COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

LIBERTY TOWNSHIP and CEASRA, INC.	:	
	:	
v.	:	**EHB Docket No. 2023-036-L**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and TRI-COUNTY LANDFILL, Permittee	:	**Issued: April 5, 2024**

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

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

Synopsis

The Board denies a motion for summary judgment filed by appellants and a motion for partial summary judgment filed by a permittee in a third-party appeal of an NPDES permit for discharges associated with the construction and operation of a landfill. The appellants have not shown on the basis of the summary judgment record that their claims are entitled to summary judgment. The permittee has not shown that the appellants cannot possibly succeed on claims related to two of the permitted outfalls.

O P I N I O N

Liberty Township and CEASRA, Inc. (the "Appellants") have appealed the Department of Environmental Protection's (the "Department's") issuance of NPDES Permit No. PA0263664 to Tri-County Landfill, Inc. ("Tri-County") authorizing discharges from Tri-County's municipal waste landfill to an unnamed tributary to Black Run in Liberty Township, Mercer County. The NPDES permit authorizes three discharges, two of which involve the discharge of stormwater runoff from the construction of landfill cells and earthen berms from a sedimentation basin

(Outfalls 004 and 005), and the other a discharge of treated wastewater from a future treatment plant (Outfall 006) that will treat landfill leachate, wastewater from Tri-County's waste transfer station, truck wash, any contaminated stormwater runoff, and sanitary wastewater. Tri-County has not yet obtained a water quality management (Part II) permit for the construction of the treatment plant.

The Tri-County landfill previously operated from approximately 1950 to 1990 but has been dormant ever since. In December 2020, the Department issued to Tri-County a major modification to Tri-County's solid waste management permit authorizing the municipal waste landfill to once again accept waste and to operate on an approximately 99-acre area. The same Appellants in this appeal filed an appeal of the major modification of the solid waste permit. On January 8, 2024, we issued an Adjudication dismissing the Appellants' appeal. *Liberty Twp. v. DEP*, EHB Docket No. 2021-007-L (Adjudication, Jan. 8, 2024). The Appellants have appealed our Adjudication to the Commonwealth Court. *See* Cmwlth. Ct. Docket No. 107 C.D. 2024.

In this appeal, the Appellants have filed a motion for summary judgment and Tri-County has filed a motion for partial summary judgment. The Appellants argue that the NPDES permit should be rescinded for a variety reasons, including because, according to the Appellants, the Department lacked the authority to issue the permit, the permit authorizes discharges to an impaired waterbody, the discharges will harm threatened or endangered species, Tri-County's compliance history should have precluded the issuance of the permit, and the public notice of the permit issuance was incorrect. The Appellants also argue that the issuance of the permit was contrary to Article I, Section 27 of the Pennsylvania Constitution and violated the Appellants' right to equal protection.

Tri-County's motion for partial summary judgment is narrower. Tri-County seeks summary judgment with respect to the effluent limitations, monitoring requirements, and benchmark values contained in the permit with respect to Outfalls 004 and 005 authorizing the discharge of stormwater runoff. Tri-County argues that the Appellants, who bear the burden of proof in this appeal, 25 Pa. Code § 1021.122(c)(2), have not produced any record evidence or expert opinion challenging the permit conditions with respect to Outfalls 004 and 005 to make out a *prima facie* case.

Tri-County opposes the Appellants' motion and the Appellants oppose Tri-County's motion. The Department has filed a letter stating that it "generally supports," whatever that means, the legal arguments contained in Tri-County's motion, and it has filed a response in opposition to the Appellants' motion. For the reasons explained below, we deny both motions.

Standard of Review

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. In evaluating whether summary judgment is appropriate, the Board views the record in the light most favorable to the non-moving party. *Stedge v. DEP*, 2015 EHB 31, 33. All doubts as to whether genuine issues of material fact remain must be resolved against the moving party. *Eighty Four Mining Co. v. DEP*, 2019 EHB 585, 587 (citing *Clean Air Council v. DEP*, 2013 EHB 404, 406). Summary judgment is also available:

> [I]f 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 which in a jury trial would require the issues to be submitted to a jury.

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. Summary judgment may only be granted in cases where the right to summary judgment is clear and free from doubt. *Amerikohl Mining Inc. v. DEP*, 2023 EHB 348, 352 (citing *Tri-Realty Co. v. DEP*, 2016 EHB 214, 217).

