



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

BRYAN LATKANICH

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and EQT CHAP, LLC,
Permittee**

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EHB Docket No. 2023-043-B

Issued: October 6, 2023

**OPINION AND ORDER ON
DEPARTMENT’S PARTIAL MOTION TO DISMISS**

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

The Board grants in part the Department of Environmental Protection’s Partial Motion to Dismiss certain objections raised in an appeal of a Department Determination Letter issued pursuant to Section 3218 of the Oil and Gas Act. The Appellant’s objections asserting that the Department failed to take action pursuant to the Hazardous Sites Cleanup Act, the Air Pollution Control Act and its Mission Statement are dismissed to the extent they challenge the Department’s failure to take action unrelated to the Determination Letter that is the subject of this appeal. The Board lacks jurisdiction over Department inaction. The Motion is denied to the extent that the Appellant is asserting that soil contamination or air pollution resulting from the drilling, alteration or operation of oil or gas wells played a role in contaminating his water supply and should have been considered by the Department in its Section 3218 investigation. Finally, the Board denies the Department’s Motion with regard to Article I, Section 27 of the Pennsylvania Constitution where it is unclear which portions of the objection the Department seeks to dismiss.

OPINION

Background

This matter involves a Notice of Appeal filed by Bryan Latkanich, challenging an April 20, 2023 letter (the Determination Letter) from the Department of Environmental Protection (Department). The Determination Letter advised Mr. Latkanich, through his attorney, that following an investigation into Mr. Latkanich’s water supply the Department could not conclude that the water supply had been adversely affected by oil and gas operations, including oil and gas activities conducted by Chevron Appalachia, LLC (Chevron). Mr. Latkanich appealed the Department’s Determination Letter on May 8, 2023 and filed an Amended Notice of Appeal on May 31, 2023.

The matter before the Board is a Motion for Partial Dismissal (Motion) filed by the Department seeking to dismiss certain objections raised in the Amended Notice of Appeal. Chevron’s successor, EQT CHAP, LLC (EQT), joined in the Motion.¹ Mr. Latkanich filed a Response objecting to the Motion. Although the Department could have filed a Reply to Mr. Latkanich’s Response pursuant to 25 Pa. Code § 1021.94(d), it did not do so.

According to the parties’ filings, Mr. Latkanich owns property and resides at 95 Hill Road, Frederickstown, Washington County, Pa. (the Latkanich Property). The Latkanich Property is served by a private groundwater well (the Water Supply). (Notice of Appeal, Schedule 1, para. 7.)

¹ We understand EQT to be a successor in interest to Chevron in this matter. Paragraph 3 of the Department’s Motion states “Sometime after restoration, Chevron became EQT CHAP, LLC” but provides no citation to the record. The Notice of Appeal, citing a letter from Chevron to the Department, states, “[O]n October 29, 2020, Chevron Appalachia notified the Department that ‘on or around November 30, 2020, EQT Aurora LLC, a subsidiary of EQT Corporation, intended to purchase Chevron Northeast Upstream LLC, which owns all of the membership interests of Chevron Appalachia.’” (Notice of Appeal, Schedule 1, para. 33; Exhibit P to Notice of Appeal.) Additionally, as evidenced by Exhibit Q to the Notice of Appeal, the Department issued an Erosion and Sediment Control General Permit-3 to EQT CHAP LLC for the Latkanich well site. (Exhibit Q to Notice of Appeal.)

Mr. Latkanich states that in 2009 and 2010 he entered into oil and gas lease agreements with Phillips Exploration, Inc. that were subsequently held by Chevron. (Notice of Appeal, Schedule 1, para. 12; Exhibit B to Notice of Appeal.) Chevron constructed a well site and drilled two unconventional gas wells approximately 500 feet from the Water Supply on what is known as the “Latkanich Well Site.” (Notice of Appeal, Schedule 1, Objections 19a and 19b; Department’s Motion, para. 3; Exhibit A to Notice of Appeal.) According to the Department’s Motion, drilling, well development and operations commenced at the Latkanich Well Site in 2011. (Department Motion, para. 3.) The wells were plugged in 2020. (Exhibit A to Notice of Appeal, p. 2.)

