THE COURT OF COMMON PLEAS OF THE 39th JUDICIAL DISTRICT OF PENNSYLVANIA – FRANKLIN COUNTY BRANCH

Lori Clopper and Thomas Clopper h/w; Anthony Grove and Stacie Grove, h/w; Brad Kershner and Kayla Kershner, h/w, Plaintiffs v. Brian Barr, Barr Farms, LLC, Jesse Jones, Jones Manure Hauling LLP, and Jones Family Farms, Defendants	Case Type: Civil Action - Law Case No.: 2023-1796 The Honorable Shawn D. Meyers, President Judge

ORDER

AND NOW THIS 16th day of **December, 2025**, upon consideration of Defendants Jesse Jones, Jones Manure Hauling LLP, and Jones Family Farms' (the Jones Defendants) Motion for Summary Judgment and Brief in Support filed September 12, 2025, Plaintiffs' Response filed October 13, 2025, Plaintiffs' Brief in Opposition filed November 6, 2025, oral argument held December 4, 2025, and review of the applicable law,

IT IS HEREBY ORDERED that the Jones Defendants' motion for summary judgment is **denied**.

This Order is pursuant to the attached Opinion.

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order and Opinion, including a copy of this Order and Opinion, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.

By the Court,

Shawn D. Meyers, P. J.

The Prothonotary shall give notice and serve:

Steven A. Hann, Esq., and William G. Roark, Esq., *attorneys for Plaintiffs*
Michael M. Badowski, Esq., *attorney for Defendants Jesse Jones, Jones Manure Hauling LLP, and Jones Family Farms*
Scott A. Gould, Esq., and Errin T. McCaulley, Jr., Esq., *attorneys for Defendants Brian Barr and Barr Farms, LLC*

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OPINION

I. Procedural History

Plaintiffs, Lori Clopper and Thomas Clopper, Anthony Grove and Stacie Grove, and Brad Kershner and Kayla Kershner (hereinafter "Plaintiffs"), initiated this matter via Writ of Summons on June 2, 2023. Plaintiffs filed their Complaint on March 20, 2024. Defendants Jesse Jones, Jones Manure Hauling LLP, and Jones Family Farms (hereinafter "Jones Defendants" or "Joneses") filed their first preliminary objections on April 11, 2024. Thereafter, Plaintiffs filed their First

Amended Complaint on April 30, 2024. The Jones Defendants filed Preliminary Objections and a Brief in Support on May 20, 2024. Plaintiffs responded to the Preliminary Objections and submitted a Brief in Opposition on June 7, 2024.

The Court issued its Order and Opinion on the Joneses' objections on July 23, 2024. With regards to Plaintiffs' private cause of action under the Clean Streams Law (35 P.S. §691.1 *et seq.*), the Court struck the portion of Plaintiffs' prayer for relief related to monetary damages and permitted Plaintiffs the remedy of abatement of the nuisance.[1] The Court also ruled Plaintiffs could bring a negligence *per se* claim based on violation of the Clean Streams Law and could plead, prove, and recover litigation costs pursuant to Section 601(g) of the Clean Streams Law.[2]

Thereafter, Plaintiffs filed a Motion to Certify the Interlocutory Order for Appeal by Permission under Pa.R.A.P. 1311(b) on August 14, 2024. Defendants Brian Barr and Barr Farms, LLC (hereinafter "Barr Defendants") filed their response to Plaintiffs' motion on September 4, 2024. The Jones Defendants filed their response on September 5, 2024. Plaintiffs filed their Brief in Support on September 12, 2024. The Joneses and the Barr Defendants each filed their

[1] See Order and Op. dated July 23, 2024 (Meyers, P.J.).
[2] Id.

respective Briefs in Opposition on September 13, 2024. The Court declined to certify the matter for interlocutory appeal.[3]

The parties agreed to a joint case management plan, which the Court entered of record on May 13, 2024. The Court granted extensions of those deadlines on July 8, 2025, and again on August 13, 2025. The Jones Defendants timely filed their Motion for Summary Judgment and Brief in Support on September 12, 2025. Plaintiffs filed their Response to the Jones Defendants' Motion on October 13, 2025. Plaintiffs filed their Brief in Opposition on November 6, 2025. The Jones Defendants did not file a reply brief. The Barr Defendants did not submit a position on the Jones Defendants' Motion, it is the Court's understanding the Barr Defendants have tentatively reached a resolution with Plaintiffs.

