



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



SALVATORE PILEGGI

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

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EHB Docket No. 2022-068-BP

Issued: March 18, 2026

OPINION AND ORDER ON REMAND

By Paul J. Bruder, Jr., Judge

Synopsis

The Environmental Hearing Board (“Board”) finds that the Department’s August 11, 2022 Administrative Order’s remedies are appropriate and reasonable based on the evidence and testimony presented at the February 21, 2024 and February 22, 2024 hearing.

OPINION

Background

The limited matter before us is whether the remedies specified in the Department’s August 11, 2022 Administrative Order are appropriate and reasonable based on the evidence, testimony, and legal arguments present in the Board’s record.

By way of background, on September 15, 2022, Appellant Salvatore Pileggi (“Mr. Pileggi”) appealed a Department August 11, 2022 Administrative Order (“Order”) to the Board. The subject Order was issued following several Lackawanna County Conservation District (the “Conservation District” or “District”) inspections at Mr. Pileggi’s property (“Site”). The Order alleges that Mr. Pileggi conducted earth disturbance activities in excess of one acre, and pursuant to a common plan of development or sale, at the Site. The administrative remedies outlined in the

Order mandated that Mr. Pileggi do the following: (1) within seven (7) calendar days, implement Best Management Practices (“BMPs”) in accordance with the Department’s regulations and the Erosion and Sediment Pollution (“E&S”) Control Manual; (2) within thirty (30) days, submit an adequate E&S control plan that complies with 25 Pa. Code § 102.4(b)(5)(i)-(xv); (3) within one hundred twenty (120) days, submit an adequate NPDES Permit application as per 25 Pa. Code § 102.5; and (4) cease earth disturbance activities until the required permits and plans are approved. (August 11, 2022 Administrative Order). On appeal, Mr. Pileggi claimed he was simply performing road maintenance and flood repair work at the Site; thus, there was no need for him to submit an NPDES permit application or E&S plan.

The Board held a two-day hearing on February 21, 2024 and February 22, 2024. Following the hearing, on October 2, 2024, the Board issued an Adjudication Opinion and Order finding that Mr. Pileggi conducted greater than one acre of earth disturbance activity, as part of a common plan of development and sale, requiring that he first obtain an NPDES permit and develop and implement an E&S plan, including BMPs. In our Opinion, the Board questioned the rationale for the Department’s decision to require Mr. Pileggi to apply for an after-the-fact permit instead of imposing a civil penalty or other sanction¹ but ultimately upheld the Administrative Order’s remedies. *Pileggi v. DEP*, 2024 EHB 634, 657. Mr. Pileggi appealed the decision to the Commonwealth Court.

On appeal, the Commonwealth Court affirmed the Board’s conclusion that Mr. Pileggi conducted greater than one acre of earth disturbance activity as a larger common plan of development or sale; thus, necessitating an NPDES permit and the submission of an E&S plan

¹ The Department has authority under the Clean Streams Law to assess civil penalties and fines for noncompliance. 35 P.S. §§ 691.602, 691.605(a). The Department’s regulations also provide methods of enforcing NPDES permit requirements such as issuing “orders to remediate or restore.” 25 Pa. Code § 102.32(a)(3).

before beginning earth disturbance activities. *Pileggi, v. DEP*, ___ A.3d ___, 2026 Pa. Commw. LEXIS 2, *17. However, the Commonwealth Court vacated the Board’s adoption of the remedies in the Administrative Order; specifically, as to the Board’s reasoning for imposing an obligation on Mr. Pileggi to obtain an after-the-fact permit. *Id.* at *15 (“We conclude the Board erred by accepting the remedies in the Administrative Order when the Board appeared to acknowledge it did not understand DEP’s reasons for imposing an after-the-fact permit requirement and relied on speculation that DEP may have some policy reason for its actions.”). The matter was remanded to the Board to determine whether an after-the-fact permit is appropriate, whether to add alternative remedies, or whether to impose different remedies altogether. *Id.* at *17. The Commonwealth Court further clarified the Board should only consider the evidence and legal argument presented to the Board by the Department and not consider any reasoning that came to light after the Board’s decision. *Id.* After a thorough review of the record, we conclude that the Department’s administrative remedies are appropriate and reasonable.