The Appellants' Motion for Summary Judgment

The Department's Authority to Issue the Permit

The Appellants first argue that the NPDES permit should be rescinded because they say the Department lacked the authority to issue the permit because the Department did not provide the permit application to the United States Environmental Protection Agency (EPA) for review. Although the Department has assumed primary authority over the administration of the NPDES program in Pennsylvania, the Appellants say that the Department is still required to provide certain NPDES permit applications to the EPA for review pursuant to a memorandum of agreement between the two agencies. (App. Ex. E.) While the EPA has waived its review of some types of NPDES permit applications, the memorandum of agreement referenced by the Appellants lists several types of NPDES permits whose applications, draft permits, and associated documentation the Department must provide to the EPA for review. (App. Ex. E.) Among those are "[i]ndividual NPDES permits for facilities that accept or are proposing to accept and treat oil and gas resource extraction wastewater." (*Id.* at 1.) The Appellants argue that, since Tri-County's solid waste management permit allows it to accept some amount of oil and gas waste, Tri-County will effectively be treating "oil and gas resource extraction wastewater" at its future landfill leachate treatment plant.

Both Tri-County and the Department argue in response that the Department is only required to submit to the EPA permit applications for facilities that propose to directly accept and treat oil and gas wastewater. In contrast, they say Tri-County is proposing to treat landfill leachate, truck wash water, sanitary wastewater, and stormwater associated with landfill operations. Although the landfill is permitted to accept some amount of oil and gas waste for disposal, they say the leachate treatment plant is not directly accepting that waste. Instead, the leachate treatment plant accepts leachate generated by all of the waste streams accepted by the landfill, which primarily consist of municipal waste. In short, the Department and Tri-County argue that the EPA does not review permit applications for the treatment of landfill leachate, regardless of whether that leachate may contain leachate generated from oil and gas waste.

The Department and Tri-County further point out that the Department communicated with the EPA about the permit following citizens contacting the EPA about the permit. The EPA directed those persons to the Department's own comment and response document that the Department prepared for the permit. (DEP Resp. Ex. 3; TCL Resp. Ex. 6.) The Department and Tri-County say if the EPA had any comments or concerns about the permit, it could have provided them to the Department.

Based on the record before us, we cannot conclude as a matter of law that the Department had an obligation to submit the permit application or any other documentation concerning the permit to the EPA. The Appellants assert that the Department admitted that the Department knew it was required to submit the permit application to the EPA and decided not to, but the deposition testimony cited by the Appellants simply does not support that claim. (App. Ex. F.) No party defines exactly what "oil and gas resource extraction wastewater" is. We have very little information on the circumstances under which the Department typically submits such NPDES

permit applications to the EPA and for what types of facilities. It does not appear on its face that Tri-County's leachate treatment plant is proposing to accept and treat oil and gas extraction wastewater. In any event, to the extent this issue presents a mixed question of fact and law, such issues are rarely if ever appropriate for summary judgment. *Ctr. for Coalfield Justice v. DEP*, 2016 EHB 341, 347.

Public Notice

The Appellants next argue that the public notice of the issuance of the NPDES permit published in the *Pennsylvania Bulletin* was deficient because the notice identified the wrong permittee: "Tri County Ind Inc." (or what the parties say is Tri-County Industries) instead of Tri-County Landfill, Inc. The Appellants ask that the permit be rescinded because of this error. There appears to be no dispute that the public notice was incorrect in terms of the right name for Tri-County. However, the Department and Tri-County assert that the discrepancy in the name at most amounts to harmless error.

The notice published in the *Pennsylvania Bulletin* identifies Tri-County's permit among a list of other NPDES permits issued and provides as follows:

Application Number	*Permit Type*	*Application Type*	*Applicant Name & Address*	*Municipality, County*	*DEP Office*
PA0263664	Minor Industrial Waste Facility with ELG Individual NPDES Permit	Issued	Tri County Ind Inc. 159 TCI Park Drive Grove City, PA 16127-4347	Liberty Township Mercer County	NWRO

(App. Ex. I; 53 Pa.B. 1740 (Mar. 25, 2023).)

