



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

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| <b>PROTECT PT</b>  | : |                                  |
|  | : |                                  |
| v.   | : | <b>EHB Docket No. 2024-092-W</b> |
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| <b>COMMONWEALTH OF PENNSYLVANIA,<br/>DEPARTMENT OF ENVIRONMENTAL<br/>PROTECTION and OLYMPUS ENERGY,<br/>LLC, Permittee</b> | : | <b>Issued: March 18, 2025</b>    |
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**OPINION AND ORDER ON OLYMPUS ENERGY LLC’S  
MOTION TO DISMISS APPEAL AS MOOT**

**By MaryAnne Wesdock, Judge**

**Synopsis**

Where the record contains insufficient information to find that an appeal is moot or fails to fall within an exception to the mootness doctrine, the permittee’s motion to dismiss is denied. The Board must exercise restraint in dismissing appeals as moot if the circumstances are not entirely free from doubt.

**OPINION**

**Background**

This matter involves an appeal filed with the Environmental Hearing Board (Board) by Protect PT challenging the approval of alternative waste management practices issued to Olympus Energy, LLC (Olympus) by the Department of Environmental Protection (Department) in connection with Olympus’ Aphrodite Well Site in Penn Township, Westmoreland County.

When an unconventional oil and gas well operator seeks to manage waste on a well site in a manner other than that provided for in the oil and gas regulations, the operator is required to submit a request to the Department outlining the alternative waste management practices it intends

to employ, along with a description of how those practices are equivalent to or superior to the protections outlined in the regulations. 25 Pa. Code § 78a.63a. According to documents submitted with the notice of appeal, Olympus sought approval pursuant to 25 Pa. Code § 78a.63a to utilize alternative waste management practices at its Aphrodite Well Site “for the physical and chemical processing of drill cuttings and for the beneficial use of drilling fluids.” (Notice of Appeal, Ex. A.) On March 18, 2024, the Department granted approval pursuant to Authorization ID No. 1477181 (Original Approval).<sup>1</sup> The Original Approval was to “terminate upon the cessation of operations associated with the completion of the final permitted well drilled on the Aphrodite Well Site that is associated with this approval.” *Id.* On or about March 24, 2024, Protect PT became aware of the Original Approval on the Department’s website and this appeal was filed on April 17, 2024. (Amended Notice of Appeal, EHB Docket No. 2024-092-W, at para. 2(d).)

On November 20, 2024, approximately eight months after the Original Approval had been issued, Olympus requested that the Department terminate the approval and authorize a different set of alternative waste management practices at the Aphrodite Well Site. The Department granted that approval one day later, on November 21, 2024, pursuant to Authorization ID No. 1507399 (New Approval).<sup>2</sup> On December 3, 2024, the Department terminated the Original Approval. Protect PT appealed the New Approval on December 23, 2024 at Docket No. 2024-185-W.

Presently before the Board is a motion to dismiss filed by Olympus asserting that the appeal of the Original Approval is moot. Olympus contends that because the Original Approval has been terminated there is no relief the Board can grant. The Department concurs in the relief requested

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<sup>1</sup> The waste management practices authorized by the Original Approval were previously approved for usage at Olympus’ Calliope Well Site. (Olympus Motion, at para. 2.)

<sup>2</sup> The waste management practices authorized by the New Approval were previously approved for usage at Olympus’ Metis Well Site. (Olympus Motion, at para. 4–5.)

in Olympus' motion. Protect PT filed a response opposing the motion, and Olympus filed a reply. This matter is now ripe for disposition.

