E-FILED
08/29/2024
PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

LAURA DENGEL	:	
	:	
v.	:	**EHB Docket No. 2022-092-B**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, and NEW SEWICKLEY MUNICIPAL AUTHORITY, Permittee	:	**Issued: August 29, 2024**

OPINION AND ORDER ON
DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

The Board grants the Department's Motion for Summary Judgment where the nature of Appellant's objections stem from alleged violations of the Sunshine Act which the Board lacks jurisdiction to hear. Additionally, the Appellant lacks standing to challenge a water allocation permit and has failed to establish a prima facie case.

O P I N I O N

Introduction

This matter involves an appeal filed with the Environmental Hearing Board ("Board") by Laura Dengel ("Ms. Dengel") challenging the Department of Environmental Protection's ("Department's") issuance of a water allocation permit to New Sewickley Township Municipal Authority ("Authority"). The Authority submitted an application for a water allocation permit ("Application") on July 8, 2022. The Authority's Application proposed replacing one of its two water supplies, specifically it requested to replace the part of the water supply it received from the Ambridge Water Authority ("AWA") with water from the West View Water Authority

("WVWA"). In its Application, the Authority explained it wished to replace the water from the AWA "due to ongoing water quality issues with the current water supply, and increased demand for public water throughout the Township." (Department's Exhibit B, p. B004). The Application was signed and notarized on June 21, 2022 and was subsequently voted on at an Authority meeting open to the public on July 7, 2022. On September 12, 2022, the Department approved the Application and issued Water Allocation Permit WA04-1019A ("Original Permit"). To correct a typographical error in the Special Conditions section and to include the Department's responses to public comments after the issuance of the Original Permit, the Department reissued it as Water Allocation Permit No. WA04-1019A-1 ("Permit") on September 23, 2022.

On October 21, 2022, Ms. Dengel filed her Notice of Appeal. In her Notice of Appeal, Ms. Dengel stated her objection as follows: "I am objecting to the Department's actions for granting the issuance of a New Water Allocation Permit to New Sewickley Township Municipal Authority." (Notice of Appeal ("NOA"), Dkt Entry No. 1). On November 14, 2022, Ms. Dengel filed an Amended Notice of Appeal ("Amended Appeal") and expanded on her previously stated objection by adding the following:

> Signed, dated and notarized 06-21-2022; however, this application (Reference No. 62504) was voted on July 7th, 2022. Therefore, the entire application package is null and void because it was illegitimate from the moment it was created. Such application never comes into effect with submission of the Water Allocation Permit Application package to the Department because it misses essential elements of a legal application and violates Federal and State laws.

(Amended Appeal, Dkt Entry No. 7).

Throughout this proceeding, the Board has granted several requests to stay proceedings and for extensions of the pre-hearing deadlines. The time for discovery ultimately concluded on December 22, 2023. On March 1, 2024, the deadline for filing dispositive motions, the Department

filed its Motion for Summary Judgment ("Motion").[1] Following the Motion, the Authority timely filed a memorandum of law in support thereto and Ms. Dengel filed her Response in Opposition to the Department's Motion ("Response") on April 1, 2024. In her Response, Ms. Dengel incorporated her own request for summary judgment. Following Ms. Dengel's Response, the Department and the Authority quickly filed a Joint Motion to Stay Filing Deadlines ("Motion to Stay") and to Strike ("Motion to Strike") (collectively, the "Joint Motions"). The Joint Motions requested the Board to strike Ms. Dengel's request for summary judgment in her favor as untimely and for raising issues outside the scope of the Amended Appeal, and further requested that the Board stay the deadline to respond to Ms. Dengel's summary judgment motion until the Board ruled on the Motion to Strike. On May 9, 2024, Ms. Dengel filed her response to the Joint Motions and concurrently filed a motion to amend her appeal. Shortly thereafter, the Department filed a Motion to Stay Proceedings Pending Ruling on its Summary Judgment Motion ("Motion to Stay").

