COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

JOHN E. YODER AND LAURA D. YODER	:	
v.	:	**EHB Docket No. 2024-097-BP**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	**Issued: August 8, 2025**

OPINION AND ORDER ON
APPELLANTS JOHN E. YODER AND LAURA D. YODER'S MOTION FOR SUMMARY JUDGMENT

By Paul J. Bruder, Jr., Judge

Synopsis

The Environmental Hearing Board ("Board") denies appellants John E. Yoder and Laura D. Yoder's ("Appellants") Motion for Summary Judgment as genuine issues of law and material fact exist regarding the Department of Environmental Protection's ("Department") issuance of its April 10, 2024 Administrative Order.

O P I N I O N

Background

This appeal pertains to the Appellants' challenge of the Department's April 10, 2024 Administrative Order addressing alleged violations of the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101- 6018.1003 ("Solid Waste Management Act").

Appellants jointly own real property in Chest Township, Clearfield County, identified in the Clearfield County Tax Assessment Office as Tax Parcel Number 1090F1700000079 ("Site"). (*See* April 10, 2024 Admin. Order ¶ C). The Site is used for the operation of a sawmill, where

logs are sawed into lumber for use in wood products.

The Department has alleged that after the logs are sawed, remnants of the timber unusable for wood products ("wood waste") are then burned at the Site without a permit or approval by the Department, in violation of the Solid Waste Management Act. (*See* April 10, 2024 Admin. Order ¶ D). Appellants do not dispute that timber is burned. Alternatively, they assert that the timber is not "waste" and that they beneficially use the ash from the burned timber as fertilizer for their soil. (NOA Objections, ¶¶ 3-4).

After a number of inspections at the Site by the Department and a February 9, 2024 Notice of Violation, the Department issued the subject April 10, 2024 Administrative Order ("Administrative Order") mandating that the Appellants: (1) cease and desist all dumping, processing, or burning of residual waste; (2) remove all ash from the Site and dispose of the ash at a permitted disposal facility in accordance with federal and state law; and (3) submit documentation to the Department that all remaining ash was properly disposed of at a facility authorized by the Commonwealth. (*See* April 10, 2024 Administrative Order, pg. 6).

On May 1, 2024, Appellants filed their appeal of the Administrative Order asserting that the timber/wood ash burned is non-hazardous agricultural waste that is used to fertilize Appellants' soil. Appellants further challenge the Administrative Order on the basis that the Appellants are Amish, and the Order violates the Religious Freedom Protection Act, 71 P.S. § 2401, et seq. (*See* May 1, 2024, NOA Objections).

Procedurally, this appeal has undergone a series of deadline extensions and discovery disputes. The current discovery deadline is in a stay[1] until several pending motions are ruled upon.

[1] Prior to the stay, the discovery deadline was July 31, 2025 and the dispositive motion deadline was September 2, 2025. (*See* March 14, 2025 Order).

(*See* July 8, 2025 Order). On June 5, 2025, Appellants filed a Motion for Summary Judgment ("Motion"). On July 11, 2025, the Department filed its Response.[2] Under Board rules, Appellants had a right to file a Reply Brief, which was due July 28, 2025, but no Reply was filed. *See* 25 Pa. Code § 1021.94a(k). This matter is ready for disposition.

Standard of Review[3]

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; *Beech Mountain Lakes Ass'n v. DEP*, 2023 EHB 221, 223. Summary judgment is also 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. Pa.R.Civ.P. 1035.2(2); *Whitehall Twp. v. DEP*, 2017 EHB 160, 163. In other words, the party bearing the burden of proof must make out a *prima facie* case for its claims. *Longenecker v. DEP*, 2016 EHB 552, 554; *Morrison v. DEP*, 2016 EHB 717, 720.

Summary judgment is granted only in the clearest of cases, and usually only in cases where a limited set of material facts are truly undisputed and a clear and concise question of law is presented. *Liberty Twp. v. DEP*, 2022 EHB 324, 326; *Sludge Free UMBT v. DEP*, 2015 EHB 469, 471; *Citizens Advocates United to Safeguard the Environment v. DEP*, 2007 EHB 101, 106. Cases

[2] On July 1, 2025, the Department filed a Motion to Exceed the Page Limit in its Response to Appellants' Undisputed Material Facts. On July 8, 2025, the Board granted the Motion and permitted the Department to file its Response to the pending Motion for Summary Judgment by July 11, 2025. (*See* July 8, 2025 Order).