The regulation governing the publication of notice of the Department's "final action" on an NPDES permit requires publication of notice in the *Pennsylvania Bulletin* but it does not specify exactly what needs to be contained in the notice:

> **§ 92a.86. Notice of issuance or final action on a permit.**
>
> Following the 30-day comment period described in § 92a.82(d) (relating to public notice of permit applications and draft permits), and any public hearing, on the permit application and draft permit, the Department will take action on the permit. Comments received during the comment period will be addressed and documented by the Department, and made available for public review. Final action will be published in the *Pennsylvania Bulletin*.

25 Pa. Code § 92a.86. This contrasts with the comparatively more detailed regulations providing the public notice requirements for permit applications, draft permits, and public hearings. *See* 25 Pa. Code §§ 92a.82 and 92a.83. *See also* 40 CFR § 124.10 (federal regulation addressing public notice for tentative denial of NPDES permit application, preparation of draft NPDES permit, and scheduling of public hearing, but not the issuance of NPDES permits).

When we encounter errors in a public notice, we have to decide what appropriate relief to provide, if any. For instance, in *Big Spring Watershed Association v. DEP*, 2015 EHB 100, we suspended and remanded a permit back to the Department where the Department failed to publish notice of a draft NPDES permit. There, we concluded that the appellant was deprived of its basic right to notice of the draft permit and to have an opportunity to comment on the draft permit, a crucial step in the permitting process. In contrast, in *Jake v. DEP*, 2014 EHB 38, we found it was harmless error when the published notice for a surface mining permit application contained an old address for the Conservation District office where the public could review the application. In *Jake*, the appellant had actual notice of the new Conservation District office address and there was no demonstration of a due process violation or actual harm to the appellant from the error. Accordingly, there is a spectrum of relief that is available for public notice errors. Permit rescission, as requested by the Appellants here, is not necessarily appropriate. *See, e.g.*, *Kleissler v. DEP*, 2002 EHB 737, 750-51 (opining that appropriate remedy could be to keep a permit in place but require the Department to readvertise the permit).

At least at this point, the situation here seems closer to *Jake* than to *Big Spring*. The Appellants have not explained how they or the public could have been materially affected by the slightly different name of Tri-County in the public notice. They have not shown that the error in Tri-County's name affected their rights or the rights of anyone else. The Appellants do not provide any evidence or affidavits showing that anyone was misled or confused by the reference to "Tri-County Ind Inc." instead of Tri-County Landfill. There are no other allegations of deficiency in the notice that would potentially mislead the public about what facility was being permitted and where. The notice provided the address of the Tri-County landfill along with the county and municipality. The notice also appears to correctly describe the permit that was issued. Further, the Appellants obviously appealed the permit, having filed their notice of appeal on March 31, 2023, six days after the date of publication in the *Pennsylvania Bulletin*. In fact, the Appellants acknowledge in their motion that they had actual notice on March 10, 2023 of the permit issuance. Under these circumstances, the Appellants have not justified on summary judgment their request that Tri-County's permit be rescinded as a consequence of the error in the public notice.[1]

Incomplete Permit Application

The Appellants assert that Tri-County submitted to the Department an incomplete and inaccurate permit application, which they say violates the regulation at 25 Pa. Code § 92a.36 prohibiting the Department from issuing an NPDES permit unless the permit application is complete and meets the requirements of Pennsylvania's NPDES regulations. The Appellants contend that Tri-County did not fully disclose what will be contained in the discharges authorized by its NPDES permit or how Tri-County will treat those discharges. The Appellants allege that

[1] The Appellants also argue that the Department's notice of the permit application and draft permit were incorrect because those notices indicated that the EPA waived its review of the permit. (App. Ex. H.) For the reasons discussed above, the Appellants have not shown that this was an error.

no one knows what is in the existing waste that was disposed of at the landfill decades ago when it was previously in operation, and therefore, there is no telling what the makeup will be of the leachate generated from that existing waste.[2] The Appellants also claim that the leachate generated from the new waste to be accepted by Tri-County will contain radioactive constituents due to Tri-County being permitted in its solid waste permit to accept some amount of oil and gas waste. They say these radioactive constituents will not be adequately treated before being discharged and they criticize the NPDES permit for not containing any effluent limits for radioactive parameters.