On May 17, 2024, following a conference call with the parties, the Board issued two orders. The first order granted the Department's Motion to Strike Ms. Dengel's request for summary judgment after Ms. Dengel stated on the conference call that she did not oppose the Motion to Strike. Additionally, the first order stayed all other deadlines until the Board ruled on Ms. Dengel's verbal request to supplement her motion to amend that she made during the conference call. The Board's second order denied the Department's Motion to Stay. The Board issued an Order on May 20, 2024, permitting Ms. Dengel to supplement her motion to amend and staying the deadline for replies to Ms. Dengel's Response to the Motion. On May 24, 2024, Ms. Dengel filed her Motion for Leave to Amend Appeal ("Motion to Amend") and the Department and the Authority

[1] The Board set the deadline for dispositive motions on January 31, 2024 in its Order dated October 13, 2023. However, the Board granted the Department's motion to extend the dispositive motion deadline after receiving no response to this motion from either Ms. Dengel or the Authority.

subsequently filed their Joint Response to the Motion to Amend. On July 15, 2024, the Board issued an Opinion and Order denying Ms. Dengel's Motion to Amend on the basis that it was procedurally defective and that allowing Ms. Dengel to amend her appeal so late in the proceedings would prejudice the Department and the Authority. That same day, the Board issued an order establishing the deadline for the Department and the Authority to submit reply briefs to Ms. Dengel's Response. The Department filed its Reply Brief on July 31, 2024. The Authority did not file a reply. The briefing is 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 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).

Discussion

In its Motion, the Department sets forth three lines of argument in support of its request for summary judgment. First, the Department argues that Ms. Dengel's objection is based on alleged violations of the Sunshine Act that the Board does not have jurisdiction to hear. In its second argument, the Department asserts that Ms. Dengel lacks standing to bring her appeal. Specifically, the Department argues that Ms. Dengel has not demonstrated that her interests have been harmed by the Department's approval of the Application. Lastly, the Department contends that Ms. Dengel has failed to establish a prima facie case demonstrating that the Department erred in approving the Permit. Ms. Dengel disputes the Department's assertions and argues that while the alleged Sunshine Act violation is part of her appeal, it is not the sole basis of her appeal. She further disputes the Department's contention that the permitted activity will not personally affect her and denies that she has not established a prima facie case. Following review of the filings, we hold that Ms. Dengel has failed to preserve a claim that we have jurisdiction to hear, does not have standing, and has failed to establish a prima facie case. Therefore, we grant the Department's Motion and dismiss the appeal.

We begin our analysis by addressing the Department's first claim for summary judgment arguing that Ms. Dengel's objection is a Sunshine Act issue that this Board does not have jurisdiction over. The Sunshine Act's[2] main purpose is to create government transparency by affording citizens an opportunity to observe the decision-making process of public agencies. *PG Publ. Co. v. Governor's Office of Admin*., 120 A.3d 456, 462-63 (Pa. Cmwlth. 2015). To

[2] Act of October 15, 1998, P.L. 729, 65 Pa.C.S.A. §§ 701 - 715.

accomplish these aims, the Sunshine Act requires that formal action be taken at public meetings and requires that public notice of such meetings is provided. *Baribault v. Zoning Hearing Bd. of Haverford*, 236 A.3d 112, 118 (Pa. Cmwlth 2020). In her Response, Ms. Dengel does not directly dispute that her claim arises from the Sunshine Act. In fact, she embraces that legal theory stating that the sole objection of her appeal is that the Department failed to follow basic due process because "[U]nder 65 Pa.C.S. §713 of the PA Sunshine Act, business conducted at a municipal meeting in violation of the PA Sunshine Act is void." (Dengel Response Memorandum at 1). Her appeal rests on her factual objection that the Authority signed and notarized the Application prior to voting which, she argues, violated the Sunshine Act. She asserts that due to the alleged violation, the Application was rendered "null and void" and, as such, the Department erred in issuing the Permit.