[3] We note that Appellants' Brief in Support of their Motion for Summary Judgment failed to set forth a statement of their view of the appropriate standard for summary judgment as it applies to the matter before the Board.

that involve complex issues of fact and law are not appropriate for summary judgment as they require a fully developed record. *Three Rivers Waterkeeper v. DEP*, 2020 EHB 87; *Protect PT v. DEP and Apex Energy (PA), LLC*, 2020 EHB 27; *Center for Coalfield Justice v. DEP, et. al.*, 2016 EHB 341, 347; *Clean Air Council v. DEP*, 2013 EHB 404, 410-11. In evaluating whether summary judgment is appropriate, the Board views the record in the light most favorable to the non-moving party, and all doubts as to whether genuine issues of material fact remain must be resolved against the moving party. *Stedge v. DEP*, 2015 EHB 31, 33; *Eighty Four Mining Co. v. DEP*, 2019 EHB 585, 587 (*citing Clean Air Council v. DEP*, 2013 EHB 404, 406).

Discussion

Appellants' allege they are entitled to summary judgment because: (1) the Department's administrative action violates their constitutional right to a jury trial pursuant to the Pennsylvania Constitution; (2) the Department's administrative action violates their constitutional right to due process, pursuant to the United States Constitution, because the same entity is acting as a prosecutor and trier of fact; and (3) the Department has failed to establish a *prima facie* case. (*See* Appellants' Summ. J. Motion at 1-2).

In response, the Department asserts that Appellants are not entitled to summary judgment because: (1) Appellants' constitutional due process claims are raised for the first time in their Motion, and are therefore waived, and (2) Appellants' arguments involve disputed questions of fact and law in which the Department has made out a *prima facie* case. (*See* DEP's Brief in Resp. to Summ. J. at 4).

Waiver of claims set forth in the Motion for Summary Judgment

Under Board rules, a motion for summary judgment must contain a concise statement of the relief requested and the reasons for granting that relief. 25 Pa. Code § 1021.94a(c). A motion for summary judgment must also include a brief *in support of* the motion that contains an

introduction, summary of the case, and any legal argument supporting the motion. 25 Pa. Code § 1021.94a(b)(iii) & (e) (emphasis added).

At the outset, Appellants do not comply with Board rules or Board precedent regarding dispositive motions. Appellants advance several due process and evidentiary arguments in their supporting brief that are not included in their Motion, without citing to any relevant Board case law that permits them to do so. Notably, the Board will not entertain a variety of allegations and theories sprinkled about in a supporting brief that are not set forth within the original motion. Any motion filed must set forth the specific grounds for the requested relief, and as such, the Board finds that parties must include all legal claims within the four corners of that motion. *See North American Oil & Gas Drilling Co. v. DER*, 1991 EHB 22, 26 ("counsel should be sufficiently aware of proper procedure before this Board and in the Courts of Pennsylvania to know that attorneys do not raise an argument for the first time in a supporting brief. Briefs are filed to support contentions advanced initially in motions..."). The legal memorandum or brief is used merely as a supplement to the motion, *i.e.,* to enhance the theories set forth in the motion with citations to supporting case law and evidentiary support. *See Barkman v. DER*, 1993 EHB 738, 745 ("The purpose of the supporting memorandum is simply to explain the motion, not to augment it. The Board has held previously that motions for summary judgment must set forth, with adequate particularity, the reasons for summary judgment and that representations in the legal memoranda alone are insufficient."). It is a procedural defect to do otherwise. *See Chestnut Ridge Conservancy v. DEP*, 1997 EHB 45, 49 ("By raising the issue in its supplemental brief, [Appellant] is attempting to expand the scope of its motion for summary judgment beyond that set forth in the motion itself. One cannot expand the scope of a motion in this manner."). Accordingly, the Board will only entertain and discuss arguments set forth in Appellants' Motion.

