



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



NATHAN EACHUS	:	
	:	
v.	:	EHB Docket No. 2025-131-L
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION and MOXIE FREEDOM, LLC,	:	
dba CAITHNESS MOXIE FREEDOM,	:	Issued: October 13, 2026
Permittee	:	

**OPINION AND ORDER ON
MOTIONS FOR SUMMARY JUDGMENT**

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

Synopsis

The Board denies an appellant’s motion for summary judgment and grants a permittee’s motion for summary judgment. The appellant has not made out a *prima facie* case regarding any alleged deficiency with the Title V operating permit renewal under appeal. A defect in the public notice that has already been addressed does not warrant vacating the permit renewal or providing a third public comment period. The appellant also has not responded to the permittee’s statement of undisputed material facts or multiple arguments contained within the permittee’s motion.

OPINION

Nathan Eachus, proceeding *pro se*, has appealed the renewal of Title V Operating Permit No. 40-00129 issued by the Department of Environmental Protection (the “Department”) to Moxie Freedom, LLC dba Caithness Moxie Freedom (“Moxie”) for a natural gas fired power plant in Salem Township, Luzerne County. In his notice of appeal, Mr. Eachus raises issues concerning the public notice that was provided for the permit renewal, arguing that it was deficient and it deprived the public of a meaningful opportunity to participate in the permitting process. He also

raises issues that bear some relation to a nuclear power plant known as the Susquehanna Steam Electric Station. Mr. Eachus contends that the Moxie facility's proximity to the nuclear plant should have prompted the Department to assess alleged cumulative risks to the local community. In Mr. Eachus's request for relief, he asks that we suspend Moxie's Title V permit until the Department conducts what he calls a lawful 30-day public notice and public comment period; that we order the Department to "[p]rovide a written explanation describing how DEP will prevent future violations of public notice requirements and ensure transparency in all future Title V permitting actions"; and that we order the Department to "[c]onduct an independent cumulative risk assessment of the Salem Township energy corridor, including chemical, explosive, and radiological hazards, with coordination from the Nuclear Regulatory Commission (NRC) where applicable."¹ (Notice of Appeal, ¶ 9.)

Both Mr. Eachus and Moxie have now filed motions for summary judgment. Mr. Eachus argues that the renewal permit should be suspended because Moxie did not comply with the public notice regulations. Moxie argues in its motion that Mr. Eachus has not made any substantive critique of the renewal permit and that any defect in the public notice process has been cured and there is nothing more that can be done. The Department has filed a letter supporting Moxie's motion, and it has filed a response in opposition to Mr. Eachus's motion. For the reasons explained below, we deny Mr. Eachus's motion for summary judgment and we grant Moxie's motion for summary judgment.

¹ Mr. Eachus filed an amended notice of appeal and petition for supersedeas, but made it clear that he was not changing any of the claims advanced in his original notice of appeal: "This Amendment does not alter the nature of the appeal, the claims for relief, or the jurisdictional basis previously pled." (Amended Notice of Appeal at 1.)

Summary Judgment Standard

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).

Importantly for the instant motions, our Rules outline 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(l). Mr. Eachus did not respond to the statement of undisputed material facts that accompanied Moxie'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). However, since we have competing motions for summary judgment and Mr. Eachus filed a statement of facts in support of his own motion (albeit without supporting each fact with record citations as required by 25 Pa. Code § 1021.94a(d)), we will consider the merits of the parties' arguments.²

Substantive Issues

Moxie argues in its motion that Mr. Eachus has not identified any material defects in the permit renewal and he has not articulated a specific issue concerning any provision or condition of the permit renewal that would suggest the Department failed to comply with any applicable law or regulation or that the Department abused its discretion in issuing the permit renewal. Moxie addresses Mr. Eachus's claims that the Department should have evaluated the permit renewal in the context of the facility's proximity to the Susquehanna Steam Electric Station nuclear power plant, that the Department should have analyzed cumulative emergency preparedness impacts, and that the Department ignored emergency planning zone safety considerations. Moxie says that none of this has anything to do with the renewal of the Title V permit for its facility, and that the

² 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).