In her Response, Ms. Dengel attempts to argue the legal merits of her objection, but she never addresses the Department's argument that the Board lacks jurisdiction over Sunshine Act claims. In support of its position, the Department cites *Com., Dep't of Env't Res. v. Steward*, 357 A.2d 255, 257 (1976). In *Steward*, the Commonwealth Court upheld our ruling, concluding that the Board does not have jurisdiction over claims arising from the Sunshine Act. In *Steward*, the Commonwealth Court examined the Sunshine Act's language pertaining to jurisdiction and venue which provides as follows:

> The Commonwealth Court shall have original jurisdiction of actions involving State agencies and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this chapter by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

65 Pa.C.S.A. § 715.[3] The Court described the Act's language as "unequivocal" and held that the Board properly concluded that it lacked jurisdiction to resolve issues arising out of the Sunshine Act. *Steward*, 357 A.2d at 257. See also, *O'Hare v. Cnty. of Northampton*, 782 A.2d 7, 14 (Pa. Cmwlth. 2001) (reiterating its holding that the Board lacks jurisdiction to resolve allegations of violations of the Sunshine Act).[4]

Upon review of these cases and the language of the Act itself, it is clear that the Board is without jurisdiction to hear claims arising from the Sunshine Act. The Department asserts that "Ms. Dengel's sole objection in this appeal is a Sunshine Act issue […]" (Motion at 2). However, it is unclear to us whether Ms. Dengel's objection is indeed purely and singularly a Sunshine Act claim. While Ms. Dengel insists throughout her Response Memorandum that the Authority violated the Sunshine Act, she does not explicitly state and/or argue that the Department violated the Act as well. In her Response Memorandum, she states that her "sole objection is failure of the Department to follow basic due process" when it approved the Application. (Response Memorandum at 1). She goes on to argue that the Department violated her due process because it did not reject the Application when it became aware of the fact that the Application was signed and notarized prior to the public meeting in which it was voted on.

Whether Ms. Dengel's claim originates from either a Sunshine Act violation or a due process argument, it fails either way. To the extent her claim arises from the Sunshine Act, we are without jurisdiction to hear it. Additionally, even if her objection invokes due process, we would

[3] In *Steward*, the Commonwealth Court cited 65 P.S. § 269 which is now codified as 65 Pa.C.S.A. § 715.

[4] In *Ziviello et al. v. State Conservation Commission et al.*, 2001 EHB 1177, the Board did address a Sunshine Act claim but it does not appear that any party raised an issue regarding the Board's jurisdiction to do so. We read *Steward,* as well the language of the Sunshine Act, as clearly holding that the Board lacks jurisdiction to hear Sunshine Act claims and would not follow *Ziviello* if faced with that issue in future cases.

not reach that question because in order to answer the question of whether the Department violated her due process by approving the "null and void" Application, we would first need to determine if the Authority's approval process actually constituted a violation of the Sunshine Act at all, which we are without jurisdiction to decide.[5] Additionally, as we explained in our Opinion and Order denying her request for leave to amend her appeal, Ms. Dengel failed to preserve a due process objection. While we are not required to address the due process claim since it was not preserved, we will briefly discuss it in order to be complete in our analysis. Ms. Dengel claims that the failure of the Department to reject the Application due to its alleged defects, deprived her of procedural due process. To comport with due process, states must provide persons with a meaningful opportunity to be heard before depriving them of life, liberty or property. *Jake v. DEP, et al.* 2014 EHB 38, 50, citing *Pa. Coal Mining Ass'n v. Ins. Dep't*, 370 A.2d 685, 692-93 (Pa. 1977) ("Notice should be reasonably calculated to inform interested parties of the pending action, and the information necessary to provide an opportunity to present objections."). An individual alleging a deprivation of procedural due process rights must demonstrate that actual harm or prejudice resulted therefrom. *Jake*, 2014 EHB at 51, citing *State Dental Council and Examining Bd. v. Pollock*, 318 A.2d 910, 916 (Pa. 1974).

Here, the Department's action does not strike us as a due process violation. Ms. Dengel does not claim that the Department somehow issued a defective notice regarding the Application and/or Permit. To the contrary, Ms. Dengel provided the Board with exhibits of the public comment letter she sent to the Department regarding the Application and the email she received

[5] Ms. Dengel contends that the Authority admitted to Sunshine Act violations. To support her assertion, she cites to her Exhibit D in her Counterstatement of Undisputed Material Facts, which is the Authority's Answer to Ms. Dengel's Complaint filed in the Beaver County Court of Common Pleas. Specifically, she cites to paragraphs 1, 2 and 8 of the Authority's Answer as proof of its Sunshine Act violations. However, she failed to produce the Complaint itself, making it impossible to know what facts the Authority admitted to.