The Appellants' contentions rest on disputed material facts that preclude the entry of summary judgment. Tri-County strenuously denies that its application was in any way incomplete or did not meet regulatory requirements. Regarding the existing waste, Tri-County says it has conducted quarterly groundwater sampling of monitoring wells on site for years. The Department says that it developed the effluent limits in the permit based on Tri-County's groundwater sampling results as well as leachate samples from the Seneca Landfill, which is operated by a corporate entity related to Tri-County. Tri-County also pushes back on the criticism that the permit does not explain how any of the leachate will be treated. Tri-County points out that effluent limits are established in an NPDES permit, while treatment methods to meet those effluent limits are contained in a separate water quality management or Part II permit. *See City of Allentown v. DEP*, 2017 EHB 908, 917 n.3 (explaining difference between NPDES and water quality management permits); *University Area Joint Auth. v. DEP*, 2013 EHB 1, 1-2 (same).

The Appellants' claim that anything can be in the existing waste is clearly speculative. The Appellants have not shown that Tri-County's groundwater sampling was inadequate to develop the permit limits or shown with any other evidence that the permit has not been adequately

[2] Tri-County proposes as part of its solid waste permit to relocate existing waste onto newly lined portions of the landfill. *See Liberty Twp. v. DEP, supra*, slip op. at 71-80.

designed to address leachate generated from the existing waste. Nor have they established for purposes of summary judgment that Tri-County did not adequately disclose the nature of its discharges.

Regarding radioactive constituents, the NPDES permit includes quarterly grab sampling for radium-226 at Outfall 006. The Department says the permit also contains a grab sample requirement for radium-228, but the permit appears to only have a grab sample for radium-226 repeated twice. (DEP Resp. Ex. 7 at 7.) Tri-County says that there is no effluent limit or standard established by the EPA or Pennsylvania's Environmental Quality Board for any radioactive element applicable to landfills. The Appellants have not shown that the existing permit limits for radioactive elements are inadequate. Whether or not the permit should have specific effluent limits for radioactive elements, a different sampling frequency, or permit conditions that address additional or different radioactive elements are all issues that, like many of the other issues raised in the Appellants' motion, will require expert testimony and as such are ill-suited for resolution in the context of summary judgment.

Department's Evaluation of the Environmental Effects of the Permit

The Appellants contend that the Department did not properly evaluate the environmental effects of the NPDES permit before issuing it. This argument rests on claims in several areas: discharges to an impaired waterbody, alleged harm to threatened or endangered species, and Tri-County's compliance history.

Impaired Waters

The Appellants say that the permit authorizes a discharge into an impaired waterbody, the unnamed tributary (UNT) to Black Run, and that alone should warrant rescission of the permit. They also criticize the Department and Tri-County for not investigating the source of impairment

for what they claim is "virtually every waterbody surrounding the Landfill." (App. Brief at 11.) The Appellants' position is that it is *ipso facto* a violation of the law and Article I, Section 27 of the Pennsylvania Constitution to issue a permit that allows a discharge to a water of the Commonwealth that is impaired.

The Appellants do not provide any legal support for their absolutist position. Indeed, we would be surprised if the Appellants were able to cite to any legal authority for the proposition that the Department is hereinafter precluded from issuing any permits for discharges into any waters of the Commonwealth classified as impaired. More to the point of this case, the Appellants produce no support for their contention that it was unlawful or unreasonable to permit the specific discharges from Tri-County landfill to the specific receiving water of the UNT to Black Run. The Appellants do not show with any evidence that the effluent limitations imposed in Tri-County's permit will interfere with the uses of the UNT to Black Run or otherwise cause unlawful pollution or degradation of those waters.

The Appellants also say that the permit should be rescinded because the fact sheet accompanying the permit did not identify the existing uses of the UNT to Black Run for any of the outfalls covered by the permit. (App. Ex. G.) The Appellants assert that the Department cannot guarantee that existing uses will be maintained and protected if the uses have not been determined.

The regulations require that both designated and existing uses of surface waters shall be protected. 25 Pa. Code §§ 93.4a(b), 93.9(a), 96.3(a). For existing uses, the antidegradation regulations require that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected" for surface waters of the Commonwealth. 25 Pa. Code § 93.4a(b). The Department must make a determination of existing

use protection for a surface water as part of taking a final action or approval on a permit. 25 Pa. Code § 93.4c(a)(1). *See also Monroe Cnty. Clean Streams Coal. v. DEP*, 2018 EHB 798, 802-04.

