



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



NATHAN EACHUS	:	
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	:	EHB Docket No. 2025-132-L
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COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and AMAZON DATA	:	Issued: October 23, 2026
SERVICES, INC., Permittee	:	

OPINION AND ORDER ON
MOTION FOR SUMMARY JUDGMENT AND MOTION FOR DISPOSITIVE RELIEF

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

Synopsis

The Board denies an appellant’s motion for dispositive relief and grants a permittee’s motion for summary judgment in a third-party appeal of the issuance of a permit authorizing the installation of aboveground storage tanks. The appellant has not established that the existence of the tanks within ten miles of a nuclear power plant rendered the Department’s evaluation and issuance of the permit unlawful or unreasonable. The appellant has not made out a *prima facie* case on the claims in his notice of appeal to be able to sustain his burden of proof.

OPINION

Nathan Eachus, proceeding *pro se*, has appealed Storage Tank Site Specific Installation Permit No. 25-40-017 issued by the Department of Environmental Protection (the “Department”) to Amazon Data Services, Inc. (“Amazon”) for the installation of 204 aboveground storage tanks to store 1,306,000 gallons of diesel fuel at a site in Salem Township, Luzerne County. Mr. Eachus argues in his appeal that the Department failed to evaluate cumulative environmental and safety risks for the storage tanks in conjunction with what he says are other hydrogen storage tanks,

methane-powered turbines, and the storage tanks' proximity to a nuclear energy facility known as the Susquehanna Steam Electric Station. He says there has not been sufficient emergency response planning in the event of a "fire, explosion, or major chemical incident." He argues that the Department has not provided evidence of coordination with the Nuclear Regulatory Commission (NRC) or other agencies concerning what he says are risks of locating 1.3 million gallons of diesel fuel near a nuclear power facility. He also criticizes the Department for "deferring oversight" to the Department of Labor and Industry for fire and explosive hazards.¹

Before the Board now are competing motions filed by Mr. Eachus and Amazon. Amazon has filed a motion for summary judgment, arguing that there is no genuine issue of material fact in dispute regarding the issuance of the permit because the Department had no obligation to consider explosion, fire, nuclear safety, and emergency planning concerns in permitting the storage tanks, and that Mr. Eachus has failed to explain how considering these matters would have changed the Department's decision to issue the permit. The Department has filed a memorandum of law in support of Amazon's motion, in which the Department maintains that it complied with all legal requirements in reviewing Amazon's permit application and issuing the permit.

Mr. Eachus has filed what he calls a "motion for dispositive relief." Mr. Eachus asks in his motion that we find that the Department failed to adequately evaluate cumulative hazards and emergency planning issues, that we vacate or reverse the permit authorization, and that we remand the permit back to the Department for the "evaluation of fire and explosion risks, cumulative industrial hazards, emergency response compatibility, evacuation feasibility, and the precise

¹ Mr. Eachus also filed an amended appeal together with a request for supersedeas, but stated in the amended appeal that "[t]his Amendment does not alter the nature of the appeal, the claims for relief asserted, or the jurisdictional basis previously pled." (Amended Notice of Appeal at 1.)

separation distance between diesel storage facilities & the Susquehanna nuclear reactors.” (Eachus Motion at 9.)

Standard of Review

Mr. Eachus’s motion is not quite a motion for summary judgment, but elements of its structure and the relief it seeks are similar to those which are typically contained in a summary judgment motion. For example, Mr. Eachus’s motion does not contain a separate document for the statement of undisputed material facts, as required by our summary judgment rule, 25 Pa. Code § 1021.94a(d), but the motion itself does contain 34 paragraphs under the heading “Statement of Material Facts.” He also asks for us to rule on the “undisputed facts,” which fits within the relief available in summary judgment. Accordingly, we will evaluate both Mr. Eachus’s motion and Amazon’s motion under the standard applicable to motions for summary judgment.