from the Department responding to her letter. (See Dkt. Entry No. 1, NOA, Exhibits A, B). This in of itself evidences she had notice and/or actual knowledge of the Department's review and approval of the Application and had the opportunity to voice her concerns. In the email responding to Ms. Dengel's comment concerning the Authority's alleged Sunshine Act violation, the Department stated that "[t]his matter should be addressed directly with the Authority, as the Department does not oversee their governing procedure." (Dkt. Entry No. 1, NOA, Exhibit B). Hence, although the Department was aware of the allegation that the Authority may have violated the Sunshine Act through Ms. Dengel's public comments, the Department nonetheless went forward and approved the Application. In addition to submitting public comments, Ms. Dengel was also present during the meeting that the Application was voted on and provided comments there as well. (Dengel Exhibit D, ¶¶ 14, 15). Furthermore, she filed an appeal with this Board, affording her yet another opportunity to be heard. We cannot discern where in this saga Ms. Dengel has not been afforded due process. It seems to us that her true objection is not one of due process but simply that she disagrees with the Department's approval of the Application which is not a basis to overturn the Department's decision to issue the Permit. The facts presented do not convince us that the Department violated her due process.

Concerning the Sunshine Act, even if, *arguendo*, Ms. Dengel's issue was properly before us, she still would not prevail. Ms. Dengel asserts that the Department violated its own internal policy concerning the "completeness review" stage of the Application and argues that the Department should have returned the Application to the Authority as "incomplete" due to the signature date.[6] Even if this was an error on part of the Department, it was at most harmless error.

[6] Although Ms. Dengel does not cite to any caselaw or legal authority to substantiate her assertion that the manner in which the Application was signed violated the Sunshine Act, it is our understanding of the case law that any violation that may have arisen by the timing of the signing was cured by the subsequent vote at the public meeting ratifying the action. The Commonwealth Court has "repeatedly held that official

"A party who would challenge a permit must show us that errors committed during the application process have some continuing relevance." *O'Reilly v. DEP*, 2001 EHB 19, 51. See also *Shuey v. DEP*, 2005 EHB 657, 712 (holding that revocation or remand of a permit must be based on material error in the permitting process). Parties who complain that the Department should have considered something in its review of a project need to "tell us how that consideration would have made any difference." *Sludge Free UMBT v. DEP*, 2015 EHB 469, 484. Additionally, the Commonwealth Court has stated that if "there was a procedural error during the processing of a permit application, it does not provide a basis for remand if it was harmless." *Berks County v. Department of Environmental Protection, et al*., 894 A.2d 183, 193 (Cmwlth. Ct. 2006). Other than her bald assertion that the Department should have denied the Application because of the signature date, Ms. Dengel does not provide any further reasoning as to how any of the material information in the Authority's Application should have prompted a different result with respect to the approval of the Permit or how the signature date has any continuing relevance. Moreover, she has failed to put forth evidence that any foreseeable harm will result from the Permit's approval. As the Department stated in its response to Ms. Dengel's public comments, it is not the Department's role to oversee the Authority's governing procedures, and Commonwealth Court precedent makes clear that the Board lacks the jurisdiction to hear a direct Sunshine Act claim. In sum, Ms. Dengel did not preserve a due process objection and further, we see no evidence demonstrating the Department violated her due process regardless of how one views the Sunshine Act issue.

While Ms. Dengel's appeal can be dismissed for the above reasons, we will discuss the other two grounds the Department relies on in support of its Motion. The Department asserts that

---

action taken at a later, open meeting cures a prior violation of the Sunshine Act." *Ass'n of Cmty. Organizations for Reform Now v. Se. Pennsylvania Transp. Auth*., 789 A.2d 811, 813 (Pa. Commw. Ct. 2002).

