



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

BARR FARMS, LLC and JESSE JONES,	:	
JONES MANURE HAULING, LLP, and	:	
JONES FAMILY FARMS	:	
	:	
v.	:	EHB Docket No. 2023-034-B
	:	(Consolidated with 2023-035-B,
COMMONWEALTH OF PENNSYLVANIA,	:	2024-119-B, and 2024-121-B)
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION, and THOMAS CLOPPER,	:	Issued: July 15, 2025
ET AL., Intervenors	:	

**OPINION AND ORDER ON
INTERVENORS' MOTION IN LIMINE**

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

The Board denies a motion in limine to preclude the expert report and testimony of an expert witness for the appellant where the expert will assist the Board in understanding the evidence in the case.

Background

This matter involves the consolidated appeals of Jesse Jones, Jones Manure Hauling, LLP, and Jones Family Farm (collectively, “Jones”) and Barr Farms, LLC (“Barr Farms”) of the Department of Environmental Protection’s (“Department’s”) issuance of a Water Supply Notification and Administrative Order. Jones’ operations that are relevant to this matter involve the transport of Food Processing Residuals (“FPR”) to Pennsylvania farms where they are stored and eventually applied as fertilizer. On June 30, 2021, Jones transported FPR via a tanker truck to Barr Farms where a release of FPR occurred due to a torn hose. In August 2021 and September 2021, the Department received complaints about contaminated well water from residents located

in the area of Barr Farms. The Department investigated the complaints and concluded the June 2021 FPR release at Barr Farms caused the contamination of the surrounding wells.

On March 22, 2023, the Department issued a Water Supply Replacement Notification (“2023 Notification”) to Jones and Barr Farms requiring them to provide a temporary water supply to the impacted residents and to restore or replace the impacted water supplies within 90 days. On August 12, 2024, the Department issued an Administrative Order (“2024 Order”) to Jones and Barr Farms for their failure to comply with the 2023 Notification directives. The 2024 Order directed Jones and Barr Farms to pay the costs for temporary and permanent water supplies and to replace the water supplies. Both Jones and Barr Farms timely appealed the 2023 Notification and the 2024 Order. The Board consolidated the appeals of the 2023 Notification and 2024 Order and also granted intervention to Thomas Clopper, Lori Clopper, Anthony Grove, Stacie Grove, Brad Kershner and Kayla Kershner (collectively, the “Residents”), the impacted residents, allowing them to participate in the consolidated appeals. The consolidated appeals of Jones and Barr Farms challenge the Department’s issuance of the 2023 Notification and the 2024 Order.

The hearing on the merits in this matter is scheduled to begin on July 28, 2025. The parties have filed their prehearing memoranda. Jones states in their prehearing memorandum that they intend to call Patrick Crawford, P.G. to offer testimony “consistent with his Expert Report.” (Jones’ Prehearing Memorandum at 9.) The Residents have now filed a Motion in Limine (the “Motion”) asking us to preclude Mr. Crawford from testifying and to preclude his expert report.¹

¹ The expert report is signed by two individuals: Ryan B. Beebe and Mr. Crawford. The Residents’ Motion more specifically requests us to preclude both individuals from testifying. However, Jones’ prehearing memo does not list Mr. Beebe as an expert witness they intend to call. To the extent Mr. Beebe is called as an expert witness, our ruling in this matter would permit him to be called but the failure to list him in a prehearing memo would allow the Residents to raise that issue challenging his ability to testify.

A copy of the expert report dated November 14, 2024, is attached to the Motion as Exhibit A. (“Report”).