The Court held oral argument on the instant summary judgment motion on December 4, 2025. This matter is now ripe for decision.

II. Brief Factual Background

Plaintiffs own residential homes neighboring the farm owned by the Barr Defendants.[4] The Jones Defendants hauled and delivered what was purported to be Food Processing Residual (hereinafter "FPR") to the Barr Farm.[5] The Barr

[3] See Order and Op. dated September 17, 2024 (Meyers, P.J.).
[4] First Am. Compl., ¶¶11, 14, 15 (April 30, 2024).
[5] Id. at ¶12.

Defendants stored FPR in two pits on their property.[6] The Jones Defendants spread the FPR on the Barr farm fields.[7] In the summer of 2021, Plaintiffs noticed problems with their water supply, including a cloudy appearance and foul smell.[8]

The Pennsylvania Department of Environmental Protection (hereinafter the "Department") examined Plaintiffs' water on September 27, 2021.[9] On November 3, 2021, the Department examined the material found in the Barr Defendants' pits.[10] The Department concluded the material was not entirely FPR, and that the pits also contained human waste.[11] The Department advised the Barr Defendants to obtain the proper permits under the Solid Waste Management Act, or to remove the waste from the pits.[12]

The Department investigated further and found Defendants released waste material adversely affecting Plaintiffs' water supply.[13] The Department thereafter issued a Water Supply Replacement Notice (hereinafter "Notice") to Defendants on March 22, 2023.[14] In the Notice, the Department attributed the June 30, 2021, spill of waste material to an equipment malfunction on the part of the Jones

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[6] First Am. Compl. at ¶13.
[7] Id. at ¶¶12, 50.
[8] Id. at ¶¶17-22.
[9] First Am. Compl. at ¶25.
[10] Id. at ¶26.
[11] Id. at ¶¶33- 34.
[12] Id. at ¶35.
[13] First Am. Compl. at ¶40.
[14] Id. at ¶39.

Defendants.[15] The Notice also required Defendants to provide Plaintiffs with both temporary and permanent water.[16] Defendants appealed this Notice to the Environmental Hearing Board.[17] Plaintiffs maintain they do not have access to safe drinking water and have suffered injuries as a result.[18]

III. Issues

The Jones Defendants raise four issues on summary judgment:

a. Whether Plaintiffs raise a *prima facie* claim of negligence where they do not have an expert witness on causation?

b. Whether Plaintiffs' claims pursuant to the Clean Streams Law fail as matter of law under the facts established in this case?

c. Whether Plaintiffs' claim of negligence *per se* fails as matter of law because it is legally insufficient?

d. Whether Plaintiffs' nuisance claim must be dismissed as it is barred by the Pennsylvania Right to Farm Law?

IV. Discussion

a. Applicable Standard – Summary Judgment

Summary judgment should be granted when "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 . . . which in a jury trial would require the issues to be submitted to

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[15] First Am. Compl. at ¶42.
[16] Id. at ¶44.
[17] Id. at ¶46.
[18] Id. at ¶47.

a jury."[19] To evaluate a motion for summary judgment, the court must apply the following standard set forth by our Supreme Court of Pennsylvania in Washington v. Baxter:

> As with all summary judgment cases, we must view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. In order to withstand a motion for summary judgment, a non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor. Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Finally we stress that summary judgment will be granted only in those cases which are free and clear from doubt.[20]

We now address the Jones Defendants' arguments *ad seriatim.*

b. Plaintiffs' claim for negligence does not fail as matter of law.

1. Parties Arguments

The Jones Defendants argue Plaintiffs are required to have an expert witness explain to the jury the relevant standard of care for hauling, transporting, and spreading FPRs, as the very nature of FPRs is outside of the purview of our general population.[21] The Jones Defendants further argue Plaintiffs have failed to produce

[19] Pa. R.C.P. 1035.2(1).
[20] 719 A.2d 733, 737 (Pa. 1998)(internal citations and quotations omitted).
[21] See Jones Defendants' Br. in Supp. Summ. J., 9-11 (September 12, 2025).

such an expert.[22] The Joneses claim Plaintiffs' expert, Nicholas Santella, is qualified only as an expert in hydrogeology.[23]