On April 22, 2022, Mr. Latkanich filed a complaint with the Department requesting an investigation of his Water Supply pursuant to § 3218 of the Oil and Gas Act, Act of February 14, 2012, P.L. 87, *as amended*, 58 Pa. C.S. §§ 2301-3504, at § 3218.² According to the Notice of Appeal, Mr. Latkanich “requested that the Department investigate environmental complaints involving his property’s water, air, and soil.” (Notice of Appeal, Schedule 1, para. 1.) On April 20, 2023, the Department issued its Determination Letter addressed to Mr. Latkanich’s counsel. The Determination Letter states in relevant part:

² Section 3218(b) of the Oil and Gas Act states:

A landowner or water purveyor suffering pollution or diminution of a water supply as a result of the drilling, alteration or operation of an oil or gas well may so notify the department and request that an investigation be conducted. Within ten days of notification, the department shall investigate the claim and make a determination within 45 days following notification. If the department finds that the pollution or diminution was caused by drilling, alteration or operation activities or if it presumes the well operator responsible for pollution under subsection (c), the department shall issue orders to the well operator necessary to assure compliance with subsection (a), including orders requiring temporary replacement of a water supply where it is determined that pollution or diminution may be of limited duration.

58 Pa.C.S. §3218(b).

The Department has completed its investigation of your client’s (Bryan Latkanich) water supply listed in Exhibit A (“Water Supply”). Based on the sample results and other information obtained to date, the Department cannot conclude that the Water Supply was adversely affected by oil and gas activities including but not limited to the drilling, alteration, or operation of an oil or gas well.

* * * * *

The Department investigated whether oil and gas activities have occurred in the recent past that may be associated with an impact to your Water Supply. The closest oil and gas activity to your Water Supply is the Latkanich unconventional gas well pad, previously operated by Chevron, located about 500 feet northwest of your Water Supply. No recent activity appears to have occurred at this well site. After the wells on this well pad were plugged in 2020, earth was moved in large volumes and then seeded to fully restore the site. The Department reviewed historic activity at this well site to determine any evidence of the use of PFAS substances. The Department also reviewed compliance records which included violations in 2012 for releases that were addressed at the time and did not note any PFAS related chemicals.

(Exhibit A to Notice of Appeal, p. 1, 2.) The Determination Letter went on to state:

While the Department did not determine that oil and gas activities polluted your Water Supply, please do note that your water quality does not meet (i.e., is worse than) health and/or aesthetic statewide standards. You may consider exploring remedial actions regarding the levels of hardness, sodium, total dissolved solids, and total coliform as identified above. Or, alternatively, you may consider replacing your water with the public water that is plumbed to your home already and, if desired, installation of filtration or treatment for any constituents of concern in that public water.

(*Id.* at p. 4.)

Standard of Review

The Board evaluates motions to dismiss in the light most favorable to the non-moving party and will only grant the motion when the moving party is clearly entitled to judgment as a matter of law. *Ongaco v. DEP*, EHB Docket No. 2023-022-CS, *slip op.* at 3 (Opinion and Order on

Motion to Dismiss issued July 25, 2023); *Scott v. DEP*, EHB Docket No. 2022-075-B, *slip op.* at 2-3 (Opinion and Order on Motion to Dismiss issued May 15, 2023); *Hopkins v. DEP*, 2022 EHB 143, 144; *Consol Pennsylvania Coal Co., LLC v. DEP*, 2015 EHB 48, 54; *Winner v. DEP*, 2014 EHB 135, 136-37. When resolving a motion to dismiss, the Board accepts the non-moving party’s version of events as true. *Downingtown Area Regional Authority v. DEP*, 2022 EHB 153, 155. Motions to dismiss will be granted only when a matter is free of doubt. *Bartholomew v. DEP*, 2019 EHB 515, 517; *Northampton Township v. DEP*, 2008 EHB 563, 570. The standard for motions to dismiss also applies to motions for partial dismissal. *Popovich v. DEP*, EHB Docket No. 2021-082-B (Opinion and Order on Motion to Dismiss Certain of Appellants’ Objections issued March 22, 2023).

Discussion

The Department seeks to dismiss paragraphs 16 through 19 of the “Additional Objections” set forth in Mr. Latkanich’s Amended Notice of Appeal.³ We address each of these objections below.

Objections 16 and 17 of Amended Notice of Appeal

Objections 16 and 17 state as follows:

16. The Department Violated its Obligations under the Hazardous Sites Cleanup Act
- The Department did not investigate as is its obligation under Section 501(a) and (d).
 - The Department abused its discretion by not acting further under 502(c)(3).

³ The Amended Notice of Appeal incorporates the objections of the original Notice of Appeal and adds new objections numbered 1-22 in the section entitled “Additional Objections.” The Department’s Motion focuses on Objections 16 through 19 of the “Additional Objections.” Therefore, references to Objections 16 through 19 in this Opinion are to paragraphs 16 through 19 of the “Additional Objections” set forth in the Amended Notice of Appeal.