The purpose of a motion in limine is to provide the Board with an opportunity to consider potentially prejudicial evidence and rule on the admissibility of such evidence before it is referenced or offered at trial. *Liberty Twp. v. DEP*, 2023 EHB 92, 92-93 (citing *Penn Twp. Mun. Auth. v. DEP*, 2021 EHB 72, 73; *Kiskadden v. DEP*, 2014 EHB 634, 635). See also 25 Pa. Code § 1021.121 (“A party may obtain a ruling on evidentiary issues by filing a motion in limine.”). The Board generally only accepts expert testimony if the testimony will assist us in understanding the evidence or determining a fact in issue. Pa.R.E. 702. “[T]he first question we must ask ourselves when presented with a proffer of expert testimony is whether the expert's specialized knowledge will aid us in understanding the evidence or determining a fact in issue.” *Rhodes v. DEP*, 2009 EHB 237, 239.

The Residents assert that we should exclude the Report² proffered by Jones³. They take issue with the Report’s statement that “[p]erformance of additional testing and sampling on and off the Barr Farms property is the only way to confirm the origin of the contamination found in the offsite residential wells.” (Motion at 2-3, citing the Report at Sec. 7.1). They assert that Mr. Crawford did not perform additional testing and sampling in order to determine the contamination

² The Judge presiding over this case as a rule does not admit full expert reports as exhibits in cases he is hearing. Parties may seek to admit portions of their expert reports in conjunction with supportive testimony from their experts who have been admitted at the hearing after any objections to their testimony have been addressed. Therefore, we read the Residents’ Motion as seeking a ruling that no portion of the expert report may be presented at the upcoming hearing.

³ We note that in its prehearing memorandum Barr Farms also listed Mr. Crawford as an expert witness and the Report as an exhibit. (Barr Farms’ Prehearing Memorandum, Dkt. No. 46, at 10, 13). Because we deny the Motion as filed, we do not need to decide whether the failure to file a motion in limine challenging the listing of Mr. Crawford and the Report in Barr Farms’ prehearing memorandum would provide an alternative basis for allowing testimony from Mr. Crawford and potential admission of portions of the Report.

source. The Residents argue that the Report fails to offer any opinion as to the source of the contamination of their wells and that it “offers no additional information, offers nothing to assist the trier of fact to determine facts at issue [...], and applies no methodology to reach a conclusion as to the contamination of the Intervenor’s water on their properties.” (Motion at 2). They summarize their arguments by stating that the expert testimony should be precluded “due to the failure to offer any expert opinion within their report and concurrent failure to offer any opinion based on specialized knowledge to assist in determining a fact in issue – instead, merely identifying facts purportedly at issue.” (Motion at 3). We disagree with the Intervenor’s characterization of the Report and hold that there is no basis for excluding it or Mr. Crawford’s testimony at this point in the proceeding.

The Residents’ arguments about the Report are not well founded. In making their argument, the Residents appear to dismiss certain language in the Report while focusing on some sections while ignoring other parts of it. For instance, the Residents question Mr. Crawford’s methodology. The Report states that Mr. Crawford’s review included a review of the location, geography, geology, and history of where the release took place, review of the Department’s 2024 Order and its manual pertaining to FPR management, sampling of FPR holding tanks, reviewing lab results of the FPR and well samples, reviewing the report of Department staffer Timothy Long, taking measurements of groundwater elevations from water wells, and a review of the legal depositions in this matter. (Report at 1). In matters in front of the Board, this is the type of information and method of review that is typically conducted by an expert as the basis for an expert report. The Residents may want to cross-examine Mr. Crawford about what he did and did not do to investigate the situation, but it does not provide a reason for excluding Mr. Crawford’s testimony.