Discussion

The Department bears the burden of proof to show by a preponderance of the evidence that its administrative remedies are lawful, reasonable, and supported by the facts. *Robinson Coal Co. v. DEP*, 2015 EHB 130, 153; *Wean v. DEP*, 2014 EHB 219, 251; *Dirian v. DEP*, 2013 EHB 224, 231; *Perano v. DEP*, 2011 EHB 623, 633; *GSP Management Co. v. DEP*, 2010 EHB 456, 474-75; *see also* 25 Pa. Code §§ 1021.117(b), 1021.122(a)&(b)(4). The Board defines “preponderance of the evidence” to mean that “the evidence in favor of the proposition must be greater than that opposed to it.” *Clancy v. DEP*, 2013 EHB 554, 572.

During the February 2024 hearing, the Department offered testimony by Brian Mackowski, Chief of Compliance for the Waterways and Wetlands Program, and Jerry Stiles, District Manager

of the Lackawanna County Conservation District, that Mr. Pileggi would need to apply for an NPDES permit and submit an E&S plan, with BMPs, for the earth disturbance activities already performed at the Site and any future activity proposed. Mr. Pileggi's attorney, Mr. Romine, extensively questioned Mr. Mackowski about the need for an NPDES Permit for work already performed. Specifically, Mr. Mackowski was asked what information Mr. Pileggi would need to put on an NPDES Permit Application if he has no plans to build a subdivision or do any more earth disturbance activity. (T. 318-328). The central theme of Mr. Romine's questioning focused on how someone could prepare an NPDES permit application without having any plans to carry out future work that would require such a permit. (T. 319; 322-323). These questions highlighted ambiguity in the Administrative Order's remedies regarding whether the requirements to apply for an NPDES permit and submit an E&S plan applied to past, future, or both types of earth disturbance activity. (T. 325).

While the Department's testimony and evidence did not definitively specify whether the Administrative Order required Mr. Pileggi to obtain a retroactive or prospective NPDES permit, or delineate the parameters of such permit, the testimony of Mr. Mackowski and Mr. Stiles supports the requirement of an after-the-fact permit and E&S plan for completed work, as well as a permit and E&S plan should Mr. Pileggi pursue future subdivision activity. Excerpts of the relevant testimony are as follows:

Cross-examination of Mr. Mackowski:

Q: Is, in paragraph 3, within 120 days Mr. Pileggi is to submit an adequate NPDES Permit Application, is that for work that's already been done or for work that is going to be done or both?

A: It could be both.

Q: I am not asking could it be. I'm asking is it.

A: You're not asking could it be both. It could be both.

Q: It could be both.

A: On how Mr. Pileggi wants to proceed. If he wants to go with the site restoration, an NPDES Permit would be required for site restoration. In order to restore it back to where it previously was, there is an acre, over an acre of earth disturbance on the property. If there is going to be further development, he's going to need an NPDES Permit for what was done plus for future development. If he wants to keep the site exactly how it is, he needs an NPDES Permit for that too. Because there is a change in cover type, so you need, along with the Erosion and Sedimentation Control for what erosion may be occurring out there, for Post Construction Storm Water Management, for the added gravel impervious areas, the affected area. So in one of three ways, an NPDES Permit would be required for the site, and it's up to Mr. Pileggi. He can fill out the application by himself, if he's qualified. He's welcome to do so. If he needs to hire a consultant to fill it out, then that's what he needs to do.

Q: Just for clarification. If Mr. Pileggi is not planning anything –

A: Uh-huh.

Q: Again, I'll say it again. No sewage, no Building Permits, no construction, no contractor, no developer.

A: Uh-huh.

Q: If that's the case –

A: Uh-huh.

Q: -- then you're saying that Mr. Pileggi still needs to comply with paragraph 3.

A: Correct.

Q: But hold on. By filling out an NPDES Application for work that was done two and three years ago.

A: Correct.

Mr. Romine: Thank you, your Honor.

Re-direct Examination of Mr. Mackowski:

Q: Okay. Picking up on where we just left off, Mr. Mackowski, assuming Mr. Pileggi only has lot 5 for sale –

A: Uh-huh.