- The Department has not required that Chevron and/or EQT remediate the site.

17. The Department violated the Air Pollution Control Act (35 P.S. §§ 4001-4015)

- The Department failed to abate the air pollution caused by the Operations, which has been inimical to public health, safety and welfare, and which is and was injurious to Appellant, his family, and the Property and such air pollution unreasonably interfered with Appellant and his family's comfortable enjoyment of their lives and the Property.
- The Department had a mandatory duty under Section 4(8) and with respect to the Operations, [to] receive, initiate and investigate Appellant's complaints, institute and conduct surveys and testing programs, conduct general atmospheric sampling programs, make observations of conditions which may or do cause air pollution, make tests or other determinations at air contamination sources, and assess the degree of abatement required.
- Nothing in the documentation provided by the Department exempted the Operations from air quality and pollution regulations under Title V or otherwise.

(Amended Notice of Appeal, Schedule 1, Additional Objections 16-17.)

The Department asserts that these objections should be dismissed because they pertain to alleged inaction on the part of the Department and, as such, fall outside the scope of the Board's jurisdiction.

The Board's jurisdiction "extends only to matters that fall within its statutorily-established subject matter jurisdiction." *Glahn v. Department of Environmental Protection*, 298 A.3d 455, 459 (Pa. Cmwlth. 2022) (*Glahn II*), *aff'g*, *Glahn v. DEP*, 2021 EHB 322 (*Glahn I*). Section 4 of the Environmental Hearing Board Act establishes the Board's jurisdiction. Pursuant to that section, the Board "has the power and duty to hold hearings and issue adjudications...on orders, permits, licenses or decisions of the department." 35 P.S. § 7514(a).

The Board has jurisdiction over final *actions* of the Department. *Jake v. DEP*, 2014 EHB

38, 59. The Board’s Rules of Practice and Procedure define an “action” as the following:

An order, decree, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of a person including, but not limited to, a permit, license, approval or certification.

25 Pa. Code § 1021.2 (Definitions). Thus, the Board has jurisdiction over final Department actions that affect personal or property rights, privileges, immunities, duties, liabilities or obligations. *Glahn I*, 2021 EHB at 325; *Jake*, 2014 EHB at 59.

This appeal involves a discrete action – the determination by the Department that it could not conclude that oil and gas activities had adversely affected Mr. Latkanich’s Water Supply. The determination was made following an investigation conducted pursuant to Section 3218 of the Oil and Gas Act. That action is reviewable by the Board. However, Objections 16 and 17 do not pertain to the Department’s determination under Section 3218. Rather, they allege that the Department failed to take action pursuant to two statutes that are not at issue in this appeal - the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, *as amended*, 35 P.S. §§ 6020.101-6020.1305 (HSCA), and the Air Pollution Control Act, Act of January 8, 1950, P.L. 2119, *as amended*, 35 P.S. §§ 4001-4015 (APCA).

It is well-established that the Board does not have jurisdiction over Department inaction or failure to act. *Lower Salford Township v. DEP*, 2011 EHB 333, 335; *Westvaco Corp. v. DEP*, 1997 EHB 275, 277; *Westinghouse Electric Corp. v. DER*, 1990 EHB 515, 518. The Commonwealth Court recently held in *Glahn II*, 298 A.3d at 461, that “inaction or failure to act is not an ‘action’ subject to the Board’s jurisdiction because it is not ‘an order, decree, decision, determination or ruling by the Department.’” The Board addressed the non-appealability of Department inaction in *Glahn I*:

We have consistently held that the Board lacks jurisdiction over Departmental inaction. See e.g., *Lower Salford Twp. Auth. v. DEP*, 2011 EHB 333, 335 (“Whether the Department could have or should have established the TMDLs, the fact of the matter is that it did not. There simply is no final Departmental action for us to review... The Board has no jurisdiction over Department inaction.”); *Westvaco Corp. v. DEP*, 1997 EHB 275, 277 (“While the denial or issuance of an application for a permit revision is a final appealable action, the Department’s inaction on an application is not.”); *Royer v. DER*, 1992 EHB 611 (dismissing appeal of Department’s failure to take action on appellants’ letter requests to lift a moratorium on issuing sewage permits for a certain subdivision; rejecting the argument that the Department’s inaction amounted to a denial) [footnote omitted]. To the extent that there was any old caselaw of the Board permitting appeals of Departmental inaction, we overruled that caselaw in *Westinghouse Electric Corp. v. DER*, 1990 EHB 515, 518.

