

[J-89A-2004:]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

EAGLE ENVIRONMENTAL II, L.P.,	:	No. 261 MAP 2003
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court entered February
	:	10, 2003 at No. 1180CD2002 which
v.	:	Affirmed the Order of the Environmental
	:	Hearing Board entered April 4, 2002 at
	:	No. 2001-198-MG.
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	818 A.2d 574 (2003)
PROTECTION AND CHEST TOWNSHIP,	:	
	:	ARGUED: May 11, 2004
Appellees	:	
	:	

[J-89B-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

TRI-COUNTY INDUSTRIES, INC. AND	:	No. 263 MAP 2003
TRI-COUNTY LANDFILL, INC.,	:	
	:	Appeal from the Order of the
Appellants	:	Commonwealth Court entered February
	:	10, 2003 at No. 1179CD2002 which
	:	Affirmed the Order of the Environmental
v.	:	Hearing Board entered April 11, 2002 at
	:	No. 2001-252-R.
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	818 A.2d 574 (2003)
DEPARTMENT OF ENVIRONMENTAL	:	
PROTECTION,	:	ARGUED: May 11, 2004
	:	
Appellee	:	

CONCURRING OPINION

MR. JUSTICE CASTILLE

DECIDED: October 27, 2005

Although I share many of the concerns expressed in Madame Justice Newman's thoughtful Dissenting Opinion, I nevertheless join the Majority Opinion in its entirety. I write only to explain why I tender my joinder notwithstanding the concerns I share with the Dissent.

The Dissenting Opinion expresses concern with the legitimacy of an agency establishing a regulatory regime which would allow for consideration, under the "Harms/Benefits Test," of "benefits" totally unrelated to the solid waste project at issue, such as an applicant's establishing a school or making charitable contributions, in order to provide for the benefits side of the equation. The Dissent has not pulled this concern out of thin air. Rather, the EQB has produced a "guidance document" which defines the regulatory term "social and economic benefits" as including precisely such items unrelated to the projects. If the actual regulations promulgated by the EQB in point of fact allowed for consideration of such unrelated matters on the benefits side of the equation, or if this case involved a challenge to the EQB insisting upon such unrelated benefits before approving an application, the regulatory action could not pass muster in my opinion.

Mr. Justice Baer's thorough and erudite analysis, however, has satisfied me that the "guidance document" relied upon by the Dissent is not a binding document, it played no role in the actual litigation of this case, and it may not strictly be at issue. More importantly for purposes of the tender of my joinder, the Majority stresses that it construes the EQB's regulations as requiring benefits that have a direct relationship to the project itself. Slip op. at 11-12 & n.11. In this regard, it seems to me, the views of the Majority and the Dissent

concerning the necessity that benefits must be directly related to the proposed project are not far apart.

If a case were to arise where the EQB followed its guidance document, rather than its regulation, there should be no doubt that such a determination would not be sustainable. The EQB perhaps should attend to redrafting any such material to conform to the statutory mandate, its regulations as issued, and the guidance of this Court's opinion. In short, although I do not see the Dissent's concerns as at all baseless, I am sufficiently satisfied that they are premature.