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; *Probst v. DEP*, EHB Docket No. 2025-114-L, slip op. at 3 (Opinion and Order on Motion for Summary Judgment issued July 28, 2026); *Liberty Twp. v. DEP*, 2024 EHB 872, 874. Summary judgment is also available

if, 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, 162-63. In other words, summary judgment may be granted if the record following the completion of all discovery contains insufficient evidence of facts for the party bearing the burden of proof to make out a *prima facie* case. *Johnson v. DEP*, EHB Docket No. 2025-077-CS, slip op. at 5 (Opinion and Order on Motion

for Summary Judgment issued July 2, 2026). A person appealing the issuance of a permit to another party, such as Mr. Eachus, bears the burden of proof to show that the Department erred in issuing that permit. 25 Pa. Code § 1021.122(c)(2). Bald, conclusory allegations are insufficient to create an element necessary for a *prima facie* case or to create a genuine issue of material fact. *Casey v. DEP*, 2014 EHB 439, 444 (quoting *Golashevsky v. Dep't of Env'tl. Res.*, 683 A.2d 1299, 1302 (Pa. Cmwlth. 1996), *aff'd*, 720 A.2d 757 (Pa. 1998)).

Our Rules provide the requirements for a response to a motion for summary judgment. One of those requirements is that a non-moving party must file a response to a moving party's statement of undisputed material facts and admit, deny, or dispute each fact with citations to the record. 25 Pa. Code § 1021.94a(g)(2). Our Rules also spell out the consequences for a party that does not adequately respond:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading or its notice of appeal, but the adverse party's response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing there is a genuine issue for hearing. If the adverse party does not so respond, summary judgment may be entered against the adverse party. Summary judgment may be entered against a party who fails to respond to a summary judgment motion.

25 Pa. Code § 1021.94a(f). Mr. Eachus did not respond to the statement of undisputed material facts that accompanied Amazon's motion for summary judgment. That on its own could arguably provide the basis for granting summary judgment against Mr. Eachus. *See Merck Sharp & Dohme Corp. v. DEP*, 2016 EHB 411, 415-16 (where non-moving party fails to file a responsive statement of facts we take all moving party's facts as undisputed).

In his own motion, Mr. Eachus's Statement of Material Facts includes almost no citations to any record support as required by our summary judgment rules. 25 Pa. Code § 1021.94a(d) (statement of facts must contain "a citation to the portion of the motion record establishing the fact

or demonstrating that it is uncontroverted.”). Only two of Mr. Eachus’s statements of fact contain any citation at all and only to exhibits Mr. Eachus previously filed with his appeal and/or with his earlier petition for supersedeas. Mr. Eachus does not attach any exhibits or affidavits to his motion, 25 Pa. Code § 1021.94a(b)(1)(iv) (summary judgment motion record must contain the evidentiary materials relied upon by the movant), although he does include exhibits with his responses. While we are aware that Mr. Eachus is proceeding *pro se* in this matter, “parties proceeding *pro se* in Board cases are bound by our rules and are expected to comply with them.” *Flatley v. DEP*, EHB Docket No. 2024-139-B, slip op. at 9 n.2 (Opinion and Order on Motion for Summary Judgment issued May 8, 2026).

This is not to be punitive, rather, the Board’s Rules of Practice and Procedure must be followed by all appellants – represented or proceeding *pro se* – to ensure fair procedure to all parties appearing before us, which requires that the Judges have all the necessary information to make a fair and reasonable ruling in accordance with the law.

Sunderman v. DEP, EHB Docket No. 2025-030-CS, slip op. at 6 (Opinion and Order on Motion for Summary Judgment issued Feb. 27, 2026). The procedural infirmities of Mr. Eachus’s filings do not on their own compel the result in this case, but some, like the lack of appropriate evidentiary support, are unignorable factors in denying Mr. Eachus’s motion and granting Amazon’s motion.

Discussion

Mr. Eachus’s motion, and much of his appeal, focuses on his allegations that the Department did not evaluate emergency planning and safety considerations that Mr. Eachus says are relevant to permitting storage tanks for diesel fuel near a nuclear power plant. Mr. Eachus tells us that Amazon’s storage tanks are within a ten-mile “emergency planning zone” for the Susquehanna Steam Electric Station. Mr. Eachus argues that the Department had an obligation to consider the interaction between diesel storage, fire and explosion hazards, emergency response

capability, and nuclear emergency planning. According to Mr. Eachus, this was a material failure on the part of the Department, and Amazon's permit should be vacated or remanded back to the Department so the Department can perform this analysis. However, Mr. Eachus does not identify any legal provision requiring the Department to perform this analysis or consider these things in the context of permitting aboveground storage tanks. In fact, he does not cite to or discuss any provision at all of the Storage Tank and Spill Prevention Act, 35 P.S. §§ 6021.101 – 6021.2104, or the accompanying regulations governing storage tanks. *See, e.g.*, 25 Pa. Code §§ 245.231 – 245.237 (regulations governing site-specific installation permits for storage tank systems and facilities).

