COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

E-FILED
04/04/2025
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, 2024-119-B, and 2024-121-B)**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, and THOMAS CLOPPER, ET AL., Intervenors	:	**Issued: April 4, 2025**

OPINION AND ORDER ON
APPELLANTS JESSE JONES', JONES MANURE HAULING, LLP'S, AND JONES FAMILY FARM'S MOTION FOR SUMMARY JUDGMENT

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

Appellants' motion for summary judgment is denied where the evidence of record sufficiently demonstrates that the Department can make a *prima facie* case that the release of residual waste impacted three private drinking wells.

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 involve the transport of Food Processing Residuals ("FPRs") to Pennsylvania farms where they are stored and eventually applied as fertilizer. On June 30, 2021, Jones transported FPRs via a tanker truck to Barr Farms where a release of the FPRs occurred due to a torn hose. In August 2021 and September 2021, the Department received complaints about contaminated well water from residents located near Barr

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

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 residences 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 incurred by the residents for their 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 Jones' and Barr Farms' appeals of both 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. After granting several extensions of prehearing deadlines, discovery was completed on November 19, 2024 with the exchange of expert reports. Jones filed its Motion for Summary Judgment (the "Motion") on December 18, 2024, and Barr Farms filed a Memorandum in Support of the Motion on January 2, 2025. The Board granted a joint request to extend the deadlines to submit responses and replies to the Motion. The Department and Residents filed their respective responses on February 3, 2025, and Jones submitted its reply brief on March 5, 2025. The briefing in this matter is now complete and the matter is ripe for decision.

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

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

material fact in dispute and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. 1035.1–1035.2; *Protect PT v. DEP*, 2024 EHB 683, 684 (*citing Amerikohl Mining Inc. v. DEP*, 2023 EHB 348, 351–52). Summary judgment may also be 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.

Pileggi v. DEP, 2023 EHB 288, 290 (citing Pa. R.C.P. No. 1035.2(2)).

In other words, the party bearing the burden of proof must make out a prima facie case. *Dengel v. DEP*, 2024 EHB 605, 608. In a motion for summary judgment challenging whether there is sufficient evidence to make out a *prima facie* case, the Board will not gauge the quality of the evidence but will simply determine whether there is enough evidence to form a *prima facie* case. *Sunoco Pipeline, L.P. v DEP*, 2021 EHB 43, 51 citing *Diehl v. DEP and Angelina Gathering Company, LLC*, 2018 EHB 18, 24. Summary judgment may only be granted in cases where the right to summary judgment is clear and free from doubt. *Scott v. DEP*, 2024 EHB 318, 319. 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).

Analysis[1]

The consolidated appeals of Jones and Barr Farms challenge the Department's issuance of the 2023 Notification and the 2024 Order. The Department issued the 2023 Notification and the

[1] Barr Farms filed a short Memorandum of Law in which it concurred in Jones' assertions and with the conclusion that the Board should grant Jones' Motion. Because Barr Farms did not add any new arguments to those set forth by Jones, we will not separately discuss Barr Farms' position in this Opinion. Our discussion on Jones' positions should be read as inclusive of Barr Farms' positions in this matter.

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

2024 Order based on its determination that a release that took place while Jones was transferring FPRs from a truck to a tank on Barr Farms' property that ultimately caused contamination of the Residents' water wells. In its brief accompanying its Motion, Jones sets forth the issue as "[w]hether Jones is entitled to summary judgment on its appeal where the DEP water replacement directives are the product of legally insufficient expert factual and scientific causal speculation and conjectures", asserting that this question should be answered in the affirmative. (Jones' Brief at 12). Specifically, Jones argues that the Department failed to properly investigate the release and, therefore, the Department relied on impermissible speculation and conjecture to arrive at its conclusion that Jones caused the contamination of the Residents' wells. (Jones' Brief at 15). The gist of Jones' argument is that the Department relied on a report from its expert, Tim Long ("Mr. Long"), to establish causation and, because the report is full of speculation resulting from the alleged shortcomings in the investigation, the Department has not established its *prima facie* case, therefore making summary judgment appropriate under Pa. R.C.P. §1035.2. Jones alleges that the investigations shortcomings include 1) the failure to test the released material; 2) failure to investigate the hole found near the release to determine whether the FPRs actually reached bedrock or groundwater and; 3) the failure to perform a dye test to demonstrate the actual flow of either water or the released material from Barr Farms. Jones also argues that the Department disregarded a different potential contamination source and points to a field located closer to the Residents' wells than that of the site of the release. That field received an application of biosolids only days before the Residents' reported the contamination. (Jones' Brief at 19).