The fact sheet accompanying the permit identifies a designated use for the UNT to Black Run as Cold Water Fishes, but the existing use for the stream is blank for all three outfalls. Nevertheless, the Department says it considered the existing uses of the stream when developing the effluent limits that are designed to protect the existing uses. (DEP Resp. Ex. 1 at ¶¶ 14, 15.) This is also reflected in another part of the fact sheet: "All proposed effluent limits and monitoring requirements mentioned in this fact sheet have been developed to ensure that existing instream water uses and the level of water quality necessary to protect the existing uses are maintained and protected." (App. Ex. G at 10.) Whether or not the Department made a determination of the existing uses of the UNT to Black Run during the permitting process is a disputed issue of material fact that must be resolved in favor of the non-moving parties and prevents the entry of summary judgment.

Threatened or Endangered Species

The Appellants allege that the permitted discharges will negatively impact endangered species. However, the Appellants do not provide support for this contention. Apart from merely identifying the potential presence of the Eastern Massasauga rattlesnake and two species of bats, the Appellants have not provided any evidence that the discharges authorized by the permit will or could harm any of these species. The Appellants do not explain how any impact will occur or quantify that impact or offer evidence of any causal link between the permitted discharges and an impact on threatened or endangered species. The Appellants appear to once again take the position that any discharge to a waterbody equals a negative impact on any endangered or threatened species in an unspecified area, but that is obviously not enough to prevail on this claim. In addition,

Tri-County in its response attaches what it says is a PNDI report for the landfill that indicates there is no anticipated impact to threatened, endangered, or special concern species and resources in a 309.10-acre project area that includes the landfill. At the very least this presents a disputed issue of fact precluding summary judgment.

Compliance History

The Clean Streams Law prohibits the Department from issuing any permit under the law if the Department finds that a permit applicant has failed and continues to fail to comply with any rule, regulation, permit, or order issued by the Department, or if an applicant has shown a lack of ability or intention to comply with the law as indicated by past or continuing violations. 35 P.S. § 691.609.

The Appellants argue that the Department should have denied the permit application because of the environmental compliance history of Tri-County and its related companies. They say that there were at least ten violations committed by Tri-County's related companies between the submission of Tri-County's NPDES permit application and the issuance of the permit. The Appellants do not clearly identify what these violations are in their papers. The Appellants refer to Exhibit R attached to their motion, which contains a variety of information across 85 pages that appears to be pulled from numerous websites. Among the pages are what the Department tells us are discharge monitoring reports for Tri-County's waste transfer station, which do not appear to show any violations. There are pages that appear to be pulled from the Department's eFacts website that show violations at Seneca Landfill from April 2023 and September 2023, which occurred after the permit was issued on March 10, 2023, and all are noted as having been corrected or abated. Another page purportedly showing violations at other companies all reflect that those violations have been "complied" or "appealed."

We are not sure what violations the Appellants allege should have prompted the Department to deny the permit. It is not the Board's responsibility to sift through the record to find support for a moving party's position. *Fisher v. DEP*, 2003 EHB 702, 712 (citing *Barkman v. DER*, 1993 EHB 738). The Department, for its part, says that it conducted a compliance audit prior to issuing the NPDES permit and found that none of Tri-County's related companies, nor Tri-County itself, had any outstanding violations as of March 6, 2023, shortly before the permit was issued. (DEP Resp. Ex. 4 at 6-7.)

In their reply brief, the Appellants appear to move on from the ten claimed violations and ask the Board to "revisit its analysis of Permittee's compliance history." (Reply Brief at 8.) The Appellants are presumably referring to the compliance history that we addressed in the context of the Solid Waste Management Act, 35 P.S. § 6018.503(c) and (d), during the Appellants' appeal of Tri-County's solid waste permit. In that case, we found that the compliance of Tri-County's related companies had dramatically improved since 2013 and we held that the Appellants had not showed that Tri-County could not be trusted with its solid waste permit or that there was any ongoing unlawful conduct. *Liberty Twp., supra*, slip op. at 93-100. To the extent the compliance inquiry under the Clean Streams Law and the Solid Waste Management Act are similar, the Appellants have not shown here why we should reach a different conclusion under the Clean Streams Law. The Appellants have not established on the summary judgment record that any compliance history issues should have prevented the Department from issuing the permit under Section 609 of the Clean Streams Law.