Department does not have any authority to regulate nuclear energy, particularly through the renewal of a Title V permit for a completely different facility.

In his own motion, Mr. Eachus does not really pursue claims that the Department should have done anything substantively with respect to the permit due to the nuclear power plant. His issues regarding any alleged risks from the existence of Moxie's facility within some proximity of the nuclear plant are primarily couched in his assertion of their importance to ensuring adequate public notice. The same is largely true of Mr. Eachus's response to Moxie's motion. He does not do much to defend those claims. He does not clearly address Moxie's arguments that he has not identified any material defect in the permit renewal, or that there is no reason why the nuclear power plant should have prompted the Department to take any different action on the substantive aspects of the permit renewal. As we mentioned above, under our Rules summary judgment may be entered against a party if that party does not respond to an argument raised in a summary judgment motion. 25 Pa. Code § 1021.94a(*l*). *See also Liberty Twp. v. DEP*, 2022 EHB 398, 402-03 (granting summary judgment on issue to which adverse party failed to respond).

To the extent these issues have not been waived, Mr. Eachus somewhat in passing asserts that a cumulative risk assessment needs to be performed of what he calls the Salem Township Energy Campus for explosive, chemical, and radiological hazards. He does not identify any legal authority requiring that analysis. He also does not say why the Department should have required Moxie to perform that analysis, or should have conducted that analysis itself, as a prerequisite to issuing the renewal of Moxie's Title V operating permit. Mr. Eachus also says that Moxie's facility "presents additional fire, explosion, and air emissions hazards," but he does not elaborate on those alleged hazards or explain how they could come to be. (Resp. at 7.)

Moxie says that its facility is located 1.73 miles to the northwest of the Susquehanna Steam Electric Station. (Moxie Statement of Facts ¶ 17.) Since Mr. Eachus failed to respond to Moxie's statement of facts, we have no reason to believe otherwise. A permitted facility's mere proximity to a nuclear power plant does not *per se* render that facility's air quality permit invalid or unlawfully issued. The bare assertion that Moxie's facility is a couple miles away from a nuclear power plant does not automatically mean that the renewal of Moxie's permit was unlawful or unreasonable.

Beyond mere proximity, Mr. Eachus has not substantiated any credible connection between Moxie's facility and the Susquehanna Steam Electric Station that would justify evaluating the projects together for purposes of renewing Moxie's Title V permit. "An appellant cannot simply come forth with a laundry list of potential problems and then rest its case. It must prove by a preponderance of the evidence that these problems have occurred or are likely to occur." *Borough of St. Clair v. DEP*, 2015 EHB 290, 314 (quoting *Shuey v. DEP*, 2005 EHB 657, 712). Although we are at the summary judgment stage here, the basic sentiment holds true. The fundamental issue with Mr. Eachus's complaints is that he never explains or provides any evidence of how they should make a difference for Moxie's Title V permit, which is the focus of our review. He does not identify any provision or condition of the operating permit that should be changed, any additional conditions that should be imposed, or otherwise explain how the permit should be different because of the nuclear plant.

Earlier in this appeal, we issued an Opinion and Order granting a motion filed by the Department to deny a petition for supersedeas filed by Mr. Eachus without a hearing. *Eachus v. DEP*, EHB Docket No. 2025-131-L (Opinion and Order on Motion to Deny Supersedeas Petition Without a Hearing issued Feb. 18, 2026). We granted the motion, among other reasons, because

Mr. Eachus did not provide any specific critique of any term or condition in the Title V permit, and he did not substantiate his claims that, due to the proximity of Moxie's facility to the nuclear power plant, there were risks of "cascading explosions," "fire propagation," the "compromise of EPZ evacuation routes," and the "undermining of NRC-mandated emergency planning." What we previously said in that Opinion still holds true here:

Mr. Eachus does not point to any provision of the Air Pollution Control Act or regulations requiring the Department to conduct these analyses. He does not explain what an "explosion risk analysis," "cumulative hazard assessment," or "EPZ integration review" are and he has not shown that these analyses, if they had been performed, would have made a material difference in the permit. Mr. Eachus does not offer any specific critique of the facility or the permit. He does not contest any of the emissions limits contained in the permit or any reporting requirements.

