COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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11/10/2026

TARAH PROBST AND LISA WAYLAND	:	
	:	
v.	:	**EHB Docket No. 2026-059-L**
	:	**(Consolidated with 2026-060-L)**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, Permittee	:	**Issued: November 10, 2026**

OPINION AND ORDER ON
MOTION FOR PARTIAL DISMISSAL

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

Synopsis

The Board denies a permittee's motion for partial dismissal of a consolidated appeal of a water obstruction and encroachment permit and an NPDES permit. While some of the appellant's objections raise issues related to federal law and property disputes, those issues are enmeshed in other issues that make them difficult to parse in the context of a motion to dismiss.

O P I N I O N

Tarah Probst[1] and Lisa Wayland, proceeding *pro se*, have appealed two permits issued by the Pennsylvania Department of Environmental Protection (the "Department") to the Pennsylvania Department of Transportation ("PennDOT") related to a construction project involving a stretch of the Interstate 80 highway in Stroudsburg, Monroe County. They have appealed NPDES Permit No. PAD450214, authorizing discharges of stormwater associated with the construction of the project (EHB Docket No. 2026-059-L), and Water Obstruction and Encroachment Permit No.

[1] Tarah Probst is a State Representative in the Pennsylvania House of Representatives representing portions of Monroe and Pike counties.

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E4502125-001, authorizing the construction of water obstructions and encroachments and the associated floodway and wetlands impacts from the project (EHB Docket No. 2026-060-L). The appeals were consolidated at EHB Docket No. 2026-059-L. According to PennDOT, the project involves reconstructing and widening 1.5 miles of I-80 and reconfiguring the Exit 303 interchange. (DOT Ex. A.)

PennDOT has filed a motion for partial dismissal seeking to dismiss from the Appellants' notices of appeal Paragraphs 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 25, and 26, and to strike portions of Paragraphs 1, 2, 3, 8, 16, 17, 21, 22, and 23.[2] The only paragraph PennDOT's motion does not contest is Paragraph 24, which is a reservation of rights. PennDOT argues that the Appellants are trying to litigate issues that are within the province of the federal government under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 – 4370m-12, and the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 – 712, as well as property issues governed by the Pennsylvania Eminent Domain Code, 26 Pa.C.S. §§ 101 – 1106, that are outside of the Board's jurisdiction and the scope of the permits under appeal. The Department has filed a letter concurring in the relief requested in PennDOT's motion. The Appellants argue in response that they are not asking the Board to enforce any federal statutes. Instead, they say that the Department improperly relied on the Environmental Assessment and "Finding of No Significant Impact" developed at the federal level to satisfy the Department's independent environmental review of the project and permit applications.[3] While this motion was pending, Tarah Probst, but not Lisa Wayland, filed a

[2] The objections in both notices of appeal are essentially identical. The appeal of the water obstruction and encroachment permit contained two additional objections that were not contained in the original appeal of the NPDES permit, but the Appellants subsequently filed an amendment to the NPDES appeal to add those two objections and to amend another objection to mirror the objection in the other appeal.

[3] The Appellants have also filed a motion seeking leave to file documents and exhibits that were inadvertently omitted from their response. Both PennDOT and the Department filed letters saying they did not intend to file a response to the motion for leave. Given our denial of PennDOT's motion, we deny as moot the Appellants' motion for leave.

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petition for supersedeas on October 27, 2026. We have scheduled a hearing on the supersedeas petition for November 17 and 18 in Harrisburg.

PennDOT's motion for partial dismissal is for all intents and purposes a motion for judgment on the pleadings, but as we said just the other day, we generally do not entertain such motions. *Church v. DEP*, EHB Docket No. 2026-038-BP (Opinion and Order on Motion to Limit Issues issued Nov. 9, 2026). *See also A.W. Long Coal Co. v. DEP*, EHB Docket No. 2025-137-L (Opinion and Order on Motion for Partial Dismissal issued June 8, 2026). Among other things, we do not require particularly artful or specific notices of appeal, and we interpret them liberally and construe them broadly. *Church*, slip op. at 4; *Protect PT v. DEP*, 2025 EHB 595, 600. Therefore, it can be difficult or even impossible in some cases to make dispositive rulings on specific parts of the notice of appeal so early in the proceedings, unless it is clear that the Board lacks jurisdiction over the entire case.