The Jones Defendants also argue Plaintiffs have not adduced sufficient evidence to show Plaintiffs' individual well contaminations were proximately and/or factually caused by the June 30, 2021, spill.[24] The Joneses claim Plaintiffs' expert, Dr. Santella, makes impermissible, speculative guesses as to the cause of the Plaintiffs' well contamination.[25] Plaintiffs are not permitted to rely on conjecture or speculation to prove the cause of their injuries.[26] An expert's opinion that the cause of an injury is "more likely than not or possibly" related to the misdeed in question is not legally sufficient.[27]

The Jones Defendants highlight a portion of Mr. Santella's report which states,

> "[T]he probable source of contamination of the residential potable wells in question is the accidental spill of FPR which occurred at the Front Tank. The second probable source would be a separate inadvertent release to the subsurface during the Barr Farm application of FPR to field F4."[28]

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[22] Jones Defendants' Br. in Supp. Summ. J., 11.
[23] Id. at 12.
[24] Id. at 12.
[25] Id. at 12.
[26] Id. at 12 (citing Krishack v. Milton Hershey Sch., 145 A.3d 762, 766 (Pa. Super. 2016)).
[27] Jones Defendants' Br. in Supp. Summ. J., 13 (citing Griffin v. U. of Pitts. Med. Ctr., 950 A.2d 996 (Pa. Super. 2008)).
[28] Id. at 14 (quoting Dr. Santella Report, 21). The parties each refer to Dr. Santella's report and Dr. Santella's Supplement (Jones Defs. M. Summ. J., Ex. O and Ex. P respectively, Plaintiffs

Additionally, Mr. Santella's Addendum states, "in addition to the spill, impacts to potable wells could also originate from improper application of FPR to bedrock in field F4."[29]

The Jones Defendants maintain the Santella report is speculative and defective as a result. The Joneses posit the FPR that spilled on June 30, 2021, was not sampled or tested.[30] The Joneses also argue the Santella Report does not describe the geologic conditions of the land area in question and only addresses the "region."[31] Additionally, Plaintiffs did not examine the water flow direction from the source of the spill or the Barr fields.[32] Plaintiffs' expert also improperly relied on the wrong Land Application System plan for Barr Farms.[33] As such, Plaintiffs' expert fails to meet the scientific degree of certainty required to show the June 2021 spill caused the Plaintiffs' well contamination.[34]

Plaintiffs respond they are not required to have a standard of care expert for three reasons.[35] First, Plaintiffs argue the doctrine of *res ipsa loquitor* applies here.[36] That doctrine permits an inference of negligence where three conditions are

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reference Ex. J for both reports). For clarity's sake, the Court shall refer simply to **Dr. Santella's Report** (November 19, 2024) and **Dr. Santella's Supplement** (May 21, 2025).
[29] Jones Defendants' Br. in Supp. Summ. J., 14 (quoting Dr. Santella's Supplement, 2).
[30] Id. at 14.
[31] See Jones Defs.' Br. in Supp. Summ. J., 14-15.
[32] Id. at 15.
[33] Id. at 15.
[34] Id. at 14.
[35] Pls. Br. in Opp'n. Summ. J., 10-18 (November 6, 2025).
[36] Id. at 10-15.

met: the event causing harm is of a type that ordinarily does not occur in the absence of negligence; other responsible causes are sufficiently eliminated; and the negligence falls within the defendant's duty to the plaintiff.[37]

Plaintiffs maintain it is the function of the jury to determine whether an inference under *res ipsa loquitor* should be drawn where different conclusions may reasonably be reached.[38] Plaintiffs maintain they can satisfy Section 328D(1)(a) by either proving existence of fund of common knowledge from which layperson could reasonably draw the inference of conclusion, and the second, offering expert testimony that such an injury would not have occurred without negligence.[39] Plaintiffs cite comment g for the proposition that they need only show the specific instrumentality, which caused the event, was under the exclusive control of the defendant, thus the responsibility of the defendant is proved by eliminating that of any other person.[40] They argue they do not need to eliminate every conceivable cause of an accident in order to recover.[41]

Plaintiffs point out the development of the crack in the hose exclusively under the Joneses' control was not an event that ordinarily occurs in the absence of

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[37] Pls. Br. in Opp'n. Summ. J., 10 (citing Quinby v. Plumsteadville Fam. Prac., Inc., 907 A.2d 1061, 1071 (Pa. 2006)).
[38] Id. at 11 (citing cmt. e of Restatement (Second) of Torts, §328D; Fessenden v. Robert Packer Hosp., 97 A.3d 1225, 1232 (Pa. Super. 2014)).
[39] Id. at 11 (citing Jones v. Harrisburg Polyclinic Hosp., 437 A.2d 1134, 1138 (Pa. 1981)).
[40] Id. at 11 (quoting the Restatement (Second) of Torts, §328D).
[41] Id. at 11 (internal citation omitted).