### **Standard of Review**

A motion to dismiss is appropriate where a party objects to the Board hearing an appeal due to a lack of jurisdiction, an issue of justiciability, or another preliminary concern. *Heights Plaza Materials, Inc. v. DEP*, EHB Docket No. 2024-170-BP, *slip op.* at 3 (Opinion issued January 28, 2025); *Protect PT v. DEP*, 2023 EHB 191, 193; *Hopkins v. DEP*, 2022 EHB 143, 144. Because "mootness is a prudential limitation related to justiciability," it is properly resolved by a motion to dismiss. *Lancaster Against Pipelines v. DEP*, 2019 EHB 134, 135; *M & M Stone Co. v. DEP*, 2009 EHB 495, 500. The Board evaluates motions to dismiss in the light most favorable to the non-moving party and will only grant the motion when the moving party is clearly entitled to judgment as a matter of law. *Ongaco v. DEP*, 2023 EHB 239, 241; *Popovich v. DEP*, 2023 EHB 35, 36. For the purposes of resolving motions to dismiss, the Board accepts the non-moving party's version of factual events as true. *Clean Air Council v. DEP*, 2023 EHB 203, 206; *Downingtown Area Regional Authority v. DEP*, 2022 EHB 153, 155; *Pa. Fish and Boat Comm'n v. DEP*, 2019 EHB 740, 741. Motions to dismiss will be granted only when a matter is free from doubt. *Greyhound Aramingo Petroleum Co. v. DEP*, 2022 EHB 96, 98; *Bartholomew v. DEP*, 2020 EHB 19, 21.

### **Mootness**

A matter before the Board becomes moot when an event occurs that deprives the Board of the ability to provide effective relief or when the appellant has been deprived of a stake in the outcome. *Citizens for Pennsylvania's Future v. DEP*, 2024 EHB 624, 626 (quoting *Protect PT v. DEP*, 2024 EHB 154, 157); *Scott v. DEP*, 2023 EHB 138, 140 (quoting *Horsehead Resource Development Co. v. DEP*, 1998 EHB 1101, 1103, *aff'd*, 780 A.2d 856 (Pa. Cmwlth. 2001)). There

are exceptions to mootness, including where the action complained of is capable of repetition but likely to evade review, where issues of great public importance are involved, or where a party will suffer a detriment without a decision by the Board. *Citizens for Pennsylvania's Future*, 2024 EHB at 626 (quoting *Protect PT*, 2024 EHB at 157); *Lawson v. DEP*, 2018 EHB 513, 515; *Consol Pennsylvania Coal Co. LLC v. DEP*, 2015 EHB 48, 56. The existence of any of these circumstances may justify the Board retaining jurisdiction of the matter. *Consol Pennsylvania Coal Co. LLC v. DEP*, 2019 EHB 146, 148.

In its motion, Olympus asserts that Protect PT's appeal of the Original Approval is moot because the approval is no longer in effect. According to the affidavit of Olympus' Environmental Compliance Manager, Laura Karosic, included with the motion, the Department terminated the Original Approval on December 3, 2024. (Olympus Motion, Ex. 1 at para. 11.) Because the approval is terminated, Olympus argues there is no meaningful relief that the Board can grant. Olympus also argues that no exceptions to mootness apply. It disputes that this matter falls within the "capable of repetition yet evading review" exception because Protect PT has had the opportunity to appeal the New Approval. Likewise, it disputes that this appeal falls within the second exception to the mootness doctrine, i.e., involving matters of great public importance, because it believes that any such matters can be addressed in the appeal of the New Approval. Finally, Olympus argues that Protect PT will suffer no detriment if the appeal is dismissed, again because it has a full opportunity to challenge the New Approval.

Protect PT acknowledges that, at first glance, Olympus' arguments "seem compelling and suggest that the proper course of action would be to grant the Motion and dismiss this case." (Appellant Memorandum in Support of Response, p. 11.) However, it urges us to take a deeper

examination of the record which it contends supports its argument that this case should be allowed to proceed under exceptions to the mootness doctrine.

It is important to note that “[m]ootness does not deprive the Board of jurisdiction; rather, where an appeal is moot the Board has the authority based upon its own measure of prudence to proceed.” *Sludge Free UMBT v. DEP*, 2015 EHB 888, 891 (citing *Ehmann v. DEP*, 2008 EHB 386, 390). Moreover, the Board must “exercise restraint in dismissing appeals as moot if the circumstance is not entirely free from doubt.” *Citizens for Pennsylvania’s Future*, 2024 EHB at 627 (quoting *Protect PT*, 2024 EHB at 162).<sup>3</sup> In this instance, we choose to exercise such restraint and deny the motion to dismiss because it is not clear from the record that the issues raised in the appeal of the Original Approval are moot or fail to fall within exceptions to the mootness doctrine.