In light of the above, the Department argues that the due process and constitutional arguments Appellants make in their Motion are waived, as they are not included in their Notice of Appeal. (*See* DEP's Brief in Resp. to Summ. J. at 4-6). Pursuant to Pennsylvania Code and Board regulations, a notice of appeal to the Board must set forth separate specific objections – either factual or legal - to the action of the Department for which review is being sought. 25 Pa. Code § 1021.51(e). It is a longstanding rule that allegations not raised in the notice of appeal are waived. However, this Board has consistently held that notices of appeal are to be read broadly, and an issue will not be considered waived if it falls within a "broadly worded objection" or the "genre of an issue." *See Bennner Twp. Water Authority v. DEP*, 2019 EHB 594, 637; *New Hanover Twp. v. DEP*, 2011 EHB 645, 671 (quoting *Rhodes, et al. v. DEP*, 2009 EHB 325, 327).

Appellants' Notice of Appeal lists the following five (5) objections:

1) The Department is acting in an *ultra vires* fashion by attempting to enforce the solid waste act against the Appellants.

2) The Department's position that timber is "solid waste" is nonsensical. Timber is regularly burned in this commonwealth for heat and agricultural purposes;

3) Even if timber is "solid waste" Mr. Yoder's disposal of it is exempt pursuant to the Department's regulations 25 Pa. Code § 287.101(b)(1) exempting agricultural waste. . . . The timber being burned by Mr. Yoder is nonhazardous agricultural waste as defined by the Department and therefore, exempt from permitting pursuant to its regulations.

   Mr. Yoder is using the ashes from the burning for a beneficial purpose i.e. to fertilize his soil. Thus, the requirement that Mr. Yoder remediate the ash pile by disposing of it with a permitted disposal facility is both wasteful and beyond the authority of the Department.

4) The Department's action is at odds with *Gaspari v. Board of Adjustment of Muhlenberg Twp*., 139 A.2d 544 (Pa. 1958) which held that the manufacture of synthetic compost for use on the manufacturer's farm was not a commercial activity. Mr. Yoder's burning of timber to create ash for his fields is legally indistinguishable from the creation of synthetic compost for use as a fertilizer. Because Mr. Yoder is using the timber to create fertilizer for his crop he is conducting an agricultural activity;

   Mr. Yoder is not selling this ash to third-parties which would be a commercial activity

and subject to regulation. *See Tinicum Twp. v. Nowicki*, 99 A.3d 586 (Pa. Commw. 2014); and

5) The Department's action is substantially burdening the Appellant's exercise of his religion as engaging in agricultural type vocations is vital to the Amish lifestyle of self-reliance and reliance on one's community. Moreover, this substantial burden is not narrowly tailored to further a compelling government interest. As preventing the burning of wood and the removal of wood ash does not rise to the level of compelling interest. As such the Department actions are in violation of the Religious Freedom Protection Act 71 P.S. 2401, *et seq*.

(*See* May 1, 2024, NOA Objections).

Upon review of Appellants' listed objections, we agree with the Department that any constitutional arguments concerning the right to a jury trial and a fair and neutral tribunal[4] are not specifically raised in the Notice of Appeal. Indeed, even in the Board's attempt to be extraordinarily indulgent to Appellants' arguments, we cannot find that Appellants' due process claims fall within the genre of issues discussed in the Notice of Appeal objections.[5] We anticipated that Appellants would file a Reply Brief to address the Department's claims in its Response and argue that its claims were somehow included in the Appeal objections, but no such Reply was filed. [6] Thus, for the reasons stated above, the Board will not address the merits of Appellants'

[4] To the extent that Appellants' argue a former Department employee cannot act as a fair and neutral trier of fact, the Board finds this assertion to be without merit and any legitimate basis. The Environmental Hearing Board is a quasi-judicial agency **wholly separate** from the Department. Act of July 13, 1988, P.L. 530, 35 P.S. §§ 7511-7516. Many Board Judges have served at one time as Department employees as well as litigators against the Department, which affords them the expertise to handle the appeals that come before them. Any allegations of bias are unfounded.

[5] If Appellants wished to pursue these arguments, they might have chosen to file a motion for leave to amend their notice of appeal. *See Pruden v. DEP*, EHB Docket No. 2024-023-BP, slip. op. at 7-13 (Opinion and Order May 19, 2025); *Chester Water Authority*, 2016 EHB 280, 285-87; *Joshi v. DEP*, 2018 EHB 771, 775.

[6] The Board has recently discussed the importance of the filing of a Reply Brief when dealing with dispositive motions. Specifically, Judge Wesdock stated:

> 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.*

constitutional due process claims[7] since we cannot say they are properly before the Board.