Ms. Dengel lacks standing to bring this appeal. In order to have standing to appeal an administrative decision, persons must have a direct interest in the subject matter of the case. *Mountain Watershed Assn. v. DEP*, EHB Docket No. 2024-077-W (Opinion and Order on Petition to Intervene issued July 18, 2024, slip op. at 4), citing *Muth v. Department of Environmental Protection*, 315 A.3d 185, 204 (Pa. Cmwlth. 2024) (citing *Citizens Against Gambling Subsidies, Inc. v. Pennsylvania Gaming Control Board*, 916 A.2d 624, 628 (Pa. 2007)). See also, *Food & Water Watch v. Department of Environmental Protection*, 2021 Pa. Commw. Unpub. LEXIS 191 (Pa. Cmwlth. 2021); and *Clean Air Council v. Department of Environmental Protection*, 245 A.3d 1207, 1212-13 (Pa. Cmwlth. 2021). A direct interest requires a showing that the matter complained of caused harm to the person's interest. *Id.* (citing *Muth,* 315 A.3d 185, 204 (Pa. Cmwlth. 2024). In order for a person to have a direct interest, their material interests must be discrete to them or a limited class of persons from more diffuse interests common among the citizenry. *Muth*, 315 A.3d at 196 (Pa. Cmwlth. 2024) (citing *Citizens Against Gambling Subsidies, Inc. v. Pennsylvania Gaming Control Board*, 916 A.2d 624, 628 (Pa. 2007)). When a party's standing is challenged in a summary judgment motion, the party cannot rest on mere allegations of injury that resulted from the conduct at issue, but must set forth by affidavit or other evidence, the specific facts that demonstrate a genuine issue exists. *Id.* "Bold, unsupported assertions of conclusory accusations cannot create genuine issues of material fact." *Id.,* citing, *Brecher v. Cutler*, 396 Pa. Super. 211, 578 A.2d 481 (Pa. Super. 1990).

In third-party permit appeals, as is the case here, the Board has held that a party can meet the requisite interest for standing based on where they reside and/or where they recreate. *Food and Water Watch v. DEP*, 2020 EHB at 247. An appellant has standing when the they come forward with specific facts to credibly aver that they use the affected area and that there is a realistic

potential that their use and enjoyment of the area will be adversely affected by the permitted activity. *Muth v. DEP, et al*., 2022 EHB 411, 415 (citing *Friends of Lackawanna v. DEP*, 2016 EHB 641, 643). In an effort to show how the Permit has impacted her personally, Ms. Dengel directs the Board to her Affidavit included with her Response. Aside from her Affidavit, Ms. Dengel has provided no other evidence demonstrating how the Permit harms her interests and she also does not offer any further explanation in her Response regarding her aggrievement or standing. Ms. Dengel's Affidavit does not include any statements pertaining to her use of the affected area or the harms the Permit may have on her use and enjoyment of it. Instead, her claims generally fall into the following three categories: 1) Personal injury she has suffered as a result of pursuing this appeal; 2) Concerns regarding future service lines and additional permits that will flow from the issuance of the Permit and; 3) Allegations that she has been threatened, intimidated and retaliated against because of the filing of this appeal.

Upon review of the Affidavit, there is nothing stated within it that supports Ms. Dengel's claim of standing. She describes in her affidavit the types of personal injury she has endured as a consequence of pursuing this litigation. She states that the appeal has "taken a toll on my personal physical, mental and emotional well-being" and the time involved in pursuing her appeal has "put my education and livelihood on hold." (Dengel Exhibit J, Affidavit, ¶ 7). However, these harms that Ms. Dengel complains of are a result of her own personal decision to file the present appeal and are not a direct result of the activity authorized by the Permit. In other words, Ms. Dengel has explained the impacts due to the time demands and effort she has spent in pursuit of her appeal, but she has not provided any explanation as to how the actual Permit at issue has affected her material interests. The pains and stressors that come from pursuing litigation of a Department

action are not the types of harms necessary to confer standing. For an environmental appellant, the aggrievement suffered must, to some degree, connect to the permitted activity.

The next harm Ms. Dengel alleges concerns potential future waterlines and permits. In paragraph eight of her Affidavit, Ms. Dengel asserts that the Permit "will service a waterline extension and further waterline expansion project that will run past the Dengel Property." (Dengel Exhibit J, Affidavit, ¶ 8). First, Ms. Dengel provides no citation to the record for this statement. Moreover, the Permit does not authorize extensions or expansions of waterlines as Ms. Dengel contends, but merely authorizes the Authority to acquire an additional source of water from the WVWA. In that same paragraph, Ms. Dengel also asserts that the Department will issue additional permits as a result of issuing the Authority its Permit that she states will "[s]pecifically, and directly, [impact] the Dengel Property as my parents are adjacent landowners to the proposed project development." *Id*. Again, Ms. Dengel failed to cite anything in the record to support this statement, but more importantly for our purposes, any future permits the Department may issue are not the subject of the current appeal. Concern for the possibility of future development and issuance of additional permits is sheer speculation and does not establish the direct interest necessary for standing.

