



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



PA WASTE, LLC

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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EHB Docket No. 2024-134-L

Issued: June 26, 2025

**OPINION AND ORDER ON
MOTION FOR SUMMARY JUDGMENT**

By Bernard A. Labuskes, Jr., Board Member and Judge

Synopsis

The Board denies an appellant’s motion for summary judgment where the appellant has not shown that the Department erred in denying the appellant’s permit application for the construction and operation of a municipal waste landfill.

OPINION

PA Waste, LLC has appealed a letter dated September 4, 2024 issued by the Department of Environmental Protection (the “Department”) that denied PA Waste’s application for the construction and operation of a new municipal solid waste landfill on property located in Boggs Township, Clearfield County. The Department’s denial is premised on the Department’s position that PA Waste did not demonstrate compliance with the municipal waste regulation at 25 Pa. Code § 271.123 requiring permit applicants to show through appropriate documentation that they have the legal right to enter and operate a landfill on the property that makes up the permit area. The Department stated that there was an unresolved property dispute with a neighboring landowner, Camp Rattlesnake, regarding an access road across PA Waste’s proposed permit area.

PA Waste has spent years trying to permit and develop its proposed landfill. *See PA Waste, LLC v. DEP*, 2010 EHB 874. This appeal concerns the same issue that was raised in an appeal filed by Camp Rattlesnake of a permit the Department previously issued to PA Waste in 2020 (EHB Docket No. 2020-018-L). In that appeal, Camp Rattlesnake said it had a four-acre property located on the western boundary of the proposed landfill site and PA Waste's permit application had not acknowledged the right-of-way Camp Rattlesnake said it held for a road that crossed PA Waste's property and provided access to Camp Rattlesnake. Camp Rattlesnake's deed, which is dated December 27, 1995, was included with PA Waste's permit application. The deed is between Al Hamilton Contracting Company, Grantor, and Camp Rattlesnake, in care of Eugene Lender, Grantee, and it grants to Camp Rattlesnake a four-acre parcel of land. Importantly for our current purposes, the deed also contains the following provision addressing an access road to Camp Rattlesnake:

Also granted to the GRANTEE is the right to use the current existing access road from Pennsylvania Route 153 to the property hereby conveyed. The GRANTEE shall in no way interfere with the GRANTOR's right to use the said road.

(PA Waste Ex. 5.)

We denied a motion for summary judgment filed by PA Waste asserting that it had supplied all the necessary documentation to the Department regarding maps and property interests required by the regulations. *Camp Rattlesnake v. DEP*, 2020 EHB 375. We identified the apparent property dispute with Camp Rattlesnake and noted Camp Rattlesnake's contention that development of the landfill would mean Camp Rattlesnake would lose its ability to use the access road. We found that PA Waste had not accounted for the access road in its maps and plans. Camp Rattlesnake later withdrew its appeal without a decision on the merits from the Board. In a separate appeal we vacated PA Waste's permit and remanded it back to the Department for further consideration.

Clearfield County v. DEP, 2021 EHB 144, *aff'd*, *Dep't of Env't Prot. v. Clearfield County*, 283 A.3d 1275 (Pa. Cmwlth. 2022).

During the remand, the Department and PA Waste went back and forth on the Camp Rattlesnake property dispute. On November 30, 2022, the Department issued a deficiency letter to PA Waste, which, *inter alia*, sought information to address the Camp Rattlesnake issue. (PA Waste Ex. 10.) PA Waste responded on May 1, 2023 and submitted a supplemental response on July 26, 2023. (PA Waste Ex. 11, 12.) A map attached to PA Waste's July 2023 submission shows the existing access road to Camp Rattlesnake running across PA Waste's proposed waste disposal area. (PA Waste Ex. 12 (at Ex. 3).) The map also shows an alternative access road PA Waste proposed that would generally run along the eastern and northern edges of the disposal area. On August 11, 2023, the Department sent a letter to PA Waste noting that Camp Rattlesnake's purported access road went through PA Waste's proposed disposal area, and stating that the Department did not consider PA Waste's submissions to have resolved the issue. (PA Waste Ex. 13.)

Having apparently heard nothing further from PA Waste, the Department issued another letter on June 14, 2024 requesting information from PA Waste addressing the Camp Rattlesnake dispute and giving PA Waste 30 business days to respond. (PA Waste Ex. 14.) PA Waste then sent a letter to the Department on July 26, 2024 saying that it was attempting to resolve the property dispute with Camp Rattlesnake by having initiated legal action against Camp Rattlesnake in the Court of Common Pleas of Clearfield County. (PA Waste Ex. 15.) PA Waste asked that the Department hold off any decision on the permit application until the litigation was resolved. The Department waited another month and then issued the denial letter that is the subject of this appeal. The Department justified its denial by explaining that Camp Rattlesnake raised a legitimate dispute

regarding PA Waste's property rights, which, if upheld, would preclude PA Waste from constructing and operating the proposed landfill, and therefore, PA Waste had been unable to demonstrate a clear property right to engage in the activities for which it seeks a permit, as required by 25 Pa. Code § 271.123. (PA Waste Ex. 16.) This appeal followed.¹

PA Waste has now moved for summary judgment, arguing that it has satisfied the requirements of 25 Pa. Code § 271.123. PA Waste contends that it has provided all the documentation needed to satisfy the requirements of the regulation. Alternatively, it argues that the Department erred in denying the application instead of waiting for the property issue to play itself out. The Department opposes the motion.² For the reasons explained below, we deny PA Waste's motion.

