Sites Cleanup Act); *Valley Creek Coalition v. DEP*, 1999 EHB 935 (finding that where the Department has issued a series of permits authorizing discharges into the same watershed, it is logical to take those other permits into consideration). *See also Davailus v. DEP*, 1991 EHB 1191, 1196 (in evaluating the environmental impact of a project, the cumulative impact of piecemeal habitat losses must be considered).

Here, Protect PT asserts that *all effects,* such as noise, dust, and truck traffic, of the various well permits in the area should be considered. In the cases in which the Board has assessed such arguments previously, we have addressed and analyzed a number of factors that play a role in the determination of whether the effects of the project should have been cumulatively considered. *New Hanover Township*, 2020 EHB at 192; *Valley Creek Coalition*, 1999 EHB at 951. As such, cases involving cumulative impact arguments are typically complex and technical. We have repeatedly held that complex and technical issues are inappropriate for summary judgment. *Scrubgrass Creek Watershed Association v. DEP*, 2024 EHB 747, 761; *Sludge Free UMBT v. DEP*, 2015 EHB 469, 499. We believe that statement holds true here and that this claim would be better addressed at a hearing on the merits. Accordingly, the Department and Olympus' motions for summary judgment with respect to Protect PT's cumulative effects claim is denied.

"Aggregation"

In paragraphs 47 and 48 of its notice of appeal, Protect PT makes the following claims:

> 47. The Department has failed to consider all related facilities in the area as a single facility, and failed to review them in the aggregate, and is therefore in violation of applicable law.
>
> 48. Additionally, the existence of, and proximity of the compressor station, and associated pipelines, to the well pads must be considered, in the aggregate with all of the drill and operate permits that were issued, and are currently the subject of this appeal.

(Notice of Appeal, para. 47-48.)

At first glance, Protect PT's "aggregation" claims appear to relate to the air permitting requirements of the federal Clean Air Act and the underlying regulations. Under federal and state air regulations, multiple pollutant-emitting sources are to be aggregated and considered a single stationary source for purposes of air quality regulation if they: (1) are under common control; (2) belong to the same major industrial grouping; and (3) are located on one or more contiguous or adjacent properties. *Clean Air Council v. DEP*, 2013 EHB 346, 348-49 (citing 40 C.F.R. § 71.2; 25 Pa. Code § 121.1). For oil and natural gas facilities, pollutant-emitting activities are considered to be "adjacent" if they are located on the same surface site or located on surface sites that are within ¼ mile of one another and share equipment. 40 C.F.R. § 52.21(b)(6)(ii).

Protect PT seems to rely on the definition of "adjacent" in Section 52.21(b)(6)(ii) of the federal regulations when it asserts, "The DEP is aware that the Guardian Compressor Station and Poseidon wells are also planned for this parcel and around ¼ mile away from the Aphrodite well pad." (Protect PT's Brief in Support of Motion for Summary Judgment, p. 7) (relying on Protect PT's Statement of Undisputed Material Facts, para. 8 and 9).[6] Olympus is the permittee of the

[6] Olympus and the Department dispute Protect PT's assertion that the Poseidon well pad is within ¼ mile of the Aphrodite site and point to evidence in the record demonstrating that it is, in fact, ¾ mile from the Aphrodite site. (Olympus' Brief in Opposition to Protect PT's Motion, p. 9, citing Ex. 3 to Protect PT's Motion; Department's Response to Protect PT's Statement of Undisputed Material Facts, para. 8.) They also assert that the Guardian Compressor Station had not been constructed, nor had a permit been submitted,

Poseidon well pad (Ex. 3 to Protect PT's Motion), and Hyperion Midstream, LLC, a subsidiary of Olympus, is the permittee of the Guardian Compressor Station (Olympus Statements of Undisputed Material Facts, para. 10, 13).