The record contains almost no information about the waste management practices approved under the Original Approval (or, for that matter, the New Approval) and no information on what activities, if any, Olympus undertook pursuant to the Original Approval during the eight months it was in effect. For example, in its memorandum of law, Olympus states that it “determined it would not act pursuant to Authorization ID No. 1477181 [the Original Approval] and, moving forward, will not seek the Department’s approval to use at any other location those alternative waste management practices approved for use at the Calliope Well Site.”<sup>4</sup> (Memorandum of Law in

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<sup>3</sup> See also *Consol*, 2015 EHB at 74 (Labuskes, J., dissenting) (recommending that the Board exercise prudence before dismissing a case based on mootness):

Our legislatively mandated charge is to review actions of the Department in challenges brought by persons aggrieved by those actions and we should not unnecessarily turn away from that charge. In close cases such as the one before us now, prudence dictates that we not toss out a party, at least in the context of a motion to dismiss. This may be [the appellant’s] one and only chance to be heard on an important issue. . .

<sup>4</sup> Because the waste management practices approved under the Original Approval were first approved for use at Olympus’ Calliope Well Site, the parties’ filings often reference the Calliope Well Site rather than the Aphrodite Well Site when referring to those waste management practices.

Support of Olympus Motion, p. 1.) Similarly, Environmental Compliance Manager, Laura Karosic, states in her affidavit: “Following a change in its operational plans, on November 20, 2024, Olympus notified the Department in writing that it would not conduct activities pursuant to [the Original Approval] and requested that the Department terminate [the Original Approval].” (Olympus Motion, Ex. 1, at para. 8.) While it is clear from these statements that Olympus does not intend to utilize the alternative waste management practices approved under the Original Approval going forward, it is not clear whether they engaged in those practices during the eight months the approval was in existence. This uncertainty “cloud[s] the mootness issue.” *Citizens for Pennsylvania’s Future*, 2024 EHB at 627. Simply because the Old Approval was terminated and a New Approval is in place, that does not automatically moot the appeal of the Old Approval. Further information is needed in order to make that determination. *See, e.g., Cooley v. DEP*, 2004 EHB 554 (finding that issuance of a new air quality plan approval did not necessarily moot the appeal of an earlier plan approval; the determination of that question required further development of the factual record). If Olympus engaged in activity pursuant to the Original Approval, it is possible that some or all of the issues raised by Protect PT in its appeal of the Original Approval remain viable.

Olympus argues that there is no relief the Board can grant since the Original Approval has been terminated. In other words, the Board cannot strike down an approval that is no longer in effect. Although Olympus argues that there is no relief the Board can grant at this stage, that is not clear from the record. For one thing, it is not clear whether any alternative waste management practices that may have been implemented under the Original Approval remain in effect, such as on-site storage of waste materials. The Board has held that the rescission of a Department action

will not automatically moot an appeal where concrete continuing obligations exist. *Consol*, 2015 EHB at 55-56.

*Citizens for Pennsylvania's Future* involved an appeal of permits issued in connection with the construction of a pipeline. While the appeal was pending, construction of the pipeline was completed and it was put into service. The permittee argued that the appeal was moot because there was no relief the Board could provide with respect to activities that had already been completed. The Board disagreed and stated:

While construction prior to the Board's decision may as a practical matter limit what relief the Board can reasonably mandate, it does not *necessarily* circumscribe the Board's options if it finds that an error has been committed. So, for example, a particular [best management practice] that is determined to have been faulty by design may need to be redone.

2024 EHB at 627 (emphasis in original).

Similarly, here, while termination of the Original Approval may limit what relief the Board can grant, it “does not necessarily circumscribe the Board's options” if we find that an error has been committed. *Id.* For example, a particular alternative waste management practice that is determined to have been faulty may need to be redone. At this point, there is insufficient evidence in the record to make the determination of what remedies, if any, may be available.