Article I, Section 27 of the Pennsylvania Constitution

The Appellants argue that in issuing the permit the Department failed to act in accordance with Article I, Section 27 of the Pennsylvania Constitution, which provides:

> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.

PA. CONST. art I, § 27. Our standard for assessing challenges premised on Article I, Section 27 is that

> [w]e first must determine whether the Department has considered the environmental effects of its action and whether the Department correctly determined that its action will not result in the unreasonable degradation, diminution, depletion or deterioration of the environment. Next, we must determine whether the Department has satisfied its trustee duties by acting with prudence, loyalty and impartiality with respect to the beneficiaries of the natural resources impacted by the Department decision.

Stocker v. DEP, 2022 EHB 351, 371 (quoting *Del. Riverkeeper Network v. DEP*, 2018 EHB 447, 493 (citing *Ctr. for Coalfield Justice v. DEP*, 2017 EHB 799, 858-59, 862; *Friends of Lackawanna v. DEP*, 2017 EHB 1123, 1163)).

As set forth above, the Appellants have not established on the existing record that the Department failed to consider the environmental effects of the NPDES permit. The Appellants have not shown based on the record that the permit is contrary to Article I, Section 27, allows an unreasonable degradation of resources, or that the Department did not satisfy its trustee duties in evaluating and issuing the permit. The Appellants again largely rest their argument on an assumption that the permit will allow degradation of an impaired waterbody when the Appellants have not shown that. The Appellants say the permit allows "essentially unlimited discharges of radioactive, toxic, and hazardous waste" but they have not produced evidence of that. The Appellants in their reply brief also suggest that the community surrounding the landfill is already overburdened by existing environmental issues, and that this must be taken into account under

Article I, Section 27, but the Appellants do not identify what those existing environmental issues are. None of this is enough to succeed on an Article I, Section 27 claim at summary judgment.

Equal Protection

The Appellants also raise an equal protection claim. The Appellants appear to argue that they are being denied equal protection of the environmental laws of the Commonwealth because the landfill is allowed to accept some amount of oil and gas waste and the Appellants believe any discharge authorized under the NPDES permit will contain radioactive elements that are harmful to employees of the landfill, residents of the community, and the environment. In their reply brief, the Appellants say things that they call the "Halliburton Loophole" and the "Bentsen Amendment" violate the guarantee of equal protection for people living near facilities that the Appellants claim are subject to these things. The Appellants do not explain this argument any further. Tri-County says that the Appellants' notice of appeal does not contain any objections related to an equal protection claim. To the extent this issue has not been waived, the Appellants have simply not presented the level of analysis in their motion necessary to succeed on an equal protection claim.

Tri-County's Motion for Partial Summary Judgment

Turning to Tri-County's motion, Tri-County argues that the Appellants have not produced enough evidence to make out a *prima facie* case with respect to any claim challenging the effluent limitations, monitoring requirements, or benchmark values established in the permit for Outfalls 004 and 005. In response, the Appellants do not clearly explain what evidence they have challenging the effluent limits, monitoring requirements, or benchmark values for Outfalls 004 and 005. However, the Appellants again point out that the fact sheet accompanying the permit does not contain an existing use listing for the UNT to Black Run, which includes the portions of the fact sheet addressing Outfalls 004 and 005. Both the Department and the fact sheet itself say

that the proposed effluent limits and monitoring requirements were developed to ensure that existing instream water uses and the level of water quality necessary to protect the existing uses are maintained and protected. As discussed above, the extent to which the Department considered the stream's existing uses is somewhat unclear at this point. Because the existing uses of the stream relate to the effluent limits, monitoring requirements, and benchmark values established for all outfalls, we cannot grant Tri-County's motion.

Accordingly, we issue the Order that follows.

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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v.	:	**EHB Docket No. 2023-036-L**
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O R D E R

AND NOW, this 5th day of April, 2024, it is hereby ordered that the Appellants' motion for summary judgment and Tri-County Landfill's motion for partial summary judgment are **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Bernard A. Labuskes, Jr.
BERNARD A. LABUSKES, JR.
Board Member and Judge

DATED: April 5, 2024

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