However, Protect PT does not cite to the Clean Air Act, the federal air regulations or the state air regulations in making the argument that the Department should have considered all related facilities in the area of the Aphrodite well pad in the aggregate, and, therefore, we do not believe that Protect PT is asserting that the Department violated those laws in permitting the Aphrodite wells. Rather, Protect PT's "aggregation" claims seem to be an extension of its "cumulative impact" argument discussed earlier. Indeed, in its brief in support of its motion, under the section entitled "Aggregation," Protect PT argues, "By piecemealing the project into separate parts, Olympus is able to avoid the environmental ramifications of the project *as a whole* being considered by the Department during the approval of the wells." (Protect PT's Brief in Support of Motion for Summary Judgment, p. 6) (emphasis added). Specifically, Protect PT argues that the impact of the Poseidon wells, Guardian Compressor Station and related facilities should have been aggregated with that of the Aphrodite wells under the Environmental Rights Amendment, stating, "Appellant contends that the proximity of the well pads and the compressor station creates a pollution source that should have been analyzed as a whole, and . . . the DEP's failure to do so is therefore in violation of Article 1, Section 27 of the Pennsylvania Constitution." *Id.*

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at the time the Aphrodite wells were permitted. (Olympus' Brief in Support of Motion for Summary Judgment, p. 21-22; Department's Brief in Support of Motion for Summary Judgment, p. 22.)

As we stated earlier, cases involving cumulative impact arguments are typically complex and technical in nature and are better addressed at a hearing on the merits. Accordingly, summary judgment on Protect PT's "aggregation" claim is denied.

New Source Performance Standards

In paragraph 49 of its notice of appeal, Protect PT raises challenges relating to federal air regulations and argues that the Department failed to properly apply the federal New Source Performance Standards, stating as follows:

> 49. Because the Department has failed in its obligation to enforce Federal Regulations as they apply to [New Source Performance Standards] and as described above, the permit applications must be denied, and/or subject to further review.[7]

(Notice of Appeal, para. 49.)

New Source Performance Standards (NSPS) are developed under the Clean Air Act for any category of air contamination sources that may endanger the public's health or welfare. 42 U.S.C.A. § 7411(b); 40 C.F.R. Part 60. The NSPS are incorporated into the Department's air regulations by reference at 25 Pa. Code § 122.3. Because the Aphrodite wells will be constructed after December 6, 2022, they will be subject to NSPS, OOOOb, the most stringent NSPS standard thus far for the oil and natural gas source category. Although Protect PT does not expand on its NSPS claim in its motion or in response to the Department's and Olympus' motions, in answers to interrogatories it describes its argument as follows: "Protect PT believes that the DEP does not have and has not requested information from Olympus Energy regarding air pollution produced

[7] While Protect PT utilizes the word "enforce" in its objection, based on the discovery responses regarding this claim that were highlighted in the Department's motion, we believe that Protect PT is actually arguing that the Department failed to properly apply the NSPS with respect to the site at issue. (*See* Brief in Support of the Department's Motion for Summary Judgment, p. 15, 16.)

during the flowback stage of horizontal well completion and therefore compliance with NSPS standards cannot be evaluated." (Ex. G to Department's Motion, Response to Interrogatory 37.)

As noted earlier, where a matter involves complex questions of law and fact, summary judgment may not be granted. We find that the air issues relating to NSPS raised by Protect PT fall into this category. We simply do not have enough information at this stage to make a determination that any party is clearly entitled to judgment as a matter of law.

Radiation/TENORM and Exemption 38(c)

Protect PT also argues that the Department violated Article I, Section 27 by not placing limits on or requiring a permit for air emissions of hazardous chemicals or technically enhanced naturally occurring radioactive material (TENORM):

> 50. The Permits do not place limits on or require a permit for air emissions of Hazardous Chemicals or TENORM, as the activities authorized under the Permits are exempt from regulation by 25 Pa. Code § 127.14(8)(38c). This exemption violates the ERA.

(Notice of Appeal, para. 50.) Pennsylvania exemption 38(c) allows a source determined to be of minor significance to operate without obtaining plan approval or an operating permit under state air regulations, so long as certain qualifications are met.

The Department and Olympus argue that Protect PT has not offered any evidence to show that TENORM will be present in dangerous concentrations at the Aphrodite well site. According to the Department, while Protect PT's expert, Marc Glass, raises the potential for TENORM to be generated at the site, his report does not show how that generation is specific to the Aphrodite well pad or any other Olympus well site. Likewise, Olympus argues that Mr. Glass' report is little more than speculation. Protect PT responds that it has, in fact, introduced evidence in support of its radiation claims by virtue of Mr. Glass' expert report. It disputes Olympus' characterization of Mr.