The Department argues that Jones' Motion should be denied, stating that there are genuine issues of material fact in dispute and that Jones has not established that it is entitled to judgment as a matter of law. (Department's Brief at 16). The material facts that the Department asserts are

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

in dispute include the size of the FPR release, the potential impact of the application of biosolids to the nearby farm field, and related testing in the Residents' water wells. The Department also notes that there is a mixed factual and legal dispute about whether the release of the FPRs should have been reported to the Department pursuant to the residual waste regulations. However, the focus of the argument is centered on the Department's investigation and the expert testimony of Mr. Long. The Department states that Jones disregards the full record of material facts, including the documents the Department relied on in finding that the FPR release caused the contamination of the water wells. According to the Department, Mr. Long considered a number of factors in reaching his professional opinion regarding the cause of the contamination. The Department states that while Jones raises a facial challenge to Mr. Long's expert report, Jones does not challenge the validity of the data underlying his report.

In their brief, the Residents assert that Jones' Motion should be denied because the Department has made out a *prima facie* case. They argue that the Department's evidence shows that an unreported release of FPRs took place and that it adversely impacted the Residents' private water supplies. They cite various lines of evidence that they contend support the Department's determination including their own expert report that concludes that the probable source of contamination of their residential potable wells was the accidental release of FPRs. (Residents' Response, Ex. 2 at 21). The Residents specifically state that the available evidence contradicts Jones' position and instead supports the Department's decision to exclude the spreading of the biosolids, FPR land application, and/or a sewer source as the cause of the well contamination. The Residents also argue that the Board should reject Jones' argument that claims the Department's investigation was insufficient because it failed to test the released FPRs, pointing out that the Department was unable to test those FPRs specifically because neither Jones nor Barr Farms timely

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

reported the release. They characterize Jones' arguments as flawed and state that the challenges Jones raises pertaining to the expert report create issues that require further development of the evidentiary record.

A prima facie case in this instance requires evidence demonstrating that 1) Jones and Barr Farms released a waste material into the environment; 2) the Residents' wells are contaminated and; 3) the release of the waste material caused the contamination of the Residents' wells. Although Jones repeatedly uses the term "alleged" in its Motion when discussing the FPR release and the well contamination, it does not directly challenge the evidence that supports a finding that a release occurred or that the Residents wells are contaminated. (See Jones' Statement of Undisputed Facts, ¶¶ 6, 9). In their responses, both the Department and the Residents cite evidence of the release and the contamination. When we view the evidence in the light most favorable to the non-moving parties, as we are required to do in evaluating a summary judgment motion, we find that there is sufficient evidence for the Department to establish a prima facie case for the occurrence of a release and for the Residents' contaminated wells.

Here, the central issue of the Motion is causation, the third requirement the Department needs to establish a prima facie case in this matter. Causation in a water contamination case is frequently the most complex issue faced by the parties. In this case, all parties agree that expert testimony is necessary for the Board to rule on the issue of causation. Jones' Motion rests on its argument that the Department failed to demonstrate that the June 30, 2021 release caused the contamination of the wells because, according to Jones, the Department's determination relies on speculation and conjecture from its expert Mr. Long. Jones argues that the Board, as the fact finder in this case, is not permitted to rely upon speculation and conjecture to find Jones responsible for the water well contamination and cites several Pennsylvania Superior court cases to support this

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

assertion, including *Krishack v. Milton Hershey Sch.* 145 A.3d 762, 766 (Pa. Super. 2016). They further argue that an expert report that uses phrases like "possibly", "more likely than not", "could have", etc., to describe the actions of a party who is found to be responsible for an injury, is legally insufficient to satisfy the burden of proof as to causation. (Jones' Brief at 14). Jones states that a "mere common sense reading of Mr. Long's analysis reveals DEP's contrived endeavor to hold Jones and Barr financially responsible for something they did not do." (Jones' Reply Brief at 5).