2021 EHB at 334.⁴ Moreover, to the extent that Mr. Latkanich is objecting to the Department’s failure to take enforcement action pursuant to the APCA or HSCA, the Board’s jurisdiction does not extend to review of the Department’s exercise of its prosecutorial discretion. *Friends of Lackawanna v. DEP*, 2017 EHB 1123, 1168; *Law v. DEP*, 2008 EHB 213, 215 (“[I]t is left to the Department to choose how and when to invest its enforcement resources, largely without interference from judicial action by the Board.”) As the Board has previously held, “We cannot order the Department to issue violations... Whether or not the Department issues a violation is a matter of its enforcement discretion.” *Glahn I*, 2021 EHB at 329. See also, *Mystic Brooke Development, L.P. v. DEP*, 2009 EHB 302, 304 (“This Board has no authority to order the Department to take enforcement action against [the permittee]”).

In his Response, however, Mr. Latkanich argues that Objections 16 and 17 are directly related to the Department’s Determination Letter that is on appeal in this matter and, therefore,

⁴ Although there are statutory exceptions to the general rule that Department inaction is not appealable, as pointed out in *Glahn I*, those exceptions are not present here.

within the Board’s jurisdiction. Mr. Latkanich asserts that air and soil pollution can cause groundwater pollution. In support of his argument, Mr. Latkanich cites a Department document entitled “Source Water Assessment & Protection Program” that he says lists air pollution as a potential source for surface and groundwater pollution. (Exhibit A to Latkanich Response). He also cites a previous case before the Board in which a permittee oil and gas operator sought to gain entry to an appellant’s property for the purpose of conducting air, soil and water testing in connection with allegations of water supply contamination. *Kiskadden v. DEP*, 2013 EHB 21 (Opinion and Order on Motion for Order Authorizing Entry Upon Property).⁵ Mr. Latkanich communicated his concerns regarding air and soil contamination to the Department when he filed his complaint pursuant to Section 3218, and the Department included this statement in its Determination Letter:

The Department understands from ongoing discussion that concern remains regarding soil and air on your property. Summaries of soil sampling were provided to the Department during this complaint investigation, but data to support those results has not yet been received, including location data, certified results, and quality control/quality assurance data documentation. The program assigned to this complaint (Southwest District Oil and Gas District) has informed the Regional Director of the Department’s Southwest Regional Office about continued concerns regarding soil and air that you have expressed during the course of this investigation.

(Exhibit A to Notice of Appeal, p. 4.)

Mr. Latkanich asserts that Objections 16 and 17 of his Amended Notice of Appeal do not seek separate action by the Department under the APCA and HSCA. Rather, he asserts that air and soil investigations should have been conducted as part of the Department’s Section 3218 investigation into his Water Supply:

⁵ The motion to which Mr. Latkanich is referring appears at *Kiskadden v. DEP*, Docket No. 2011-149-R, Docket Entry No. 97.)

The Department tries to mischaracterize Appellant’s allegations as seeking to have the Board find the Department violated laws “by not performing additional investigation and taking additional actions.” However, Appellant’s appeal is not based on the need for “additional investigation.” Rather, Appellant’s appeal is based on the Department’s violation of its obligations to perform a lawful investigation into the Water Supply under the Oil and Gas Act, which necessarily includes air and soil investigations.

(Appellant’s Memorandum in Support of Response, p. 5.) The Department did not file a Reply to Mr. Latkanich’s Response and therefore did not respond to these arguments.⁶

The wording of Objections 16 and 17 is not consistent with Mr. Latkanich’s explanation that he is not asking the Department to undertake any action other than that related to the Determination Letter. For example, Objection 16 clearly states, “The Department did not investigate as is its obligation under [Section] 501(a) [of HSCA]” and “The Department abused its discretion by not acting further under [Section] 502(c)(2)⁷ [of HSCA].” Objection 16 also indicates that the Department should have required Chevron or EQT to “remediate the site.” Likewise, Objection 17 states that the Department “had a mandatory duty under Section 4(8) [of the APCA]...[to] receive, initiate and investigate Appellant’s complaints” and take further action under that section. The language of these objections clearly conveys the intent that Mr. Latkanich was seeking action by the Department pursuant to the APCA and HSCA.