Q: -- does he need an NPDES Permit right now?

A: Yes.

Q: Okay. And let's assume he goes home and he takes lot 5 off the market and he doesn't want to sell lot 5, does he still need an NPDES Permit?

A: Yes.

Q: Why?

A: Because of the work that was already done, which is more than an acre of earth disturbance and change of cover type. So, therefore, there will be an increase in rate, volume, and water quality from the site based on what was done, therefore, he has to mitigate that. He needs to have best management practices in place for that, for those aspects.

(T. 325-328)

Direct Examination of Mr. Mackowski:

Q: Okay. Okay. Are you familiar with the Administrative Order that the Department issued?

A: Yes, I'm familiar with it. I have read it once.

Q: Okay. Can I turn your attention to Department Exhibit 1, please?

A: Sure. Okay.

Q: Is that the Administrative Order that the Department issued in this matter?

A: Yes, it is.

Q: Okay. Dated August 11, 2022?

A: Yes.

Q: Okay. And if you turn to page 13 of that exhibit –

A: Okay.

Q: -- it says, it is hereby – at the top of the page, third line, it says in party it is hereby ordered and then there are four numbered paragraphs, correct?

A: Yes.

Q: Okay. And are you in agreement with the requirements in those paragraphs?

A: Yes. I am in agreement with these four items.

[objection and testimony creating foundation of witness to testify on Order omitted]

Q: Okay. So turning back to page 13 –

A: Uh-huh

Q: -- and those four requirements.

A: Uh-huh.

Q: Were you in agreement with those?

A: Based on my experience, absolutely. Number 1, again, there was earth disturbance that had taken place. And, you know, those areas should be stabilized as per the E&S Manual. You know, a plan should be submitted that complies, you know, with the Department regulations. And then beyond that, because of the amount of earth disturbance activity that had occurred plus with all the other findings that I found, then, absolutely there should be an NPDES Permit for this site for what was done plus for what will happen in the future, because all indications point that there is going to be a subdivision in the future.

(T. 252-53; 255-56)

Cross-examination of Mr. Stiles:

Q: Okay. So if the disturbance for the homes, driveways, utilities, garages, and on-lot sewage facilities never happened, then there would be no common plan of development that would require an NPDES Permit, correct?

A: Yes and no. Can I explain?

Q: Please.

A: So an NPDES Permit is required anytime you disturb an acre or more during what's called the life of the project. So in this case, if an acre or more had been disturbed already, a permit would be needed.

Q: So a permit, you're telling me a permit would be needed for work that had already been done.

A: Yes.

Q: But that wouldn't be required for if there was – the work was road maintenance activities, correct?

A: If it was road maintenance, yes.²

(T. 157).

Mr. Stiles also testified on direct examination that he agreed with the four remedies outlined in the Department's August 11, 2022 Order based on his observations at the site. (T. 123-25). In further support of the need for an after-the-fact E&S plan, both Mr. Stiles and Mr. Mackowski testified that Mr. Pileggi conducted more than 5,000 square feet of earth disturbance activity and that un-stabilized areas remained at the Site after issuance of the Administrative Order, necessitating remediation through an after-the-fact E&S plan with BMPs. (T. 28-30; 32-33; 55-57; 66-69; 79; 91; 106-109; 121-122; 125-26; 226-227; 229-232; 245).³

In addition to the testimony presented at the hearing, we find that the Pennsylvania Code supports the requirement for an NPDES permit for earth disturbance activity already performed at the Site, despite Mr. Pileggi's assertion that "25 Pa. Code § 102.5(a) applies to proposed future work, not completed work." (Pileggi Post-Trial Brief at pg. 45). 25 Pa. Code § 102.5(a), which governs Pennsylvania's stormwater and earth disturbance regulations, states:

² The Board found, and the Commonwealth Court agreed, that the work performed at the Site did not constitute "road maintenance;" thus, Mr. Pileggi is not exempt from seeking an NPDES Permit based on that claim. *Pileggi v. DEP*, 2024 EHB 634, 650; *Pileggi, v. DEP*, ___ A.3d ___, 2026 Pa. Commw. LEXIS 2, *9.