negligence.[42] Considering the testimony of the Jones driver, Mr. Shaw, the jury should be permitted to determine whether or not was material leaking from a hole in the Jones' hose was something that could have occurred in the absence of negligence.[43] Also, the Joneses had exclusive control over the hose, and the Joneses were exclusively responsible for unloading and spreading the waste material at Barr Farms.[44]

Separate from their *res ipsa loquitor* argument, Plaintiffs posit they do not need a standard of care expert where the Joneses' negligence is apparent and within the understanding of an ordinary lay person.[45] Specifically, Plaintiffs state jurors can easily understand the concept of hose use having likely operated a hose dozens of times, and that the hose rupture and subsequent spill of "hundreds of gallons of purported FPR constitutes negligence."[46] Plaintiffs point out that the Jones's driver had no specialized training or certifications on transporting or handling waste material.[47]

Thirdly, Plaintiffs argue if a standard of care expert for agricultural waste application is required, Dr. Santella is qualified to provide that testimony.[48]

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[42] Pls. Br. in Opp'n. Summ. J., 12.
[43] Id. at 12-13 (internal citations omitted).
[44] Id. at 14 -15 (internal citations omitted).
[45] Pls. Br. in Opp'n. Summ. J., 15-17 (internal citations omitted).
[46] Id. at 16.
[47] Id. at 16 (internal citations omitted).
[48] Id. at 17-18 (internal citation omitted).

Plaintiffs maintain Dr. Santella's report is sufficient to establish causation of the contamination of Plaintiffs' wells.[49] Plaintiffs argue the Court must consider the entirety of Dr. Santella's testimony and Dr. Santella need not rule out all other possible causes.[50] As long as their expert's conclusion is grounded in an adequate factual basis, the expert is not required to use "magic words."[51] In establishing a *prima facie* case, a plaintiff's expert "need not exclude every possible explanation of the accident, it is enough that reasonable minds are able to conclude that the preponderance of the evidence shows the defendant's conduct to have been a substantial cause of the harm."[52] The weight and credibility owed to Dr. Santella's report should be left to the jury.[53]

Plaintiffs also maintain Dr. Santella's report demonstrates the Jones Defendants' conduct was a "substantial cause" of the contamination of Plaintiffs' wells.[54] Dr. Santella, after reviewing geologic conditions, laboratory analysis of Plaintiffs' wells, and other hydrogeological conditions apparent, concluded " [s]everal lines of evidence indicate that the FPR spill, rather than the biosolids

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[49] Pls. Br. in Opp'n. Summ. J., 18-21.
[50] Id. at 18 (internal citations omitted).
[51] Id. at 18 (internal citations omitted).
[52] Id. at 19 (internal citations omitted).
[53] Id. at 19 (internal citation omitted).
[54] Pls. Br. in Opp'n. Summ. J., 19.

application, is the probable source of impacts to potable wells" belonging to Plaintiffs.[55]

In response to the Defendants' contention that Plaintiffs' expert never tested the spilled material, Plaintiffs argue they had no feasible way to conduct such tests because the spill was not reported until after torrential rainfall, circumstances which were beyond Plaintiffs' control.[56] Plaintiffs also point out Dr. Santella's findings are consistent with the Department of Environmental Protection.[57] Again, Plaintiffs argue weight and credibility determinations should be left to the jury.[58]

Lastly, Plaintiffs argue summary judgment is improper as Plaintiffs have asserted a *prima facie* claim of negligence and the Joneses have neither set forth any evidence the Plaintiffs' wells were contaminated in the absence of negligence nor sufficiently demonstrated why the absence of a standard of care expert precludes Plaintiffs' claims.[59]

2. Law and Analysis of Duty

The primary element in any negligence action is whether the defendant owes a duty of care to the plaintiff.[60] The legal concept of duty of care is rooted in

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[55] Pls. Br. in Opp'n. Summ. J., 19 (quoting Dr. Santella's Supplement, 2).
[56] Id. at 20.
[57] Id. at 20 (citing Long Report, 22-23).
[58] Id. at 20.
[59] Pls. Br. in Opp'n. Summ. J., 17.
[60] Althaus ex rel. Althaus v. Cohen, 756 A.2d 1166, 1168 (Pa. 2000)(other citation omitted).