Finally, in paragraphs 9, 10, and 11 of her Affidavit, Ms. Dengel alleges that she has in various ways been intimidated, threatened and retaliated against for, at least in part, the filing of this appeal. As troubling as Ms. Dengel's allegations may be if true, these statements again are not the type of harm that constitutes standing for the matter under appeal. When the Department challenged Ms. Dengel's standing in its Motion, it was incumbent on Ms. Dengel to come forward with specific facts to show that she would in some way be harmed by the permitted activity such as having reasonable concerns that her use and enjoyment of the area would be adversely affected.

The harms Ms. Dengel alleges of personal and economic injury in pursuing her appeal, concern for future development and future permits, and bald allegations of harassment do nothing to show that she will be adversely affected by the Permit.

The Department relies on the verified depositional testimony of Ms. Dengel to demonstrate she does not have a direct interest in this appeal. While Ms. Dengel resides at her parents' home which falls within the Authority's coverage area, her testimony reveals that neither she nor her parents are customers of the Authority as her parents' property is served by a private drinking well. (Dengel Exhibit J Affidavit, ¶ 2; DEP Ex. E-1, 52-54). Therefore, Ms. Dengel will not be using the water from the new WVWA source and her water supply will remain unchanged. It is difficult to conceive how Ms. Dengel, who is not a customer of the Authority and whose residence does not receive water from the Authority or WVWA will suffer injury as a result of the Permit.

During her deposition, the Department inquired into her recreational activities in and around the Authority's service coverage area. Ms. Dengel testified that she engages in boating, fishing, paddle boarding, kayaking, and wake boarding and does so "all over the world" but could not identify which hobbies or how often she did them in the Authority's coverage area. (Department's Exhibit E-2 at 343-44). Further, when asked how the Permit could affect her recreational uses of the local waterways, she was unable to articulate any realistic concern of how she could be impacted. (*Id.*, at 341-42, 346). At most, Ms. Dengel's testimony demonstrates that she occasionally recreates in a number of local waters. The lack of detail and supporting evidence as to her recreational use falls far short of the evidence in cases where the Board has found individual standing based on recreational use of a given area. See *Citizens for Pennsylvania's Future v. DEP*, 2015 EHB 750, 754 (the Board denied a motion for summary judgment and found the appellant had standing where appellant-member testified that he hiked in the affected area,

detailed the time he spent there, took photographs, birdwatched, and had an aesthetic appreciation for the area); *Food & Water Watch v. DEP*, 2019 EHB 459, (the Board found a third-party appellant had representational standing where appellant's members had individual standing based on a record that detailed their recreational activities such as kayaking, birdwatching, wading and walking along the creek); *Blose v. DEP*, 1998 EHB 635, 638 (the Board held that appellant had standing where his deposition, answers to interrogatories and affidavit all demonstrated that he used the site for swimming, boating, fishing and canoeing on a regular basis for the past 40 years). The evidence we have before us fails to convince us that Ms. Dengel has the requisite contact to demonstrate that she has a direct interest in the outcome of the appeal and, therefore, lacks the standing to pursue it.