Moreover, even if we were to find that the appeal of the Original Approval is moot, this matter may fall within at least one exception to the mootness doctrine, specifically, involving conduct that is capable of repetition yet evading review. Olympus owns and operates a number of gas wells in Westmoreland County, and at least three of those well sites (the Metis, Calliope, and Aphrodite) have requested approval of alternative waste management practices. In its motion, supported by Ms. Karosic's affidavit, Olympus states that it does not intend to apply for the alternative waste management practices set forth in the Original Approval at any point in the future.

(Olympus Motion, at para. 11, and Ex. 1, at para. 12.) While we have no reason to doubt that this is Olympus’ intention at the present time, there is nothing to prevent it from seeking such authorization in the future. Further, as Protect PT notes in its response, there is nothing preventing Olympus from withdrawing and the Department from terminating the New Approval and seeking yet a different approval. Under these circumstances, it is possible that future alternative waste management approvals could evade review. *See, e.g., Harriman Coal Corp. v. DEP*, 2000 EHB 1170 (declining to dismiss appeals of surface coal mining license renewals that had expired where the issues raised by the appellant were capable of repetition yet likely to evade review).

Olympus asserts that the issues raised in the appeal of the Original Approval will not evade review since the same issues have been raised in the appeal of the New Approval. While the appeal of the Original Approval may contain the same or similar objections as the appeal of the New Approval, it is nonetheless challenging a different action. There is nothing in the record clearly demonstrating that Protect PT’s issues with the Original Approval will be resolved by its appeal of the New Approval and Protect PT does not indicate this is the case. As we stated earlier, the record contains scant information on what the Original Approval and New Approval actually entail.<sup>5</sup> Where there is doubt, we must view the record in the light most favorable to the non-moving party. Moreover, based on a comparison of the two appeals, it appears that at least one issue in the appeal of the Original Approval does not appear in the appeal of the New Approval. That issue concerns Olympus’ Calliope Well Site which utilizes the same alternative waste management practices as those authorized by the Original Approval. While Olympus argues that

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<sup>5</sup> In an affidavit attached to a motion to stay filed by Olympus on November 20, 2024, Environmental Compliance Manager Laura Karosic states that the waste management practices of the New Approval are “substantially similar” to those of the Original Approval; she notes that the former allows for an additional solidification agent. Putting aside the fact that this document is not part the materials filed in support of the motion to dismiss, it does not convince us that Protect PT’s appeal of the New Approval will resolve all the issues raised in its appeal of the Original Approval.



any matters pertaining to the Calliope site are no longer relevant, that argument is premised on its assertion that the appeal of the Original Approval is moot, which, as we have explained, is not clear.

Without clear information regarding the implementation, or lack thereof, of the alternative waste management practices outlined in the Original Approval, we can only speculate as to whether any portion of this dispute is moot. We simply do not have enough information at this point to make that determination. Likewise, there is insufficient information to determine whether this matter falls within an exception to the mootness doctrine.<sup>6</sup> As we have stated, the Board will only grant a motion to dismiss when a matter is free of doubt. *Bartholomew v. DEP*, 2019 EHB 515, 517. Where the matter is not clear, the motion must be denied. *See Thomas v. DEP*, 1998 EHB 93, 98.

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<sup>6</sup> Although the parties' filings also discuss the remaining exceptions to mootness, i.e., matters of great public importance and matters where a detriment will be suffered without a ruling by the Board, we decline to address those issues at this time without a more complete record.



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

PROTECT PT

v.

COMMONWEALTH OF PENNSYLVANIA,  
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EHB Docket No. 2024-092-W

**ORDER**

AND NOW, this 18<sup>th</sup> day of March, 2025, it is hereby ordered that the Motion to Dismiss Appeal as Moot is denied.

ENVIRONMENTAL HEARING BOARD

s/ MaryAnne Wesdock  
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MARYANNE WESDOCK  
Judge

**DATED: March 18, 2025**

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