



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

FRIENDS OF LACKAWANNA, Appellant	:	
and SIERRA CLUB, Intervenor	:	
	:	
v.	:	EHB Docket No. 2021-066-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and KEYSTONE SANITARY	:	Issued: January 9, 2024
LANDFILL, INC., Permittee	:	

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

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

Synopsis

The Board denies a permittee’s motion for partial summary judgment asserting collateral estoppel where the appellant makes clear in its response to the motion that it is not attempting to relitigate issues from an earlier appeal, notwithstanding its expert report that might have suggested otherwise. The motion is also denied with respect to the permittee’s arguments on issues upon which the Board has already ruled.

OPINION

Friends of Lackawanna (“FOL”) has appealed the Department of Environmental Protection’s (the “Department’s”) issuance of a major modification to Keystone Sanitary Landfill, Inc.’s (“Keystone’s”) solid waste disposal permit (Permit No. 101247) for its municipal waste landfill located in the boroughs of Dunmore and Throop, Lackawanna County. The major permit modification authorizes Keystone’s Phase III vertical expansion at the landfill. The Sierra Club has intervened in FOL’s appeal. The hearing on the merits in this appeal is scheduled to begin on April 22, 2024.

FOL previously appealed from the renewal of Keystone’s solid waste management permit (“Renewal Appeal”). See *Friends of Lackawanna v. DEP*, EHB Docket No. 2015-063-L. In the Renewal Appeal, FOL challenged, among other things, Keystone’s characterization of the geologic and hydrogeologic setting of the landfill property and the adequacy of the monitoring well network at the landfill. The Board, following 18 days of hearing, replete with extensive expert testimony, for the most part rejected those challenges. See *Friends of Lackawanna v. DEP*, 2017 EHB 1123, 1170. The exception was groundwater degradation being detected in a monitoring well designated as MW-15. We insisted that Keystone prepare a groundwater assessment of the groundwater degradation that was being detected in MW-15, and we revised the permit to contain a condition to that effect. *Id.* at 1193-94.

FOL’s notice of appeal of the Phase III permit once again asserts that Keystone “has inaccurately or insufficiently characterized the aquifer system on site.” (Appeal at ¶ 57.) FOL, in support of that contention, has served an expert report by Thomas Gillespie, P.G., wherein Mr. Gillespie has offered some rather broad opinions regarding the conceptualization of the hydrogeologic conditions below the Keystone Landfill site. Keystone complains that it should not be required to relitigate the characterization of the hydrogeologic setting of the landfill site and the adequacy of its monitoring well network. It has filed a motion for partial summary judgment asking the Board to hold that FOL is collaterally estopped from relitigating those issues. The Department has filed a memorandum in support of Keystone’s motion on this issue.

It would appear that Keystone’s concern is unwarranted. In its response to the motion, FOL says no less than 11 times that, in this appeal, it is only focused on the “nature and condition of groundwater in and around MW-15.” Notwithstanding the rather broad language in FOL’s expert report, FOL only intends to focus on the area in and around MW-15. FOL is now bound

by this self-imposed limitation in the presentation of its case at the merits hearing. Keystone concedes in its reply brief that the groundwater issue in the area of MW-15 is fair game. Accordingly, there is no need to address any further Keystone’s collateral estoppel argument.

Keystone next argues that it is entitled to summary judgment because FOL and the Sierra Club, as corporate entities, lack standing to assert claims under Article I, Section 27 of the Pennsylvania Constitution, PA. CONST. art I, § 27. Keystone says in its reply brief that it is not attempting to relitigate the facts related to the standing issue; it merely wishes to re-raise the legal issue. (Reply Brief at 6.) Keystone recognizes that we have already rejected this argument in the Renewal Appeal and other cases, but it seeks to “preserve its rights.” We decline the invitation to revisit the issue here. This issue is preserved.

Next, again in an effort to preserve its rights and/or convince the Board to overrule its previous jurisprudence on Article I, Section 27 more generally, Keystone seeks a ruling on summary judgment that FOL’s and the Sierra Club’s claims that the issuance of the permit violates that constitutional provision must be rejected as a matter of law for a panoply of reasons (e.g. the issuance of the permit is not a state action, the provision is not self-executing, the provision does not go beyond the environmental protection statutes, the Commonwealth’s trustee obligations do not apply to the private use of private property). It does not appear that Keystone is arguing anything new that has not already been addressed by the prior case law of this Board and the appellate courts. We decline the invitation to revisit any of those issues here.

Accordingly, we issue the Order that follows.



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ORDER

AND NOW, this 9th day of January, 2024, it is hereby ordered that Keystone’s motion for partial summary judgment is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.

BERNARD A. LABUSKES, JR.
Board Member and Judge

DATED: January 9, 2024

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