The last point we will make regarding Ms. Dengel's standing pertains to her generalized interest in this matter. As stated above, in order for a person to possess standing, their interest must be greater than those common amongst the citizenry. Ms. Dengel's material interests in this appeal must be discrete to her or to a limited class of persons. Her depositional testimony makes clear that this is not the case. When asked how she could be affected by the New Sewickley Permit, she stated that "I haven't thought about it. I haven't thought about myself in any of this. This isn't – I'm not here for myself." (Department's Exhibit E-1 at 128). She went onto state that "It would take me quite some time to think about how I personally am impacted by this because this is not about me. This appeal is not about I, Laura Dengel. My appeal description does not say my name anywhere in it or the impacts that it has on me." (*Id*., at 130). Regardless of Ms. Dengel's motives, these statements do not support standing to pursue her appeal. As we have stated before "concern alone does not equate to standing and an appellant […] must make credible averments of her use of an affected area and show that the challenged activity has the realistic potential to affect her and

her use of the resource in order to maintain an appeal in front of the Board." *Muth* v. DEP, 2022 EHB 411, 422. Without pointing to evidence in the record that supports a finding that she has a direct interest in her third-party permit appeal, Ms. Dengel has failed to demonstrate she has the requisite standing to maintain her appeal.

Finally, we turn to the Department's argument that Ms. Dengel has not established a prima facie case. In order to establish a prima facie case, Ms. Dengel is required to produce evidence of facts essential to her cause of action. 25 Pa. Code § 1025.2(2). This criterion is satisfied if Ms. Dengel, who has the burden of proof in this instance, has put forward evidence sufficient to allow a trier of fact to find in her favor. Here, her single allegation is that the Department erred in approving the Authority's Application and issuing the Permit because, according to Ms. Dengel, the Application was null and void due to it being signed prior to being voted on. There does not appear to be any dispute amongst the parties of the material facts that make up Ms. Dengel's claim: 1) the Application was signed on June 22, 2022, prior to the vote; 2) the Application was voted on and approved at a public meeting on July 7, 2022; and 3) despite the fact that the Application was signed prior to the vote, the Department approved the Application and issued the Permit. The filings before us do not establish a prima facie case that the Department erred in issuing the Permit. Ms. Dengel failed to develop a plausible cause of action based on the material facts of her claim. Even if her objection was broader in scope, Ms. Dengel has not provided any evidence that suggests any environmental harm would result from the Permit and she has not proffered anything that demonstrates either that the Authority did not comply with the statutory requirements relevant to the Application or that the Department failed to adhere to the statutory requirements pertinent to their review.[7]

[7] Section 6 of the Water Rights Act, 32 P.S. § 636, sets forth the requirements for the Authority's permit application, requiring the authority to provide the following information: 1) The river or stream the supply

Conclusion

Ms. Dengel's claim in this appeal arises from an alleged Sunshine Act violation that we are without jurisdiction to hear. Furthermore, Ms. Dengel has not come forward with sufficient evidence to show that she has the direct interest necessary to confer standing and has failed to establish a prima facie case. In viewing the record in the light most favorable to Ms. Dengel, we discern no genuine issue of material fact, therefore, the Department is entitled to judgment as a matter of law. Accordingly, we issue the following Order:

would be taken and the necessity for either new water rights, new source, or additional quantity; 2) the amount of water proposed for present and future needs; 3) the locality and its population requiring the supply and the necessity of the acquisition; 4) the plan for development or use of the water; and 5) any additional information the Department requires. Section 7 of the Water Rights Act, 32 P.S. §637, sets forth the requirements for the Department's review of the application which requires the Department to consider the proposed water to be acquired is reasonably necessary for the present and future needs; and 2) the taking of the proposed water will not either interfere with navigation, jeopardize public safety or cause the Commonwealth substantial injury.

COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

LAURA DENGEL	:	
	:	
v.	:	**EHB Docket No. 2022-092-B**
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, and NEW SEWICKLEY MUNICIPAL AUTHORITY, Permittee	:	

O R D E R

AND NOW, this 29th day of August, 2024, it is hereby ORDERED that the Department's Motion for Summary Judgment is **granted** and the Appellant's appeal is hereby **dismissed**.

ENVIRONMENTAL HEARING BOARD

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

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

s/ Sarah L. Clark
SARAH L. CLARK
Judge

s/ MaryAnne Wesdock
MARYANNE WESDOCK
Judge

s/ Paul J. Bruder, Jr.
PAUL J. BRUDER, JR.
Judge

DATED: August 29, 2024

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

For the Commonwealth of PA, DEP:
Christopher R. Ryder, Esquire
(via electronic filing system)

For Appellant, *Pro se*:
Laura Dengel
(via electronic filing system)

For Permittee:
Paul A. Steff, Esquire
(via electronic filing system)