Id., slip op. at 12. Even after conducting discovery, Mr. Eachus has not made out a *prima facie* case on these claims. He has not pointed to any evidence that is sufficient to survive summary judgment.

Public Notice

The dispute in this appeal that has been argued more vigorously concerns the public notice that was provided for the notice of intent to issue the renewed Title V permit. Under the air quality regulations, there are notice publication requirements for both the *Pennsylvania Bulletin* and a newspaper of general circulation. 25 Pa. Code § 127.424(b). The Department prepares a notice of the action it intends to take on an operating permit. 25 Pa. Code § 127.424(a). The Department sends that notice to the permit applicant, the U.S. EPA, and any contiguous state within 50 miles of the facility. The permit applicant then has 10 days from receiving the notice prepared by the Department to publish that notice in a newspaper of general circulation in the county in which the emissions source is to be located. The applicant must publish the notice in the newspaper "on at least 3 separate days in a prominent place and size" and then provide proof of publication to the

Department within one week. 25 Pa. Code § 127.424(b). According to the regulations, “[a]n operating permit will not be issued by the Department if the applicant fails to submit the proof of publication.” *Id.* At approximately the same time, the Department publishes the same notice in the *Pennsylvania Bulletin*. The notices in the newspaper and the *Pennsylvania Bulletin* are to provide a 30-day comment period.³ 25 Pa. Code § 127.424(e)(2).

There is no dispute that notice of the Department’s intent to issue the renewed permit was published by the Department in the *Pennsylvania Bulletin* on June 14, 2025, which included a 30-day public comment period. 55 Pa.B. 4079 (June 14, 2025). There is also no dispute that notice of the permit renewal’s *issuance* was published in the *Pennsylvania Bulletin* on August 30, 2025, as required. 55 Pa.B. 6348 (Aug. 30, 2025). The issue presented here concerns Moxie’s publication of newspaper notice of the intent to issue the renewal permit.

The parties agree that Moxie was required to publish notice of the Department’s intent to issue the renewed permit in a newspaper on three separate days, but instead only published notice in the newspaper on one day on June 10, 2025. (Moxie Ex. 4.) The failure to publish notice in the newspaper on three separate days was brought to the Department’s attention by Mr. Eachus and another individual in November 2025, after the renewal permit had been issued in August. (DEP Ex. G, J.) Upon learning of the newspaper notice error, the Department directed Moxie to republish newspaper notice on three days. Moxie then published newspaper notice in the Wilkes-

³ There are somewhat overlapping public notice requirements specific to Title V facilities, which also require notice to be published in a newspaper, but not on a certain number of days:

Notice shall be given by publication by the permit applicant in a newspaper of general circulation in the area where the source is located and by the Department in the *Pennsylvania Bulletin* and to persons on a mailing list developed by the Department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

25 Pa. Code § 127.521(b).

Barre *Citizens' Voice* on November 18, 19, and 20, 2025. (Moxie Ex. 7.) The Department opened up another 30-day comment period until December 20, 2025. No comments were received during the additional comment period. (DEP Ex. I, ¶ 14.)

The question now is what more, if anything, should be done in light of the defective newspaper notice from June 2025. Mr. Eachus emphasizes the language in the regulations prohibiting an operating permit from being issued unless a permit applicant submits to the Department proof of publication of the newspaper notice. He argues that, because the newspaper notice was done incorrectly, no lawful public comment period ever commenced, and therefore, the permit was unlawfully renewed.⁴ He asks that we vacate and remand the permit so that the public notice and comment process can begin again. He also says that Moxie is required to hold a public hearing at Berwick High School. Moxie argues that, even assuming the initial newspaper notice was defective, such a defect does not warrant rescission of the permit renewal. Moxie asserts that the publication of newspaper notice on one day instead of three days was a purely procedural error that has no continuing relevance due to Moxie's subsequent publication of newspaper notice on three separate days.