public policy considerations, which may include our perception of history, morals, justice and society.[61] The question of duty is a legal question for the court to decide.[62] We recognize that a duty based on professional standards of care requires specialized, expert testimony. "However, expert testimony is not required when the matter under consideration is simple and the lack of ordinary care is obvious and within the range of comprehension of the average juror."[63] Here, the Jones truck driver testified he received no special training in transporting or handling FPR.[64] We agree with Plaintiffs that operation and maintenance of a hose is within the common knowledge of the average Franklin County juror. Thus, we conclude no specialized, expert testimony is required concerning the hose leak resulting in the June 30, 2021, spill.

Expert testimony explaining the duty owed by a defendant is not the only way to demonstrate the defendant owed a duty of care to a plaintiff.[65] The determination of whether a duty exists in a particular case involves the weighing of several discrete factors which include: (1) the relationship between the parties; (2)

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[61] Althaus, 756 A.2d at 1169 (internal citation omitted).
[62] Bourgeois v. Snow Time, Inc., 242 A.3d 637, 657 (Pa. 2020)(referencing R.W. v. Manzek, 888 A.2d 740, 746 (Pa. 2005)(explaining "a duty consists of one party's obligation to conform to a particular standard of care for the protection of another")(internal citations omitted)).
[63] Cipriani v. Sun Pipe Line Co., 574 A.2d 706, 710 (Pa. Super. 1990)(internal citations omitted).
[64] Donald Roy "Buddy" Shaw, Jr., Dep. Trans., 148:23-25, 149:1 (August 20, 2024).
[65] See Bourgeois v. Snow Time, Inc., 242 A.3d 637, 658 (Pa. 2020)(Pa. Supreme Court disagreed with the Superior Court's unsubstantiated conclusion that "the parties do not dispute that plaintiffs needed an expert opinion to establish a standard of care").

the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.[66] No one of these five factors is dispositive. Rather, a duty will be found to exist where the balance of these factors weighs in favor of placing such a burden on a defendant.[67]

Here, as we examine the relationship between Plaintiffs and the Joneses, the parties do not dispute Plaintiffs are landowners whose land is contiguous to Barr Farms, stated simply, they are Barr's neighbors. When the Joneses undertook the spreading and unloading of FPR at Barr Farms they stood in the shoes of Barr Farms, and owed Plaintiffs a duty to do their job without injuring Plaintiffs.[68] Stated differently, the Joneses' affirmative acts, transferring the FPR to the Barr pit or spreading the FPR on the Barr fields, trigger their duty to others to exercise the care of a reasonable person and to protect those others against an unreasonable risk of harm to them arising out of their acts.[69] We find these duties, at a minimum,

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[66] Althaus, 756 A.2d at 1169 (internal citations omitted).
[67] Commonwealth v. Monsanto Co., 269 A.3d 623, 668 (Pa. Cmwlth. 2021)(citing Phillips v. Cricket Lighters, 841 A.2d 1000, 1008-1009 (Pa. 2003)).
[68] The Supreme Court recently held a possessor may be found jointly liable with a contractor for the harm a contractor's dangerous condition caused to third parties. Brown v. City of Oil City, 294 A.3d 413, 434 (Pa. 2023)(citing Builders Supply Co. v. McCabe, 366 Pa. 322, 77 A.2d 368, 371 (1951)("The universal rule is that when two or more contribute by their wrongdoing to the injury of another, the injured party may recover from all of them in a joint action or he may pursue any one of them and recover from him.").
[69] Commonwealth v. Monsanto Co., 269 A.3d at 667 (citing Second Restatement § 302, Cmt. a (emphasis added)).

included reporting the spill to DEP and ensuring efforts are taken to remediate the spill. It is reasonably foreseeable that the risk of harm from failing to do these minimum duties is great.