The Department's Prima Facia Case

Appellants further argue that they are entitled to judgment as a matter of law because the Department failed to establish a *prima facie* case against them for violations of the Solid Waste Management Act. (*See* Appellants' Summ. J. Motion at 2). In response, the Department argues the Motion is premature because discovery has not yet closed, and alternatively, they have met their burden of proof to overcome summary judgment. (*See* DEP's Brief in Resp. to Summ. J. at 11-12).

While we acknowledge that the Motion was filed before the close of discovery, if Appellants are satisfied that they have requested and received all discovery relevant to their claims, we find that there is no reason Appellants cannot bring their Summary Judgment Motion before the Board. *See* Pa.R.Civ.P. 1035.2(2) ("after the completion of discovery *relevant to the motion*…"). For these reasons, we do not believe the motion is premature, and we conclude it is properly before the Board.

In regard to the merits, Appellants argue the Department has failed to establish a *prima*

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.

Protect PT v. DEP, EHB Docket No. 2023-085-W, slip op. at 4-5 (Opinion and Order July 23, 2025)

[7] Alternatively, we note that the Department argues that *Security and Exchange Comm'n v. Jarkesy*, 603 U.S. 109 (2024) is inapplicable to this matter as it involves the Seventh Amendment of the United States Constitution; whereas, the current appeal deals with violations of a statute, and neither the Pennsylvania Constitution nor the Pennsylvania General Assembly provide any statutory requirement for a jury trial under the Solid Waste Management Act. (*See* DEP's Brief in Resp. to Summ. J. at 7-8 *citing* Pa. CONST. art. I, § 6; *Wertz v. Chapman*, 741 A.2d 1272, 1276 (Pa. 1992) (finding plaintiff was not entitled to a jury trial under the Pa Constitution nor the PHRA statute)). As Appellants have provided no Reply to the Department's arguments concerning this matter, we conclude that there are genuine issues of material fact and law surrounding this matter.

facie case against them. Specifically, Appellants argue in their supporting brief that the Department has no evidence of what was allegedly burned at the Site, for what purpose it was being burned, the source of the material that was allegedly being burned, or evidence of any noxious materials leaving the property. (*See* Appellants' Summ. J. Brief at 4-5).

Board case law is clear in that a party need not definitively or absolutely prove its entire case to survive a motion for summary judgment. *Protect PT v. DEP*, EHB Docket No. 2023-085-W, slip op. at 14 (Opinion and Order July 23, 2025) *citing 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."); *Barr Farms, LLC v. DEP*, EHB Docket No. 2023-034-B, slip op. at 11 (Opinion and Order Apr. 4, 2025); *Milco Industries, Inc. v. DEP*, 2002 EHB 723, 724. In order to establish a *prima facie* case, the Department, who has the burden of proof in this matter, is only required to put forward sufficient evidence of facts essential to their cause of action that would justify moving forward to a hearing. 25 Pa. Code § 1021.122(b)(4); *Protect PT*, at 14 *citing Sunoco Pipeline L.P. v. DEP*, 2021 EHB 43, 53; *Dengal v. DEP*, 2024 EHB 605, 620. This burden of proof is contrasting to the standard at a hearing on the merits, where the Department bears the burden of demonstrating by a preponderance of the evidence that its actions were lawful, reasonable, and supported by the facts. *Bryan Whiting and Whiting Roll-Off, LLC v. DEP*, 2015 EHB 799; *Robinson Coal Co. v. DEP*, 2015 EHB 130, 153; *Wean v. DEP*, 2014 EHB 219, 251.

At this stage in the proceedings, the Board does not assess the quality or the merits of the evidence[8] but simply whether there is enough evidence presented to overcome summary judgment.

[8] Any discussion that the Department's evidence should be prohibited because it was obtained without a search warrant, violating the 4th Amendment, was not addressed in the motion for summary judgment, and is therefore not properly before the Board. Regardless, issues of evidentiary exclusions are not appropriate for summary judgment motions but are best left to motions *in limine*. *Liberty Twp. v. DEP*, 2023 EHB 92, 92-93; 25 Pa. Code § 1021.121 ("A party may obtain a ruling on evidentiary issues by filing a motion *in limine*.").