We conclude that Moxie and the Department have already sufficiently addressed the lack of complete newspaper notice by republishing notice on three separate days and opening a new 30-day comment period. We are not sure what the opening of a third comment period would accomplish. No comments were received during the first two comment periods. In fact, the Department tells us that the only comments it received during the entire time from the opening of

⁴ In his papers, Mr. Eachus frequently cites 25 Pa. Code § 127.44(c), which applies to plan approvals, not operating permits, but contains a similar requirement for publication of newspaper notice. We will treat Mr. Eachus's arguments as if he is making them under the regulations that apply to operating permits. Mr. Eachus also seems to suggest in his motion that the Department and Moxie did not fully comply with the Title V public notice requirements in 25 Pa. Code § 127.521, but he does not provide any evidence establishing that.

the first comment period in June 2025 to the closing of the second comment period in December were from Mr. Eachus and another individual in early November, which flagged the notice issue. (DEP Ex. I, ¶ 15.) The Department responded to those comments. (DEP Ex. K, L.) Mr. Eachus does not explain what would be gained from another comment period. This is not a situation where no notice was ever published at all. *See Big Spring Watershed Ass'n v. DEP*, 2015 EHB 100 (suspending and remanding NPDES permit where no notice of draft permit was ever published). Newspaper notice was published once in June 2025, the Department published notice in the *Pennsylvania Bulletin* in June 2025, and the Department has already directed republication of newspaper notice on three days in November 2025.

Mr. Eachus has not established any basis for taking the rather severe measure of vacating the permit renewal based solely on the newspaper notice issue. In other cases, we have found appropriate the very same remedy that has already been taken without vacating the permit. In *Kleissler v. DEP*, 2002 EHB 737, the appellants argued that the public notice for permits for an oil and gas wellfield was incomplete because it was published before the application was complete and the public was deprived of a meaningful opportunity to provide input. The appellants argued that a permit applicant must fully follow the public notice regulations. We postulated in the context of a summary judgment motion that republishing notice and accepting comments would be appropriate relief:

it would seem that the appropriate remedy, in the event he prevails in proving the claim, would be to leave the permits in place, but require the Department to readvertise the permits, accept new comments, and consider those comments in deciding whether *it* wishes to suspend or revoke the permits or require PGE to provide additional information. *See Fontaine v. DEP*, 1996 EHB 1333, 1356. Other than vindicating the principle of public involvement, we question whether such relief would have any practical value at this stage, but we look forward to receiving evidence and argument on the question.

Kleissler, 2002 EHB at 750-51.

In *PRIZM Asset Management Company v. DEP*, 2005 EHB 819, we ordered the very remedy suggested in *Kleissler*—re-noticing the permit application. *PRIZM* involved supersedeas proceedings in an appeal of an NPDES permit associated with the development of a shopping mall. The appellants pointed out that the public notice indicated that all of the stormwater from the site would be discharged to one receiving stream, but when the permit was issued there were two receiving streams after the permit application had been revised by the permittee. We determined this was a significant change from the permit application to the permit that was issued, but we did not think revocation of the permit was appropriate. Instead, we ordered that the permit be re-noticed but allowed the permit to remain in place while the Department accepted new comments and decided what to do in light of those comments. *Id.* at 851.

In our adjudication in *Groce v. DEP*, 2006 EHB 856, we found there was nothing more to be done on the issue of public notice because the Department had already republished notice. The appellants appealed an air quality plan approval for the operation of a coal combustion power plant. The Department failed to include in the public notice certain information required for Prevention of Significant Deterioration facilities. After the plan approval was issued, the Department published another public notice to correct the error. The appellants argued that the deficiencies in the public notice required rescission of the plan approval while public notice was published again. The Board determined that rescission of the plan approval was not warranted. We said that the appropriate remedy might be remanding the plan approval for the republication of public notice, but the Department had already done that and accepted public comments, even though none were submitted. We noted the appellants' frustration with the Department correcting the notice and providing the opportunity to comment *after* the plan approval had already been issued. But we ultimately determined that the remedy already undertaken by the Department was

adequate because the Department, in response to comments following the corrected public notice, still could have modified the plan approval, imposed new conditions, or even revoked it. *Groce*, 2006 EHB at 939-40.