Amazon asserts that Mr. Eachus cannot succeed on this claim because there is no provision of the Storage Tank Act or the regulations that require the Department to assess risks of explosion or emergency planning in relation to a nuclear power plant. Amazon argues that the regulation of storage tanks is focused on preventing any releases from the tanks that could contaminate land, groundwater, and surface water, and on requiring the prompt cleanup of any releases. 35 P.S. § 6021.102 (legislative findings). The regulatory scheme requires certain technical standards for tanks to be met, along with testing and inspection of leak detection systems and the structural integrity of the tanks. *Id.* at § 6021.301 (aboveground storage tank requirements); 25 Pa. Code § 245.232 (requirements for site-specific installation permits). There are also requirements for owners of storage tank facilities to develop a Spill Prevention Response Plan, 35 P.S. §§ 6021.901 – 6021.904; 25 Pa. Code § 245.232(b)(1), which the Department says Amazon submitted. (Amazon Ex. C.)

There are fire protection requirements for certain tanks in the Storage Tank Act, but the development and enforcement of those requirements are left to the State Fire Marshall and the

Pennsylvania State Police, not the Department. 35 P.S. § 6021.305. Amazon also asserts that the Department of Labor and Industry regulates the storage and handling of combustible liquids through the Flammable and Combustible Liquids Act, 35 P.S. §§ 1241 – 1252, and the regulations in Chapter 14a of Title 34 of the Pennsylvania Code. Amazon says that the Department of Labor and Industry issued permits to Amazon for the regulation and prevention of fire or explosive hazards. (Amazon Ex. P, Q, R, S.) Although Mr. Eachus criticizes the Department for “deferring” to other agencies, he has not explained why regulation by the Department of Labor and Industry or the State Fire Marshall is inadequate. He has not explained why the Department should have performed an additional analysis in the context of permitting the tanks or how that analysis should have differed from whatever was done by the Department of Labor and Industry.

The only regulations Mr. Eachus points to are federal regulations, which govern the Nuclear Regulatory Commission’s licensing and regulation of power plants, *see* 10 CFR Part 50, and which govern the Federal Emergency Management Agency’s review of local and state emergency plans for the offsite effects of a radiological emergency at a nuclear power plant, *see* 44 CFR Part 350. He does not explain what authority or obligations the Department has over these regulations. He does not identify any specific federal regulation that requires the Department to consider or evaluate nuclear safety or nuclear emergency planning when reviewing permits for storage tanks, or even permits more generally, if a proposed operation is within a certain distance of a nuclear power plant.

Mr. Eachus repeatedly emphasizes the importance of emergency planning and response for communities within ten miles of a nuclear power plant. No one seems to dispute that. But Mr. Eachus has not established any tangible way that the permit for these storage tanks should have been different because of this. Mr. Eachus broadly refers to emergency planning zone

requirements, but he does not point to any specific legal requirement mandating that the Department perform some sort of nuclear emergency planning analysis when evaluating a permit application for aboveground storage tanks at a different site. The fact that the Nuclear Regulatory Commission and/or FEMA and/or a nuclear plant itself, or even local and state communities more broadly, may be required to undertake nuclear emergency planning does not necessarily mean that every permitting decision of the Department involving activity occurring within ten miles of a nuclear power plant needs to involve some kind of unspecified nuclear emergency planning analysis.

To the extent that Mr. Eachus argues that the Department, in its discretion, should have performed or required Amazon to perform these analyses anyway, he has not established with any competent evidence that the Department should have evaluated these issues in the absence of specific statutory or regulatory requirements. Mr. Eachus says that Amazon produced a Safety Data Sheet in discovery demonstrating that diesel fuel carries with it a number of hazards, such as fire, combustion, toxicological, respiratory, and carcinogenic. (*See* Amazon Ex. C., Appx. T.) Although not clearly articulated, Mr. Eachus seems to fear that, because diesel fuel is flammable, there will somehow be some sort of explosion of the tanks at a magnitude great enough to cause some kind of failure at the nuclear power plant an unknown distance away and that failure will result in an unspecified nuclear emergency. Or perhaps he also fears the reverse—that a nuclear meltdown will then trigger an explosion of the tanks. However, apart from the mere existence of the storage tanks in some proximity to a nuclear plant, none of the other variables in that speculative chain of causation have been explained or substantiated with any facts that would be admissible at a merits hearing.