In light of Jones' arguments, we turn our attention to Mr. Long's expert report, attached as Exhibit 13 to the Motion. Mr. Long signed his report, listed his title as a Licensed Professional Geologist, and placed his Commonwealth of Pennsylvania Registered Professional Geologist stamp on the report. The Motion does not challenge Mr. Long's professional qualifications. Mr. Long's expert report consists of a lengthy narrative along with multiple figures, attachments, including inspection reports and sample results, and two tables summarizing sample results. In his report, Mr. Long discusses the geologic setting at Barr Farms, the FPRs' nature, FPR sample results collected at Barr Farms, the June 2021 release, the weather conditions of the relevant area, the Residents' wells, including video from the wells, water supply impacts, and well sample results from the water wells. Mr. Long's report concludes with a summary that includes 34 bulleted statements and his expert opinion. Mr. Long does not explain the bulleted items but these statements appear to set forth facts the Department determined during its investigation and that Mr. Long subsequently relied on in forming the basis for his conclusion. (Jones Ex. 13 at 21-22). At the end of the narrative, Mr. Long sets forth his expert opinion as follows:

> Given the nature of the bedrock, the nature of the waste, the residual waste sludge spill, the subsidence features at the Barr Farm Front Tank, the amount of precipitation experienced while the residual waste was on the ground and entering the subsurface, the facts that water supply complaints only began after the spill occurred, the similar chemical signatures of the spill material and the Grove and

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

> Kershner well water sample results, the similarity of materials in each well as shown on the downhole videos, the similar descriptions of well water quality by the homeowners, and the timing of the residential well impacts, it is my professional opinion, to a reasonable degree of scientific certainty, that the material spilled onto the ground at the Barr Farm Tank on 6/30/2021 entered a sinkhole and adversely affected the Grove, Kershner and Clopper wells.
>
> (Jones Ex. 13 at 23-24).

Following the narrative portion of his expert report, Mr. Long includes references, his qualifications, maps, aerial views of the area of investigation, photographs, Department inspection reports, correspondence, analytical reports, weather data, and well reports. This information is referenced within the narrative portion of Mr. Long's report.

In its Motion and Reply Brief, Jones repeatedly calls Mr. Long's expert report speculative but cites only a limited number of specific statements in the report in support of that position. Jones directly challenges Mr. Long's discussion of the alleged hole near the tanks at Barr Farms that the Department concluded was a conduit for the FPR release. Mr. Long notes in his report that the Department observed spillage of FPRs during its initial inspection and goes on to state that "[d]uring follow-up Department inspections on 9/9/2021 and 9/10/2021, Department inspectors found a hole in the ground along the outside edge of the Front Tank […]. The hole was obscured by vegetation and had not been previously noted by the Department." (Jones Ex. 13 at 5). Shortly after this statement, Mr. Long goes on to state "[c]onsidering the location of the truck unloading area in relation to the sinkhole, it is possible that sludge was pumped directly into the sinkhole from the 'ruptured hose.'" (Jones Ex. 13 at 5). Jones argues that these statements rely on the speculative assumption that the hole existed prior to when the Department observed it on September 9th and 10th, 2021 and, furthermore, Mr. Long's conclusion that the FPRs were pumped directly into the sinkhole is sheer conjecture and speculation. (Jones' Brief at 17). Jones also

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

asserts that Mr. Long elevated the hole to a sinkhole despite their being testimony from other Department staff that conflicts with Mr. Long's determination. Other various Department personnel described it as a hole (Mr. Sweeney) and a groundhog hole (Ms. Fleming). (*Id*.).

Jones' position ignores other statements in Mr. Long's report that tend to support his conclusion about the existence and nature of the hole and the role it played in allowing the FPR release to reach the Residents' wells. In the same section of the report previously quoted in this Opinion, Mr. Long states "[p]hotos taken on 9/9/2021 and 9/10/2021 (Figures 12-15) show that the release material had flowed and/or washed into the hole and the hole was approximately 3-4 feet long, 2 feet wide, and 2 feet deep. The Department inspector also noted these approximate hole dimensions in the general inspection report and that there was release material observed in the bottom of the hole. (Attachment 8)." (Jones' Ex. 13 at 5). The cited dimensions certainly do not suggest a groundhog hole. In other portions of his report, Mr. Long cites to the geologic setting and notes that the formation underlying Barr Farm and the Residents' homes is very prone to sinkholes and subsidence features. (Jones' Ex. 13 at 2). He then discusses the fact that Barr Farms is seated in a major karst region and further states that, based on his personal observation of the topography at Barr Farm, the area is a well-developed karst terrain. (*Id*. at 3). Our reading of the report leads us to conclude that there is sufficient factual evidence supporting Mr. Long's position and, moreover, the Department's prima facie case on this issue. As to the ultimate outcome, it would be best for the Board to hear testimony from the parties' experts before making any decisions on this issue.

Jones also presents an alternate theory of the source for the contamination found in the Residents' wells. Jones asserts that Waynesboro Municipal Waste Authority spread a total of 486,000 gallons of biosolids at Barr Farms on Field R4 in June 2021 and early August of 2021.