This case serves as the perfect example. PennDOT is rightly concerned that the Appellants have asked us to do more than we can and for reasons that may not be relevant in this appeal. In their notices of appeal, the Appellants have included the following sentence at the end of nearly every single objection: "Only a comprehensive, corridor-wide Environmental Impact Statement (EIS) can legally and adequately assess this severe deficiency, which the current shortcut assessment completely fails to do." An Environmental Impact Statement (EIS) is part of the **federal** NEPA process. *See* 23 C.F.R. § 771.115. NEPA generally requires **federal** agencies to analyze the environmental impact of their actions. *DOT v. Public Citizen*, 541 U.S. 752, 756-57 (2004). *See also Maiden Creek Assocs., L.P. v. United States DOT*, 823 F.3d 184, 188 (3d Cir. 2016). PennDOT correctly points out that we have no authority to order PennDOT to conduct an EIS under NEPA. As we said in a different appeal that was somewhat related to the same project:

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> This Board has no authority "to rescind the Finding of No Significant Impact (FONSI)" or "REQUIRE the completion of a full Environmental Impact Statement (EIS)," both of which relate to federal actions that are beyond our reach….Our jurisdiction is statutorily limited to state actions taken by the Department of Environmental Protection. 35 P.S. § 7514(a). "We do not review actions of the federal government." *Lower Salford Twp. v. DEP*, 2011 EHB 333, 335.

Probst v. DEP, EHB Docket No. 2025-114-L, slip op. at 6 (Opinion and Order on Petition for Supersedeas issued May 27, 2026).

However, entangled among the Appellants' many claims regarding federal issues are other issues over which it is likely we do have jurisdiction. For instance, in Paragraph 4 of their notices of appeal the Appellants assert that the overall I-80 expansion has been improperly segmented into smaller projects that need to be assessed together in terms of the cumulative environmental impact of the project. Although we are saying nothing of the merits of the objection one way or the other at this point, the objection is at least arguably within our ambit apart from the request for an EIS.

Similarly, Paragraph 7 criticizes the **Pennsylvania** Natural Diversity Inventory (PNDI) search that was completed for the project and the wildlife surveys completed for the project, while also criticizing the Environmental Assessment and making some claims regarding the federal Migratory Bird Treaty Act. The objections to the PNDI are fully within the Board's authority to consider. Paragraph 12 says that the Department did not investigate Native American artifacts and archeological sites rendering the applicant's Finding of No Significant Impact (FONSI) completely invalid. We cannot provide any relief in terms of the validity of the FONSI or any alleged violations of NEPA, but the objection also raises a claim under Article I, Section 27 of the Pennsylvania Constitution.

PennDOT also takes issue with other objections in the notices of appeal that relate to PennDOT's use of eminent domain, condemnation proceedings, and a takings claim over which PennDOT says we have no jurisdiction. Again, although the Board has no power to adjudicate

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property disputes *see, e.g.*, *Delaware Riverkeeper Network v. DEP*, 2024 EHB 549, 599, *appeal dismissed as moot*, 2026 Pa. Commw. Unpub. LEXIS 306 (Pa. Cmwlth. June 5, 2026); *Beech Mountain Lakes Association v. DEP*, 2023 EHB 221; *Lyons v. DEP*, 2011 EHB 169, 191; *Abod v. DEP*, 1997 EHB 872, 884; *Bernie Enterprises v. DEP*, 1996 EHB 239, 243, the Board does have the authority to hear takings claims in certain situations, *see Scott v. DEP*, 2024 EHB 318, *aff'd*, 356 A.3d 946 (Pa. Cmwlth. 2026); *Marshall v. DEP*, 2019 EHB 352, 354.

These examples illustrate the point that, although some of the Appellants' claims raise issues that touch on federal law or property issues, those issues are deeply entangled with other issues that at least arguably are the proper subject of the Board's jurisdiction. It is neither practical nor possible to parse all of these issues in the context of a motion to dismiss, which we evaluate in the light most favorable to the nonmoving party and must only grant when the moving party is clearly entitled to judgment as a matter of law and the matter is free of doubt. *BCD Properties, Inc. v. DEP*, 2025 EHB 761, 766 (citing *Downingtown Area Regional Auth. v. DEP*, 2022 EHB 153, 155); *Friends of High Point Lake v. DEP*, 2025 EHB 672, 675; *HD Holdings v. DEP*, 2025 EHB 662, 664; *Bartholomew v. DEP*, 2019 EHB 515, 517; *Telford Borough Auth. v. DEP*, 2009 EHB 333, 335. PennDOT's motion is not free of doubt and must be denied.

Accordingly, we issue the Order that follows.

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PROTECTION and PENNSYLVANIA	:	
DEPARTMENT OF TRANSPORTATION,	:	
Permittee	:	

O R D E R

AND NOW, this 10th day of November, 2026, it is hereby ordered that the Permittee's motion for partial dismissal is **denied**.

ENVIRONMENTAL HEARING BOARD

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

DATED: November 10, 2026

c: **DEP, General Law Division:**
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