Sunoco Pipeline, at 51. After a thorough examination of the documents and records produced, including the Department's Responsive Brief, which contains thirteen (13) pages of factual and legal averments of how and why the Appellants violated Sections 301, 302(a), 501(a), 610(2), 610(3), and 610(4) of the Solid Waste Management Act, with accompanying investigation reports, receipts, discovery responses, and photographs, we conclude that the Department has met its burden of establishing a *prima facie* case to overcome summary judgment. (*See* DEP's Brief in Resp. to Summ. J. at 11-24).

With respect to Appellants' claims that the Department has no evidence of what was allegedly burned, for what purpose it was being burned, and the source of the material that was allegedly being burned, Appellants themselves admit in their Notice of Appeal that timber is burned at the Site to turn into fertilizer for their soil. (*See* NOA objections at ¶ 3 "*The timber being burned by Mr. Yoder is nonhazardous agricultural waste as defined by the Department. . . . Mr. Yoder is using the ashes from the burning for a beneficial purpose i.e. to fertilize his soil*."). Additionally, several documents produced by the Department detail Mr. Yoder or sawmill workers stating that they burn residual wood waste from the sawmill.

For example, a Department Report dated August 29, 2017 documents that the Department was told by sawmill workers that clean wood scraps are burnt daily because they get overrun with wood and have no other way of disposing of it. (*See* DEP Ex. 7). More recently, a Complaint Investigation Report dated February 1, 2024 details Mr. Yoder stating that he burns slab scraps from the sawmill to clear space in his yard. Mr. Yoder also specified the burning was for agricultural reasons.[9] (*See* DEP Ex. 10 & 11). Additionally, a Department General Inspection

[9] Any evidentiary issues, such as hearsay, are not appropriately ruled upon in motions for summary judgment. Appellants will be afforded opportunities for evidentiary objections and/or cross examination at the time of a hearing.

Report details a March 1, 2024 complaint inspection at the Site where Dustin Karschner and Tony Pennington of the Department spoke with Mr. Yoder and some of his helpers for approximately 20 minutes. The report states that the sawmill has continued to burn waste slabs, and a pile was beginning to burn at the time of the Department's visit. The Department advised Mr. Yoder that burning of the waste slabs was a violation of the Solid Waste Management Act, and Mr. Yoder quantified that he believes he is agriculturally exempt. (*See* DEP, Ex. 13). The Department also produced invoices, a bill of lading, and a check documenting that Arrow Forest LLC provides logs to Appellants' sawmill, and assertions that wood products from the sawmill are sold to Harzell Hardwoods, Inc. (*See* DEP Ex. 2 & 6).

In regard to Appellants' claims that there is no evidence of any noxious materials leaving the property, the Department has also produced incident reports by Irvona Fire Company, with accompanying photographs, documenting the firefighters extinguishing smoldering burn piles of wooden slabs at the Site. (*See* DEP, Ex. 4 & 5). Irvona VFC Incident Reports document that on January 22, 2024 a neighbor called in to complain that there was smoke 400 ft. from his house. The cause of the fire was documented as "burning slabs." (*See* DEP, Ex. 4). Additionally, DEP complaint reports document neighboring property owners' grievances of fumes leaving the Site and creating sawdust coatings on their cars and smoke entering their homes. (*See* DEP Ex. 8 & 10). Moreover, the Department, on at least three separate occasions, was able to visit the Site and allegedly able to observe a pile of wood waste burning/smoldering at the time of the visit. (*See* DEP Ex. 7, 9, 10).

Therefore, based on the documents produced, the Board finds that the Department has produced sufficient evidence to create a *prima facie* case that wood waste is burned at the Site to reduce the volume of residual waste from the sawmill without a permit, in violation of the Solid

Waste Management Act.

Conclusion

For the reasons stated above, we deny Appellants' Motion for Summary Judgment. Accordingly, we issue the Order that follows.

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

JOHN E. YODER AND LAURA D. YODER	:	
v.	:	**EHB Docket No. 2024-097-BP**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	

O R D E R

AND NOW, this 8th day of August, 2025, it is hereby **ordered** that Appellants John E. Yoder and Laura D. Yoder's Motion for Summary Judgment is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Paul J. Bruder, Jr.
PAUL J. BRUDER, JR.
Judge

DATED: August 8, 2025

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

For the Commonwealth of PA, DEP:
Robert Cronin, Esquire
Geoffrey Ayers, Esquire
(via electronic filing system)

For Appellant:
Kurt D. Mitchell, Esquire
(via electronic filing system)