We have held that third-party appellants challenging the Department's issuance of a permit can prevail by showing that the Department and/or permittee have not performed a legally required analysis during the permitting process. *Chester Water Auth. v. DEP*, 2016 EHB 280, 290 (citing *Borough of St. Clair v. DEP*, 2014 EHB 76; *Blue Mt. Pres. Ass'n. v. DEP*, 2006 EHB 589). However, "[a] weaker case is presented where...the Department and/or permittee performed the required analysis but the third-party appellant who bears the burden of proof challenges some aspect of the analysis but fails to explain why the Department's final conclusion is wrong." *Id.* To this we would add that a weaker still case is presented where an appellant argues that some extra-statutory or regulatory analysis should have been performed but fails to substantiate with any credible evidence why that analysis was necessary or explain what should have been changed in the permit as a result of that analysis. "A case built upon speculation, possibilities, and little actual investigation on the part of the appellants themselves has limited chances of success." *Citizens for Pa.'s Future v. DEP*, 2025 EHB 275, 299, *aff'd*, ___ F.4th ___, No. 25-2134, 2026 U.S. App. LEXIS 31298 (3d. Cir. Oct. 14, 2026). *See also Sludge Free UMBT v. DEP*, 2015 EHB 469, 484 ("given the Board's extensive *de novo* review, an appellant who rests on the fact of an inadequate investigation or analysis alone often does so at its peril"); *Kiskadden v. DEP*, 2015 EHB 377, 409 ("it is not enough for [the appellant] simply to demonstrate that the Department did not consider certain evidence in making its decision; rather, he must show that the evidence makes a difference in the final outcome").

Mr. Eachus does not explain precisely what the Department or Amazon should have done in evaluating the tanks in relation to the Susquehanna Steam Electric Station or the ten-mile emergency planning zone. He does not explain how, even if the permit for the storage tanks had been evaluated with nuclear safety in mind, that should have changed anything about the permit

for the storage tanks. To the extent he contends that the permit should never be issued because of alleged risks resulting from the proximity of the tanks to the nuclear plant, he has not established any basis for that.

Mr. Eachus also criticizes what he calls an “incomplete administrative record,” which is a variation on his argument that the Department did not consider all the necessary information relevant to the permitting of the storage tanks. He says the “administrative record” does not establish the exact distance between the storage tanks and the Susquehanna Steam Electric Station nuclear reactors and whether the Department considered and evaluated fire and explosion risks associated with the diesel storage, cumulative emergency response demands, evacuation and protective action implications, and compatibility with existing emergency planning zone assumptions.

To that end, Mr. Eachus devotes most of his responses to Amazon’s motion and the Department’s memorandum of law in support of that motion to complaints about what he views as inadequate answers given by Amazon and the Department to his discovery requests. Mr. Eachus says that the Department and Amazon should not be allowed to object to discovery requests and then be granted summary judgment because the opposing party lacks sufficient evidence. He says without these answers, there is an incomplete record addressing things like emergency planning and intergovernmental coordination among various agencies. He asserts that these inadequate answers leave disputed issues of material fact that preclude entry of summary judgment against him.

As an example, Mr. Eachus through interrogatories asked both Amazon and the Department how far the storage tanks are located to the nuclear power plant. Instead of answering with a number of feet for the distance, Amazon and the Department apparently stated various

objections to the question and generally directed Mr. Eachus to their document production and maps in the permit application. Despite any frustration Mr. Eachus might have with Amazon and the Department's responses to this question, the appropriate time to resolve discovery disputes is in discovery. We did not receive any discovery motions from any party in this appeal. If Mr. Eachus believed that the Department's discovery responses were deficient, or if he disagreed with the basis for an objection to his discovery requests, the time to resolve that dispute was during discovery through an appropriate motion. He needed to seek relief from the Board before the filing of dispositive motions.

Mr. Eachus bears the burden of proof in this appeal. 25 Pa. Code § 1021.122(c)(2). He has an obligation to obtain evidence to support his claims if he wishes to meet that burden of proof. The opportunity to "complete the record" is during this appeal before the Board. Proceedings before the Board are conducted pursuant to *de novo* review. *Friends of Lackawanna v. DEP*, 2025 EHB 182, 218. "The Board's *de novo* review allows it to admit and consider evidence that was not before the Department when it made its initial decision, including evidence developed since the filing of the appeal." *United Ref. Co. v. Dep't of Env't Prot.*, 163 A.3d 1125, 1136 (Pa. Cmwlth. 2017). We decide the case anew based on the record developed before us. *Carbon & Metal Tech., LLC v. DEP*, 2018 EHB 706, 716. This appeal is Mr. Eachus's opportunity to make the case that this information was necessary for the Department's determination, and more importantly, to show that it makes a material difference to the Department's final decision to issue the permit. He has not done that.