While the industry repercussions of imposing a duty of care on haulers and/or appliers of FPR may seem endless, this Court concludes a commercial entity whose business is hauling, transferring, and/or land applying FPRs/FPWs must be aware of these risks and exercise due care. The social utility in properly hauling, transferring, and applying FPRs/FPWs is significant. There is a precarious intersection between generators' and appliers' need to dispose of the residual material and the environmental impact of disposal. This intersection must coexist with extensive agency and legislative regulation in our Commonwealth.[70] There are several environmental consequences associated with FPRs/FPWs.[71] For example, "[s]ome FPRs contain pathogens, which have a negative health impact on humans or animals if they are not properly managed."[72] Again, the consequences

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[70] See The Food Processing Residual Management Manual, September 14, 2001, 1; see also PA DEP FPR Workgroup Summary (results of meeting April 11, 2024), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files.dep.state.pa.us/waste/bureau%20of%20waste%20management/wastemgtportalfiles/SolidWaste/Residual_Waste/PA_FPR_Workgroup_Final_Report.pdf#:~:text=Upon%20completion%20of%20the%20inspection%20and%20subsequent,for%20transporting%20and%20land%20applying%20the%20FPR; see *e.g.*, Antrim Twp., "Food Processing Residual Ordinance," 2025-367 (adopted April 8, 2025).

[71] See The Food Processing Residual Management Manual, September 14, 2001, 26-36 (Chapter 4: Sampling and Analyzing Food Processing Residuals).

[72] The Food Processing Residual Management Manual, September 14, 2001, 76 (Chapter 8 Recycling FPRs as Soil Conditioners or Fertilizers).

of imposing a duty of care on the commercial haulers and/or appliers of FPR may seem excessive or onerous, but this Court refuses to conclude otherwise.

In turn, these commercial entities must exercise reasonable care before undertaking the spreading or land application of those materials.[73] Reasonable care under these circumstances may include inquiring with the FPR generator the character of the material and whether any steps were taken to "reduce pathogenic risk" by disinfecting or stabilizing the FPRs before land application.[74] The resultant harm that may occur, if these risks are ignored and appropriate care not taken, could be significant. As a result, there is strong public interest in managing these risks effectively.

Thus, we conclude Plaintiffs did not require an expert to establish the duty of care owed for the June 30, 2021, spill. Additionally, in consideration of our foregoing analysis of the Althaus factors, we find the Jones Defendants owed Plaintiffs a common law duty of care associated with their commercial activities conducted at Barr Farms related to FPR. Other, unanalyzed sources of obligations or duties owed by the Joneses here may arise from the Food Processing Residual

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[73] The matter before our Court does **not** involve a one-time transport.

[74] The Food Processing Residual Management Manual, September 14, 2001, 76 (Chapter 8 Recycling FPRs as Soil Conditioners or Fertilizers); see also PA DEP FPR Workgroup Summary (results of meeting April 11, 2024), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files.dep.state.pa.us/waste/bureau%20of%20waste%20management/wastemgtportalfiles/SolidWaste/Residual_Waste/PA_FPR_Workgroup_Final_Report.pdf#:~:text=Upon%20completion%20of%20the%20inspection%20and%20subsequent,for%20transporting%20and%20land%20applying%20the%20FPR

Management Manual authored by the Pennsylvania DEP and the Joneses' own Land Application System (LAS) plans.[75]

3. Law and Analysis of Breach and Causation

After proving the defendant owed a duty or obligation to plaintiff, a plaintiff must prove a breach of that duty, and a causal connection between the conduct and the resulting injuries.[76] One way to establish these elements is through *res ipsa loquitur*. *Res ipsa loquitur* is an evidentiary doctrine permitting the jury to infer negligence and causation from the mere occurrence of the event and the defendant's relation to it.[77] This rule is defined as "evidence of one fact, or of a set of facts, from which the existence of the fact to be determined may reasonably be inferred."[78] "There must be reasonable evidence of negligence; but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those

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[75] Thomas J. Sweeney, Jr., a soil scientist for the DEP Clean Water Program since 1994, reviewed LAS plans and found the Joneses' plan deficient. See Dep. Trans., 9:1-8; 20:5-12 (9/9/24). Mr. Sweeney also testified FPRs require no permit for land application, as long as the FPR applier follows DEP's FPR Management Manual guidelines. Id. at 18:15-19. See also, The Food Processing Residual Management Manual, September 14, 2001, 87-102 (Chapter 8 Recycling FPRs as Soil Conditioners or Fertilizers, section 8.3 **Components of a Land Application System**).

[76] Toro v. Fitness Int'l LLC., 150 A.3d 968, 976–977 (Pa. Super. 2016)(citing Estate of Swift by Swift v. Northeastern Hosp., 690 A.2d 719, 722 (Pa. Super. 1997)).