³ Mr. Stiles testified that on a sunny day in July, the majority of areas previously disturbed were stable. (T. 106-108; 136). However, five months later, site conditions had changed. On a rainy day in December, areas of instability were evident. (T. 120-122).

Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting activities or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, **or an earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under a general NPDES permit** for Stormwater Discharges Associated With Construction Activities prior to commencing the earth disturbance activity. . . .

25 Pa. Code § 102.5(a) (emphasis added).

In our October 2, 2024 Adjudication Opinion, the Board stated that one way to determine if Mr. Pileggi is “*proposing*” earth disturbance activity is by asking if he undertook any work pursuant to a common plan of development, and therefore, that work performed indicated his proposal. *Pileggi v. DEP*, 2024 EHB 634, 651. We stand by this statement and reassert it today. Likewise, we also find the explicit language of 25 Pa. Code § 102.5(a) supports the acquisition of an after-the-fact NPDES permit. Although a clear reading of the regulation states that a person must obtain a NPDES permit *before* starting any earth-disturbance activity, the regulation also states an NPDES permit shall be obtained “*during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance. . . .*” 25 Pa. Code § 102.5(a)(emphasis added). We find that this phrasing of “during any stage of” indicates that an NPDES permit is still necessary and appropriate after the work has been started and even if the work is not finished or abandoned.

In addition to the regulatory language, as a matter of public policy, allowing Mr. Pileggi to knowingly⁴ violate Pennsylvania regulatory law, without any consequence, would undermine the

⁴ Mr. Pileggi was aware of the Conservation District’s and Department’s belief that he would need to obtain an NPDES Permit and submit an E&S plan. The Department provided the Board with extensive testimony from Mr. Stiles regarding his multiple site inspections – five total – at Mr. Pileggi’s property. Mr. Stiles testified that he advised Mr. Pileggi he would likely need to obtain an NPDES permit. (T. 32-33; 37; 49-50). Indeed, Mr. Pileggi was aware in February 2022 that he would definitively need an NPDES Permit and E&S Plan for his earth disturbance activities. (T. 91).

purpose and effectiveness of the Clean Streams Law. Permitting requirements are not mere formalities. They are essential mechanisms designed to protect the Commonwealth's waterways and environment. Allowing individuals to bypass these requirements without consequence would incentivize noncompliance and weaken uniform enforcement. Requiring a retroactive permit not only deters willful violations but also ensures that the work performed is subject to appropriate stabilization, sediment and erosion controls, and compliance with applicable best management practices.

Although there is no way to say with exact certainty all the work Mr. Pileggi performed at the Site - being that he never applied for any permits prior to conducting any earth disturbance activities - we find that remediating or restoring the property to its previous condition would be impossible based on the work performed. (T. 37-38; 41-45; 69). There was extensive testimony offered by the Department about the earth disturbances observed at the Site from as early as 2019. Prior to 2019, Wooden Lane used to consist of an unimproved farm lane road, consisting of two dirt tracks on either side of a grassy strip, just wide enough for one vehicle. However, in 2019 this road was expanded by Mr. Pileggi. (T. 60; 150; 212). Also, Bonnie Circle had been created on the ground, as evidenced by the road being mowed into the shape of a cul-de-sac. (T. 179-181).

Additional testimony indicated that in 2021 and 2022 the condition of the Site continued to change, involving increased earth disturbance activity. (T. 28-30; 47; 150). Specifically, as of April 19, 2021, Bonnie Circle had been graded and improved with stone aggregate, approximately 600 linear feet of Wooden Lane had been graded and covered with a stone aggregate, there was a cut bank and drainage swale along Wooden Lane that had not been stabilized, and approximately 250 feet of roadway (which had previously been a grass field) had been mowed and rough graded

into bare earth, which was also not stabilized. (T. 28-30; 66; 72-73).⁵ As of September 2021, Mr. Stiles testified that the bank and swale along Wooden Lane were still not stabilized. (T. 66-68). Mr. Stiles stated that as of 2021, the total amount of graded roadway on the Property exceeded 5,000 square feet and did not show evidence of an E&S plan and BMPs required for that amount of roadway. (T. 30; 55-57). Additionally, on December 6, 2022, four months after the issuance of the subject Administrative Order, Mr. Stiles observed that the area of the swale and embankment along Wooden Lane had continued to not be stabilized and several rills/gullies leading to the drainage channel developed. (T. 120-22). The Department admitted photographs and reports into evidence to support the oral testimony on this matter.