As we have stated, the Board does not have jurisdiction to review Department inaction. To the extent that Mr. Latkanich is asking the Board to review whether the Department *should have* taken action pursuant to the APCA and HSCA, those objections are dismissed. However, to the

⁶ Although Section 1021.94(d) of the Board’s Rules of Practice and Procedure says that the moving party *may* file a reply to a response to its motion, 25 Pa. Code § 1021.94, the Board would have benefited from hearing the Department’s reply to this argument.

⁷ The Department points out that there is no Section 502(c)(2) of HSCA and presumes the citation was intended to be to Section 501(c)(2). (Department Motion, n. 4.) We agree.

extent that Mr. Latkanich is arguing that soil contamination or air pollution resulting from the drilling, alteration or operation of oil or gas wells played a role in contaminating his Water Supply and should have been considered by the Department in its Section 3218 investigation, he may pursue those claims in his appeal of the Determination Letter.⁸

Objection 18 of Amended Notice of Appeal

Objection 18 of the amended notice of appeal states as follows:

The Department Violated the Pennsylvania Constitution

- Pennsylvania’s Environmental Rights Amendment at Article 1, Section 27 states: The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

- The Department violated the Environmental Rights Amendment both by its actions and its failures to act.

- The Department was obligated to first review Appellant’s environmental complaints and to perform investigations in response thereto under the Environmental Rights Amendment and this obligation is self-executing.

- The Property is located in an area that is already overburdened by pollution and is medically underserved, and the Department should be exercising increased scrutiny in its exercise of fiduciary duties of loyalty, impartiality, and prudence in protecting Pennsylvania’s natural resources. See Exhibit RR.⁹

- The Department’s own records reflect that the Operations contaminated Appellant’s air, water, and soil by virtue of the underlying facts of the Chevron Violations, the Consent Order, and the PFAS test results.

⁸ We take no position on the merit of those claims, only that the Board has jurisdiction to hear them.

⁹ Exhibit RR is entitled “Hydraulic Fracturing Fluid Product Component Information Disclosure.”

- The Department cannot credibly dispute the testing that has been performed on the Property and presented by the Appellant.

- The Department, well aware of the health impacts on Appellant and his minor child, proceeded in a wanton, negligent, and knowingly reckless disregard for their health, and its actions have contributed to the worsening of the health of Appellant and his child.

- The Department has admitted that freshwater sources used by oil and gas operators contain PFAS, and that the use of such water in oil and gas operations is spreading PFAS contamination throughout the state, yet the Department has taken no further action to halt such practices or to remediate the same, including on Appellant's Property.

- The Department's actions and failures to act deprived Appellant and his family of the full use and enjoyment of the Property and Home, both on a temporary and permanent basis.

- The Department's actions and failures deprived Appellant and his family of a right to be timely heard.

- Appellant makes and urges the Board to undertake an analysis of a takings claim and in connection therewith, inverse condemnation in this matter.

- Appellant and his family are not "outlier" cases; the Grand Jury Report and other documented cases across the state reveal that the Department's knowing actions and failures have endangered and continue to endanger the environment and human health.

(Amended Notice of Appeal, Schedule 1, Additional Objection 18.)

In its Motion, the Department makes the same argument regarding Objection 18 as it did with Objections 16 and 17, i.e., that the objection pertains to inaction by the Department and, therefore, the Board lacks jurisdiction. However, in a footnote the Department states:

The Department is not moving to dismiss parts of Paragraph 18 to the extent they are intended to apply to the action on appeal, the Determination Letter. This motion is just in regard to alleged inaction.

(Department's Motion, n. 6.)

The Department does not specify which parts of Objection 18 it seeks to dismiss, nor does it expand on its argument in its Memorandum of Law. The specific inaction it is referring to is unclear. For example, one subpart of Objection 18 reads, “The Department violated the Environmental Rights Amendment both by its actions and its failures to act.” To the extent this objection is contending that the Department failed to fulfill its duties as trustee under Article I, Section 27 in connection with the Section 3218 Water Supply investigation and Determination Letter, that is a matter that is within the scope of the Board’s jurisdiction.

In his Response, Mr. Latkanich focuses on the Department’s “failure to obtain information regarding all environmental effects in this matter” and cites *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013), in which a plurality of our Supreme Court held:

Clause one of Section 27 requires each branch of government to consider in advance of proceeding the environmental effect of any proposed action on the constitutionally protected features. *The failure to obtain information regarding environmental effects does not excuse the constitutional obligation because the obligation exists a priori to any statute purporting to create a cause of action.*

Id. at 952 (Emphasis added). We understand Mr. Latkanich’s argument to align with his contention that the Department should have investigated soil contamination and air pollution in connection with its investigation of his Water Supply. However, without the benefit of more information from the Department or Mr. Latkanich, it is difficult to sort out the parties’ arguments.