Here, compliant newspaper notice has already been published. Like in *Groce*, there may be some question regarding the utility of soliciting comments after the Department has already taken its action on the permit. Indeed, Mr. Eachus argues that the after-the-fact newspaper notice publication on three days does not cure the failure to provide timely public notice. But unlike in *Groce*, where the appeal concerned a plan approval authorizing the construction and initial operation of an air emissions source, this appeal concerns the renewal of an operating permit for a facility that has been operating since 2018. From a practical point of view, the Department was arguably in much the same position reviewing comments on the renewal permit in November as it would have been in June. The Department retained the discretion to act on any comments it received. It was fully capable of evaluating any concerns expressed in the comments and deciding if those comments necessitated any changes to Moxie's ongoing operations as governed by the permit renewal.

Mr. Eachus says that proper public notice is all the more important because Moxie's facility is within 10 miles of a nuclear power plant and because it is a major source of emissions, including greenhouse gas emissions, particulate matter 2.5, methane, ozone-forming pollutants, and nitrogen oxides. Correct and accurate public notice that complies with the requirements of the law is undoubtedly important. Receiving public comment allows the Department to hear from the community and account for legitimate concerns in the final permit. *Throop Property Owner's Association v. DEP*, 1998 EHB 618, 624. However, that does not necessarily mean that the

appropriate remedy for a public notice error is vacating the permit or ordering relief that has already been provided.

Mr. Eachus also complains that, although the Department told him that Moxie would be republishing notice in a newspaper on three days, the Department did not tell him on which days that would happen and that the notice would open another 30-day public comment period. In some ways this is suggestive of the elevation of form over substance. Mr. Eachus apparently does not read the newspaper where the notice was republished, or else he would have seen the notice himself. He does not point to any requirement entitling him to personal notice of a comment period (as opposed to notice of a final permitting decision). Importantly, Mr. Eachus has appealed the permit renewal and has had the opportunity to raise with the Board any concerns he has with the final permit. Any issue that he could have raised in another comment period should have been raised in this proceeding. Instead of utilizing this appeal to make substantive critiques of the permit or any of its terms and conditions, he has made unsubstantiated claims of supposed risks from Moxie's facility being in some proximity to a nuclear power plant. We doubt that those claims would have been any more persuasive when expressed in comments to the Department.

Finally, Mr. Eachus has not established any basis for his assertion that a public hearing on the permit renewal should be held at Berwick High School. Holding a public hearing is not a mandatory requirement under the law. Under the Air Pollution Control Act, 35 P.S. §§ 4001 – 4015, “[t]he department shall provide public notice and the right to comment on all permits prior to issuance or denial and **may hold public hearings concerning any permit.**” 35 P.S. § 4006.1(b)(1) (emphasis added). *See also* 25 Pa. Code § 127.402(b) (Department may hold public hearings concerning a permit). Public notice provisions that particularly apply to Title V permits also appear to leave the holding of a public hearing to the Department's discretion. 25 Pa. Code §

127.521(c)(8). As more fully explained above, Mr. Eachus has not demonstrated that a public hearing is warranted to address any substantive concern with the permit or its terms and conditions.⁵

Accordingly, we issue the Order that follows.

⁵ Moxie also reiterates its view that Mr. Eachus's appeal is untimely, an issue we addressed earlier in an Opinion and Order denying Moxie's motion to dismiss. *Eachus v. DEP*, EHB Docket No. 2025-131-L (Opinion and Order on Motion to Dismiss issued Feb. 11, 2026). Because we have already granted summary judgment on other grounds, we will not revisit this argument.



COMMONWEALTH OF PENNSYLVANIA
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NATHAN EACHUS

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COMMONWEALTH OF PENNSYLVANIA,
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EHB Docket No. 2025-131-L

ORDER

AND NOW, this 13th day of October, 2026, it is hereby ordered as follows:

1. The Appellant's motion for summary judgment is **denied**.
2. The Permittee's motion for summary judgment is **granted** as set forth in the preceding Opinion 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 13, 2026

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