The Residents also argue that Jones' experts took "no steps to perform any additional analysis, geologic analysis, well video observation testing or sampling of the affected sites." (Motion at 3). According to the Report, on November 8, 2023, Crawford personnel conducted a site visit at the Barr Farms property to collect samples from the tanks and to observe and photograph the area of the FPR spill. The samples collected from the tanks were analyzed and compared to the samples previously collected by the Department and Groundwater Sciences. A second site visit was conducted by Crawford personnel on August 24, 2024, for the stated purpose of measuring the water table elevations in supply wells located on Barr Farms. This information was used to construct a potentiometric surface map to analyze groundwater flow direction. (Report at 7-9). Clearly, this work by Mr. Crawford belies the Residents' claim that Jones' experts had no scientific methodology nor performed any additional analysis, etc. To the extent that the Residents' arguments are that other types of testing or analysis should have been conducted, or that the work by Mr. Crawford was limited to the Barr Farms site and did not involve new sampling or new analysis of the Residents' wells, those arguments are not persuasive. Again, those may be points worth raising on cross-examination but hardly support excluding Mr. Crawford's expert testimony through a motion in limine.

The Residents' main argument that Mr. Crawford offers no opinions in the Report is simply not supported by a reading of the Report. At two points in the Report, Mr. Crawford specifically uses the term "Crawford's opinion" to offer an opinion based on his review of the situation and the information gathered during the site visits and sampling analysis. (Report at 6, "In Crawford's opinion, the decrease in well volume [...]") and Report at 15, "It is Crawford's opinion that PADEP made conclusions that [...]") Other text in the Report clearly constitutes opinions even though that terminology is not directly used. Those opinions include criticism or rebuttal of the

Department's expert report. The Report and its language are consistent with the type of expert rebuttal report that the Board receives and admits in many cases. The Residents argue that Mr. Crawford only sets forth additional work that he believes should have been conducted but was ultimately lacking from the Department's investigation and that this does not qualify as expert testimony. An expert report that offers an opinion in the form of a rebuttal to an opposing parties' expert does not make it any less of an expert opinion. Rebuttal testimony and evidence is not outside the purview and character of expert testimony as the Residents argue. Finally, the Residents assert that any statements or "opinions" should be disregarded because the Report never indicates that they were made "within a reasonable degree of scientific certainty." (Motion at 2). While using that language is certainly helpful, we have repeatedly stated that using those specific words is not a pre-requisite to including an expert opinion in the record. See *High v. DEP*, 2023 EHB 331, 335 ("the absence of "magic words" like "reasonable degree of scientific certainty" or "reasonable degree of certainty" does not necessarily discount or reduce the weight of [the expert's] testimony."); *Blythe Township and FKV, LLC v. DEP and Borough of St. Clair*, 2011 EHB 433, 435 ("there is actually no absolute requirement that the phrase "reasonable degree of scientific certainty" be used at the hearing, let alone in an expert report, so long as the testimony, when taken in context and a whole, reflects the requisite level of confidence."); *City of Harrisburg v. DER, and Pennsylvania Fish and Boat Commission*, 1996 EHB 709, 715 (an expert's failure to recite the words "to a reasonable degree of scientific certainty" does not render his testimony inadmissible so long as his testimony is expressed with reasonable certainty.").

Based on our review of the Report and the Residents' challenges to it, we conclude that Mr. Crawford's testimony will assist the Board in understanding the evidence in this matter. The fundamental issue in this case is one of causation. The Department and the Residents contend that

the FPR spill caused the contamination of the Residents' wells. In support of this position, the Department and the Residents each offer their own expert witness and expert report. Mr. Crawford and his Report challenge the Department's conclusion about causation. The Report includes additional observations and data and raises alleged shortcomings with the Department's investigation. We believe that the testimony from all of the parties' experts, including Mr. Crawford, will allow the Board to fully evaluate the issue of causation and determine whether the Department's conclusion in this case is adequately supported by the facts. For that reason and the others set forth above, the Motion is denied.

Accordingly, we issue the following Order:



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

**BARR FARMS, LLC and JESSE JONES,
JONES MANURE HAULING, LLP, and
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**COMMONWEALTH OF PENNSYLVANIA,
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ORDER

AND NOW, this 15th day of July, 2025, the Intervenor's Motion in Limine is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman

STEVEN C. BECKMAN

Chief Judge and Chairperson

DATED: July 15, 2025

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