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*, EHB Docket No. 2023-034-B, slip op. at 2-3 (Opinion and Order on Motion for Summary Judgment issued Apr. 4, 2025). 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

¹ Camp Rattlesnake has not sought to intervene or otherwise participate in this appeal.

² On May 13, 2025, the Department belatedly filed a motion for leave to include within its response a cross-motion for summary judgment. PA Waste filed a response in opposition to the Department's motion. We denied the motion.

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.

At the crux of PA Waste's motion and the Department's denial of PA Waste's permit application is the regulatory right of entry provision for municipal solid waste landfills at 25 Pa. Code § 271.123. That regulation provides in relevant part as follows:

(a) An application shall contain a description of the documents upon which the applicant bases the legal right to enter and operate a municipal waste processing or disposal facility within the proposed permit area. The application shall also state whether that right is the subject of pending litigation.

(b) The application shall provide one of the following for lands within the permit area:

(1) A copy of the written consent to the applicant by the current landowner to operate a municipal waste processing or disposal facility.

(2) A copy of the document of conveyance that expressly grants or reserves the applicant the right to operate a municipal waste processing or disposal facility and an abstract of title relating the documents to the current landowner.

25 Pa. Code § 271.123(a)-(b).

"PA Waste argues that section 271.123 requires a straightforward demonstration that the applicant has the right to enter and operate within the permitted area." (PA Waste Reply Brief at 1.) We completely agree. However, PA Waste has yet to make that demonstration in this case. Camp Rattlesnake's access road goes right through PA Waste's proposed waste disposal area. Camp Rattlesnake's deed providing for the use of an access road predates by more than a decade the conveyance of title to PA Waste in 2006. PA Waste does not clearly say what would happen to the road once PA Waste begins construction of the landfill, but the fact that PA Waste has proposed constructing an alternative route to Camp Rattlesnake that circumvents the disposal area suggests that PA Waste's construction would eliminate the existing access road. From what we can tell, PA Waste has not provided any assurance to the contrary.

There is pending litigation in the Court of Common Pleas of Clearfield County, a quiet title action initiated by PA Waste against Camp Rattlesnake. (DEP Ex. 2.) The fact that PA Waste apparently could not resolve the issue regarding its right to enter and operate at the property without resorting to litigation by way of a quiet title action reinforces the rather obvious conclusion that it has yet to make a “straightforward demonstration” that it has the right to obliterate Camp Rattlesnake’s access road.

The question still remains whether the Department, in exercising its discretion, should have taken some action other than denying the permit application. PA Waste says that, rather than denying the permit outright, the Department should have awaited the resolution of the quiet title action. The Department, for its part, provides little in response to this argument, perhaps intimating that it has waited long enough and the application cannot be allowed to sit indefinitely. There is certainly precedent for the notion that a permit application that has festered for years at some point should be denied as stale, necessitating a new application based on fresh information. *New Hanover Twp. v. DEP*, 2020 EHB 124, *aff’d*, *Gibraltar Rock, Inc. v. Dep’t of Env’t Prot.*, 316 A.3d 668 (Pa. Cmwlth. 2024); *New Hanover Twp. v. DEP*, 2014 EHB 834.

We dealt with an analogous situation in *Tri-County Landfill, Inc. v. DEP*, 2015 EHB 324. There, we considered a motion for summary judgment filed by intervenors aligned with the Department, asserting that the Department acted reasonably in denying a landfill’s permit application in light of a zoning conflict that limited the height of the proposed 140-foot landfill to 40 feet. The landfill argued that, instead of the Department denying the permit application, the landfill should have been given a chance to modify its permit application to comply with the height restriction, or the Department could have issued the permit with an appropriate condition. We recognized that, like a property dispute, once a potential zoning conflict is identified, the

Department must decide what to do about it. We found that the Department had options in the face of a zoning conflict: “It may be appropriate in some cases to deny the permit, but it might be appropriate in other cases to suspend review of the permit, as was previously done with respect to this project....It may be appropriate under other circumstances to issue the permit with conditions.” *Id.* at 331. We held that a conditioned permit would not have been appropriate since the zoning issue was resolved and there was no dispute that the landfill could not be constructed as it was then designed. Nevertheless, we were not convinced that the Department was required to deny the permit. We denied the motion for summary judgment because “once we enter the world of reviewing the Department’s *discretion*, we tend to exit the world where summary judgment is appropriate.” *Id.* at 333 (emphasis in original).

The same is true here. In light of the lingering property issue, whether the Department acted appropriately in declining to wait any further for PA Waste to resolve the dispute is a matter of the Department’s discretion, which, at least for now, goes beyond the appropriate scope of a summary judgment motion.

Accordingly, we issue the Order that follows.



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ORDER

AND NOW, this 26th day of June, 2025, it is hereby ordered that PA Waste, LLC's motion for summary judgment is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.

BERNARD A. LABUSKES, JR.
Board Member and Judge

DATED: June 26, 2025

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