The Department also put forth testimony from Mr. Mackowski on what the Department is looking for when evaluating a site such as Mr. Pileggi's. Mr. Mackowski stated that the Department considers: (1) where excavated earth will be placed to ensure it will not pollute the waters of the Commonwealth; (2) whether the project will change the site's cover type, such as converting a meadow or forested area into an impervious or gravel surface, and how such changes will affect runoff rates, runoff volume, and water quality; (3) whether potential pollutants, including nitrates and phosphates, under post-construction stormwater management requirements are present; and (4) how pre-development conditions compare with post-development conditions. Ultimately, the developer must demonstrate that the project will protect the waters of the Commonwealth. (T. 267-269)

We found Mr. Mackowski and Mrs. Stiles' testimony, along with the supporting evidentiary documents, credible and confirm these activities must be accounted for in the NPDES

⁵ Mr. Pileggi confirmed this observation by testifying that the modified and gravel was hauled to the site by the truckload and spread by Mr. Pileggi himself. (T. 419-420).

Permit application. Thus, we conclude that the testimony and evidence support that Mr. Pileggi conducted over one acre of earth disturbance activity, which primarily involved work on Wooded Lane and Bonnie Circle and adjacent support areas, and these earth disturbances must be included in the NPDES Permit application and E&S plan with BMPs. (T. 56-57; 227; 229; 265- 266).

Conclusion

It is undisputed that 25 Pa. Code § 102.5(a) requires a person to obtain an NPDES permit prior to commencing earth disturbance activities exceeding one acre. It is also undisputed that the Department met its burden of proof that Mr. Pileggi conducted over one acre of earth disturbance activity, as part of a common plan of development and sale, without first obtaining an NPDES permit, and without a written E&S plan that implemented BMP. *Pileggi v. DEP*, 2024 EHB 634, 656-57 *aff'd Pileggi, v. DEP*, ___ A.3d ___, 2026 Pa. Commw. LEXIS 2. Accordingly, where earth disturbance activities have begun without the required permit coverage, we conclude that the Department may require submission of an after-the-fact NPDES permit application to address the previously unauthorized discharge. Such a requirement is a suitable remedy, as it will ensure the work performed has the necessary regulatory oversight and complies with the Clean Streams Law.

Although we initially questioned the Department's rationale for requiring Mr. Pileggi to apply for a permit rather than imposing a civil penalty, we conclude that the testimony presented at the hearing sufficiently establishes that an NPDES permit and E&S Plan are the appropriate remedies to: (1) ensure that the earth disturbance activities already performed comply with applicable law; (2) remediate any work that is unstable or inconsistent with BMPs; and (3) address any future work Mr. Pileggi may undertake.

Thus, Mr. Pileggi will need to apply for an NPDES Permit and submit an E&S Plan with BMPs for the work already performed at the Site. If Mr. Pileggi has any plans to continue his

subdivision or conduct more than one acre of earth disturbance activity, he will need to include that information in the NPDES Permit application and E&S plan. It also goes without saying that Mr. Pileggi will need to cease any future work in conjunction with the common plan of development until the appropriate administrative remedies are adhered to.

Accordingly, we issue the following order.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

SALVATORE PILEGGI

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

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EHB Docket No. 2022-068-BP

ORDER

AND NOW, this 18th day of March, 2026, we affirm the Department's August 11, 2022
Administrative Order's Remedies.

ENVIRONMENTAL HEARING BOARD

s/ Steven Beckman
STEVEN BECKMAN
Chief Judge and Chairperson

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

s/ Sarah L. Clark
SARAH L. CLARK
Judge

s/ MaryAnne Wesdock
MARYANNE WESDOCK
Judge

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

DATED: March 18, 2026

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