Motions to dismiss may be granted only when a matter is free of doubt. *Bartholomew*, 2019 EHB at 517. In considering a motion to dismiss, the Board should not be required to guess which objections a moving party seeks to dismiss or the basis for their dismissal. Because it is unclear which parts of Objection 18 the Department seeks to dismiss, and without further support for dismissal set forth in its Memorandum of Law, we find that it is not appropriate to dismiss any portion of Objection 18 at this time.

Additionally, in Objection 18 Mr. Latkanich asks the Board to undertake a takings analysis. The Department's Motion does not specifically address the takings claim, nor does Mr. Latkanich reference it in his response. However, paragraph 26 of the Department's Motion states that the Department "only seeks dismissal of 'objections' stating that the Department failed to investigate or take other actions than the specific action on appeal, a water supply determination letter issued pursuant to Section 3218 of the Oil and Gas Act..." (Department's Motion, para. 26.) Because this particular objection does not allege a failure to investigate or take action by the Department, and because it is unclear whether the takings claim relates to the Department's Determination Letter, we find that the Department has presented no basis for dismissal of this claim at this time.

Objection 19 of the Amended Notice of Appeal

The Department seeks to dismiss Objection 19, which states as follows:

The Department Violated its Mission, and the underlying Constitutional, regulatory, and statutory obligations attendant thereto.

- The DEP's Mission Statement is: The Department of Environmental Protection's mission is to protect Pennsylvania's air, land and water from pollution and to provide for the health and safety of its citizens through a cleaner environment. We will work as partners with individuals, organizations, governments and businesses to prevent pollution and restore our natural resources.
- The Department clearly did not protect the air, land, and water from the pollution caused by the Operations.
- The Department's actions and failures to act harmed and jeopardized Appellant and his family's health and safety.
- The Department did not work with Appellant to prevent pollution and to restore his Property and Home.
- The Department failed to abate the nuisances caused by the Operations in violation of applicable law.

(Amended Notice of Appeal, Schedule 1, Additional Objection 19.)

As with the earlier objections, the Department argues that the Board has no jurisdiction to hear Objection 19 because it deals with the Department's alleged failure to act. In his Response, Mr. Latkanich reiterates that the Department's failure to conduct an air or soil investigation in connection with the Water Supply investigation is within the Board's authority to consider.

To the extent that Objection 19 challenges the Department's failure to take action outside the scope of the Department's Section 3218 investigation and Determination Letter, that claim is beyond the Board's jurisdiction, as explained earlier. However, to the extent that Mr. Latkanich is arguing that soil contamination or air pollution resulting from the drilling, alteration or operation of oil or gas wells played a role in contaminating his Water Supply, and the Department violated its Mission Statement by failing to investigate the alleged soil contamination or air pollution in connection with its Section 3218 investigation and Determination Letter, the Board has jurisdiction to hear this claim.¹⁰

In conclusion we enter the following Order:

¹⁰ Although the Department does not raise this issue in its motion, we make no ruling at this time as to whether the Mission Statement is binding and enforceable.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

BRYAN LATKANICH

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION and EQT CHAP, LLC,
Permittee**

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EHB Docket No. 2023-043-B

ORDER

AND NOW, this 6th day of October, 2023, it is hereby ordered as follows:

1. The Department’s Motion is granted as to Objections 16 and 17 to the extent they challenge the Department’s failure to act pursuant to the Hazardous Sites Cleanup Act and the Air Pollution Control Act. The Motion is denied to the extent that Objections 16 and 17 assert that soil contamination or air pollution resulting from the drilling, alteration or operation of oil or gas wells played a role in contaminating the Water Supply and should have been considered by the Department in its Section 3218 investigation.
2. The Department’s Motion is denied as to Objection 18.
3. The Department’s Motion is granted as to Objection 19 to the extent it challenges the Department’s failure to take action outside the scope of the Section 3218 Water Supply investigation. The Motion is denied to the extent that Objection 19 asserts that soil contamination or air pollution resulting from the drilling, alteration or operation of oil or gas wells played a role in contaminating his Water Supply, and the Department

violated its Mission Statement by failing to investigate the alleged soil contamination or air pollution in connection with its Section 3218 investigation.

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

DATED: October 6, 2023

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