[77] Lageman by & Through Lageman v. Zepp, 237 A.3d 1098, 1104 (Pa. Super. 2020), aff'd, 266 A.3d 572 (Pa. 2021).

[78] D'Ardenne by D'Ardenne v. Strawbridge & Clothier, Inc., 712 A.2d 318, 320 (Pa. Super. 1998)(quoting W. Page Keeton et al., Prosser and Keeton on the Law of Torts §39, at 242 (5th ed.1984)(other citations omitted)).

who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."[79]

In 1974, our Pennsylvania Supreme Court adopted this evidentiary rule from the Restatement (Second) of Torts:

> Section 328D, titled Res Ipsa Loquitur, states:
>
> (1) It may be inferred that harm suffered by the plaintiff is caused by negligence of the defendant when
> (a) the event is of a kind which ordinarily does not occur in the absence of negligence;
> (b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and
> (c) the indicated negligence is within the scope of the defendant's duty to the plaintiff.
> (2) It is the function of the court to determine whether the inference may reasonably be drawn by the jury, or whether it must necessarily be drawn.
> (3) It is the function of the jury to determine whether the inference is to be drawn in any case where different conclusions may reasonably be reached.[80]

The Restatement requires the plaintiff to prove all the elements enumerated in subsection one by a preponderance of the evidence.[81] This theory relieves the plaintiff of having to prove causation directly.[82]

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[79] D'Ardenne, 712 A.2d at 320-321 (internal citation omitted).
[80] D'Ardenne, 712 A.2d at 321 (citing Gilbert v. Korvette, Inc., 327 A.2d 94, 100 (Pa. 1974)(other citation omitted)).
[81] Hollywood Shop, Inc. v. Pennsylvania Gas & Water Co., 411 A.2d 509, 511 (Pa. Super. 1979).
[82] Toogood v. Owen J. Rogal, D.D.S., P.C., 824 A.2d 1140, 1146 (Pa. 2003).

Our courts, interpreting Section 328D(1)(a), note there are two avenues to avoid the production of direct evidence of the facts establishing liability: one being the reliance upon common lay knowledge that the event would not have occurred without negligence, and the second, reliance upon expert knowledge that the event would not have occurred without negligence.[83]

As to Section 328D(1)(b), whether plaintiff eliminated other responsible causes for the accident, it is **not necessary** for a plaintiff to exclude **all** other possible causes of the accident beyond a reasonable doubt.[84] Rather, "[a]ll that is required is that [plaintiff] present a case from which a jury may reasonably conclude that the negligence was, more probably than not, that of the defendant."[85] A party's negligence may be inferred when 'other responsible causes . . . are sufficiently eliminated by the evidence.'[86] Exclusive control, though disavowed as a requirement by the Restatement, may eliminate other causes, but the critical inquiry is **not control** but whether a particular defendant is the "[r]esponsible cause of the injury."[87] This responsibility may be shared by two or more defendants.[88]

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[83] Jones v. Harrisburg Polyclinic Hosp., 437 A.2d 1134, 1138 (Pa. 1981)(referencing Restatement (Second) of Torts, §328D, cmt. d; relating to medical malpractice cases).
[84] D'Ardenne, 712 A.2d at 325-326 (citing Smith v. City of Chester, 515 A.2d 303, 305 (Pa. Super. 1986)(emphasis added)).
[85] D'Ardenne, 712 A.2d at 326 (internal citations omitted).
[86] Gilbert v. Korvette, Inc., 327 A.2d at 101 (internal quotation omitted).
[87] Id. at 101 (emphasis added).
[88] Id. at 101.

In this matter, we reasoned *supra* that Plaintiffs may rely upon a Franklin County juror's common fund of knowledge about hose use in lieu of expert testimony concerning same. We also ruled that the Jones Defendants owed Plaintiffs a duty of reasonable care under the circumstances. We further agree with Plaintiffs that the development of the hole in the FPR unloading hose, under the exclusive control of the Jones Defendants,[89] is not an event that ordinarily occurs in the absence of negligence, *i.e.* failing to properly inspect and maintain the hose. When properly maintained and, if needed, replaced, the hose should not have ruptured and leaked.