Mr. Eachus cites the cases of *Wintermyer v. Workers' Compensation Appeal Board*, 812 A.2d 478 (Pa. 2002), and *Metal Green Inc. v. City of Philadelphia*, 266 A.3d 495 (Pa. 2021) in support of his argument that agency decisions cannot exclude material evidence. However, those

cases address the standard for appellate review of agency decisions. The Pennsylvania Supreme Court in *Metal Green* held that one component of an appellate court's review of an agency decision should be an assessment of whether the agency exhibited a "capricious disregard of material, competent evidence." *Metal Green*, 266 A.3d at 514 (discussing and quoting *Wintermyer*). Even if these standards did apply to our review of Department actions, or the Department's review of permit applications, we detect no "capricious disregard of material, competent evidence" in the Department's approval of Amazon's permit.

Earlier in this appeal we denied a petition for supersedeas filed by Mr. Eachus without a hearing. *Eachus v. DEP*, EHB Docket No. 2025-132-L (Opinion and Order on Motion to Dismiss Petition for Supersedeas without Hearing issued Jan. 26, 2026). We held that, despite Mr. Eachus's claims of hazards from the storage tanks, he did not substantiate any of those in his petition for supersedeas:

Mr. Eachus merely states generally that these hazards exist, but he does not specify what they are, how they could happen, or how likely or unlikely the risks are. He does not support his claims with any objective documentation. Mr. Eachus never clearly explains what the threats and risks are of Amazon's storage tanks in the context of the Emergency Planning Zone, or produces any facts to substantiate those risks. He seems to believe the risks are self-evident, but that is not enough for a petition for supersedeas. He does not identify any permit term or condition, or part of the permit application that is incorporated into the permit, that is deficient in light of the Emergency Planning Zone. He does not identify the proximity of the nuclear power plant to Amazon's tanks or how any fire or explosion would impact that plant or impede any evacuation routes within the Emergency Planning Zone. If Mr. Eachus fears that a fire or explosion associated with the storage tanks will trigger a nuclear or radiological emergency, he has fallen far short of substantiating that with any credible facts for purposes of a supersedeas.

Id., slip op. at 11. We then provided some guidance on what Mr. Eachus would need to do to prove his case as it moved forward:

We must emphasize that nowhere in Mr. Eachus's petition for supersedeas or in his response to the motion to dismiss the petition is there any specific critique of the permit or the permit application incorporated therein. This appeal will likely turn

on the requirements of the Storage Tank and Spill Prevention Act, 35 P.S. §§ 6021.101 – 6021.2104, the applicable regulations, and technical evidence about the tanks and the requirements of the permit. In order to ultimately prevail in the appeal, Mr. Eachus will need to prove by a preponderance of the evidence that the Department's issuance of the storage tank permit to Amazon was unlawful in that the Department violated a statutory, regulatory, or adjudicatory law or acted contrary to its duties under the Pennsylvania Constitution, or that the Department's action was otherwise unreasonable or not supported by the facts.

Id., slip op. at 11-12.

It seems not much has changed from an evidentiary or argument standpoint from when Mr. Eachus filed his petition for supersedeas. Much like how Mr. Eachus failed in his supersedeas papers to set forth a *prima facie* case for his entitlement to a supersedeas, he has failed to set forth a *prima facie* case on the merits of his claims in this appeal to survive summary judgment.

Accordingly, we issue the Order that follows.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NATHAN EACHUS

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EHB Docket No. 2025-132-L

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and AMAZON DATA
SERVICES, INC., Permittee

ORDER

AND NOW, this 23rd day of October, 2026, it is hereby ordered as follows:

1. The Appellant's motion for dispositive relief is **denied**.
2. The Permittee's motion for summary judgment is **granted** and this appeal is **dismissed**.

ENVIRONMENTAL HEARING BOARD

s/ MaryAnne Wesdock

MARYANNE WESDOCK
Chief Judge and Chairperson

s/ Bernard A. Labuskes, Jr.

BERNARD A. LABUSKES, JR.
Board Member and Judge

s/ Sarah L. Clark

SARAH L. CLARK
Board Member and Judge

s/ Paul J. Bruder, Jr.

PAUL J. BRUDER, JR.
Board Member and Judge

DATED: October 23, 2026

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