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

(Jones' Statement of Undisputed Facts, ¶ 8.). In their responses, both the Department and the Residents denied this assertion as stated. (Department's and Residents' Responses to Jones' Statement of Undisputed Facts, ¶ 8). They assert that Jones' statement does not accurately describe the location where the biosolids were spread. The Department notes that the biosolids were spread on Frank Barr Farm 2 Field R4 rather than Barr Farm 1 which is the farm at issue in this case. The Department also states that the Frank Barr Farm 2 is located further east of Barr Farm 1. The Residents note that Field R4 is located south and east of their properties whereas the location of the FPR release took place to the north of their properties. In its Brief, the Department points to testimony from Department employee, Carrie Fleming. Her testimony provides that the Department tested the Residents' wells for a common contaminant from a sewer source and found nothing, leading the Department to rule out septage as a source. (Department's Brief at 10). Overall, the parties' positions demonstrate that there are issues of material fact on what role, if any, the spreading of the biosolids may have played in the contamination of the Residents' wells. That dispute does not support the granting of the Motion.

As we stated previously, the other issues raised in the Motion focus less on what is in Mr. Long's report and more on what is not in the report and, further, what was not part of the Department's investigation. Jones discusses both the Department's failure to test the FPRs released on June 30, 2021 and the lack of any dye testing which Jones claims would have demonstrated the actual flow of the FPR release and/or water from Barr Farms. (Jones' Brief at 15). The Department does not dispute that it neither sampled the FPR release nor conducted a dye test.

The Department does not offer a reason why it chose not to directly test the FPR release. There is no dispute that any testing would have taken place several weeks after the release given

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

that the Department's initial inspections of the release site took place in late August 2021 and early September 2021. Perhaps, as the Residents suggest, the amount of rain between the time of the release and the dates of the inspection may have made any test results unreliable. We simply do not know the Department's reasons and look forward to further testimony on this issue. However, we ultimately view this issue as going to the outcome in this case and whether the Department will be able to prevail in meeting its burden rather than sufficient to show the lack of a prima facie case. In *Sunoco*, we noted that the Department's case would certainly have been stronger if the Department had completed an on-site investigation but, nevertheless, we found that viewing the record in the light most favorable to the Department, as we are required to do when ruling on a summary judgment motion, there was sufficient evidence for the Department to establish a prima facie case. (*Sunoco*, 2021 EHB at 51). We think that the same can be said about this case. Jones will have the opportunity at a hearing to present its arguments about the lack of certain actions by the Department and, the Board, after weighing the evidence, including any expert testimony that the parties choose to present, will decide whether the Department has met its burden of proof in this case.

When we review Mr. Long's report in its entirety, along with the undisputed facts and other information submitted by the parties, we conclude that the Department has adequately established a prima facie case to prevail over Jones' Motion. Specifically, the Department has put forth evidence on the issue of causation that is sufficient for us to rule in the Department's favor. That is not to say that the Department will prevail in this case after a hearing. This matter is the type of complex case where the Board will benefit from the development of a full evidentiary record, including the evaluation of the credibility of the witnesses. Post-hearing briefing will give the Board the opportunity to hear and consider the legal arguments of the parties on a complete record.

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

There also appears to be several material facts that the parties dispute, making it inappropriate for the Board to grant summary judgment in this case.

Therefore, we issue the following Order:

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

E-FILED
04/04/2025
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, 2024-119-B, and 2024-121-B)**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, and THOMAS CLOPPER, ET AL., Intervenors	:	

O R D E R

AND NOW, this 4th day of April, 2025, the Jones' Motion for Summary Judgment is **denied**.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman
STEVEN C. BECKMAN
Chief Judge and Chairperson

DATED: April 4, 2025

c: **DEP, General Law Division:**
Attention: Maria Tolentino
(via electronic mail)

For the Commonwealth of PA, DEP:
Robert Pawlinski, Esquire
Dawn M. Herb, Esquire
Beverly H. Rampaul, Esquire
(via electronic filing system)

For Appellant, Barr Farms, LLC:
Errin T. McCaulley, Esquire
Scott A. Gould, Esquire
(via electronic filing system)

E-FILED
04/04/2025
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

For Appellants, Jesse Jones, Jones Manure Hauling, LLP, and Jones Family Farms:
Michael M. Badowski, Esquire
Anthony J. Gabriel, Esquire
(via electronic filing system)

For Intervenors:
William G. Roark, Esquire
Steven A. Hann, Esquire
(via electronic filing system)