Glass' report and points out that the report discusses how TENORM is generated by the oil and gas production process and that over time, this can result in deleterious health effects.

Upon review of Mr. Glass' report, we do believe that Protect PT has provided evidence of facts essential to its cause of action. While the Department and Olympus highlight that Mr. Glass' report is more generalized to the oil and gas industry, rather than specific to the Aphrodite site, we recognize Mr. Glass' explanation that "[r]adiological gaseous emissions from oil and gas infrastructure are not generally directly measured or reported by operators or regulatory agencies." (Protect PT's Brief in Response to Olympus' and DEP's Motions for Summary Judgment, Ex. 1, p. 14.) As such, generalized data and information may be the best information available to Protect PT at this time.

The Department relies heavily on the Board's opinion issued in *Protect PT v. DEP*, 2024 EHB 683, in support of its argument that Protect PT failed to offer evidence sufficient to support its radiation claims. In that opinion, the Board dismissed Protect PT's claim regarding the presence of PFAS at the site in question. We want to make clear that an appellant need not definitively or absolutely prove its entire case to survive a motion for summary judgment. *See Diehl v. DEP*, 2018 EHB 18, 25 ("In a motion for summary judgment, the responding party does not have to demonstrate that it will eventually win the argument.") (citing *Milco Industries, Inc. v. DEP*, 2002 EHB 723, 724); *Barr Farms, LLC v. DEP*, EHB Docket No. 2023-034-B, *slip op.* at 11 (Opinion and Order on Motion for Summary Judgment (issued Apr. 4, 2025)). It simply must present sufficient evidence in support of its claim to move forward to a hearing. *Sunoco Pipeline L.P. v. DEP*, 2021 EHB 43, 53 ("Where the Department can muster sufficient facts to demonstrate that the danger of pollution is not purely theoretical or that an implausible series of events is not

required to reach that conclusion, it will likely be able to establish a *prima facie* case when challenged in the context of a summary judgment motion."). In the *Protect PT* matter concerning PFAS, there was simply no evidence that supported PFAS use at the site, and evidence was provided by the opposing parties that PFAS would not be used. Here, however, Protect PT's expert report addresses how TENORM is likely to be generated at the Aphrodite site given its location in the Marcellus Shale formation, and the Department and Olympus have offered no evidence that TENORM will not be generated. In fact, the Department attached to its motion the Department's 2016 TENORM Study, a study aimed at collecting data regarding TENORM associated with oil and gas operations in Pennsylvania. This study serves as support for Protect PT's claim that TENORM is commonly associated with oil and gas well sites in Pennsylvania. As such, we find that Protect PT has produced evidence sufficient to make out a *prima facie* case on its TENORM claim. *See Sunoco Pipeline L.P.*, 2021 EHB at 50–51; *Belitskus v. DEP*, 1997 EHB 939, 952. Accordingly, summary judgment is denied on this claim.

Burden of Proof

Finally, based on statements made in Protect PT's briefs, it seems that Protect PT believes the burden should be on the Department and Olympus to show that the permits issued in this matter will not cause harm. It is well-established both in caselaw and under the Board's rules that the party seeking recourse (i.e. the overturning of a permit) has the burden of proof. 25 Pa. Code § 1021.122(c)(2); *Friends of Lackawanna v. DEP*, EHB Docket No. 2021-066-L, *slip op.* at 70 (Adjudication (issued Apr. 1, 2025)); *Delaware Riverkeeper Network v. DEP*, 2024 EHB 549, 564; *Reed v. DEP*, 2024 EHB 417, 438. While all that Protect PT must provide in order to overcome a motion for summary judgment under Pa. R.C.P. 1035.2(2) is sufficient evidence on

which to move forward, the burden is still on Protect PT to produce evidence to prove its claim at a hearing on the merits.

In conclusion, we enter the following order:

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

PROTECT PT	:	
	:	
v.	:	**EHB Docket No. 2023-085-W**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and OLYMPUS ENERGY, LLC, Permittee	:	

O R D E R

AND NOW, this 23rd day of July, 2025, it is hereby ORDERED that the parties' motions for summary judgment are **denied**.

ENVIRONMENTAL HEARING BOARD

s/ MaryAnne Wesdock
MARYANNE WESDOCK
Judge

DATED: July 23, 2025

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