While we hold there is a common fund of knowledge about general hose use, we conclude expert testimony is required to explain the composition of the materials found in the FPR and how those materials reached Plaintiffs' wells. While Plaintiffs' expert may not be qualified to testify about how to operate the machinery that sprays or spreads FPR or how to drive or load a tanker truck, Dr. Santella is qualified to discuss the materials found in the FPR, compare the physical makeup of the FPR tested, and opine about the contamination of the Plaintiffs' wells.

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[89] Though not required by the Restatement 328(D), the Joneses had exclusive control of the ruptured hose. See Brian Barr, Dep. Trans., 55 (1/17/25)(testifying hoses belonged to the Joneses' and the Joneses stored hoses outside at the farm).

Dr. Santella first examined the FPR application at Barr Farms[90] and the overall geologic and hydrogeologic conditions present.[91] Dr. Santella also discussed the scientific analysis of the FPR tested and its impact on Plaintiffs' wells.[92] Dr. Santella adequately described the contaminated wells samplings and why the materials found in the contaminated wells were not naturally occurring.[93] Accordingly, after reviewing Dr. Santella's report and supplement in their entirety, we conclude Plaintiffs have made a *prima facie* showing which satisfies the second portion of 328D(1)(a).

Concerning the application of Restatement (Second) Section 328(D)(1)(b), we further scrutinize Plaintiffs' expert reports as the Jones Defendants contend Dr. Santella's opinions are not rendered to the requisite degree of certainty.[94] In determining whether an expert's opinion meets the required degree of certainty, the court must examine all of the expert's testimony.[95] "That an expert may have used less definite language does not render [their] entire opinion speculative if at some time during [their] testimony [they] expressed [their] opinion with reasonable

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[90] Pls. Br. in Opp'n. Summ. J., (referencing Dr. Santella Report, 3-5).
[91] Id. at 5-8.
[92] Id. at 8-13.
[93] Id. at 10-13.
[94] The admission of expert testimony is a matter of discretion of the trial court. Estate of Pew, 598 A.2d 65, 69 (Pa. Super. 1991)(other citation omitted).
[95] Betz v. Erie Ins. Exch., 957 A.2d 1244, 1259 (Pa. Super. 2008)(citing Carrozza v. Greenbaum, 866 A.2d 369, 379 (Pa.Super.2004)(other citation omitted).

certainty."[96] Accordingly, an expert's opinion will not be deemed deficient merely because they failed to expressly use the specific words, "reasonable degree" of scientific certainty.[97] Nevertheless, "[a]n expert fails this standard of certainty if they testify 'that the alleged cause 'possibly', or 'could have' led to the result, that it 'could very properly account' for the result, or even that it was 'very highly probable' that it caused the result."[98] Consequently, an expert's "failure to state an opinion with such certainty need not be fatal if we could look to [their] testimony in its entirety and find that it expresses reasonable certainty."[99]

Examining all of Dr. Santella's opinions, particularly his conclusion in his May 21, 2025, supplemental report, leads this Court to find Plaintiffs' expert's opinions are rendered to the required degree of specificity. Of note, Dr. Santella concludes, "[s]everal lines of evidence indicate that FPR, rather than biosolids application, is the sources of impacts to potable wells" of Plaintiffs.[100] It seems to the Court the Joneses Defendants would like the Court to find there is no "requisite

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[96] Betz v. Erie Ins. Exch., 957 A.2d at 1259 (internal citation omitted).
[97] Betz, 957 A.2d at 1259 (referencing Comm. v. Spotz, 756 A.2d 1139 (Pa. 2000)(indicating that "[i]n this jurisdiction, experts are not required to use 'magic words' " but, rather, "this Court must look to the substance of [the expert's] testimony to determine whether his opinions were based on a reasonable degree of medical certainty rather than upon mere speculation").
[98] Betz, 957 A.2d at 1259 (citing Griffin v. U. of Pitt. Med. Ctr., 950 A.2d 996, 1000 (Pa. Super. 2008)(other citations omitted); see also Corrado v. Thomas Jefferson Univ. Hosp., 790 A.2d 1022, 1031 (Pa.Super.2001)(finding expert opinion that defendant "more likely than not" deviated from standard of care insufficient).
[99] Betz, 957 A.2d at 1259 (citing Peerless Dyeing Co., Inc., 573 A.2d 541, 547 (Pa. Super. 1990).
[100] Dr. Santella Supplement, 2.

degree of specificity" where Dr. Santella's identifies two causes of pollution impacting the Plaintiffs' well contaminations, the FPR spill and the overall FPR application. However, consistent with appellate precedent, we find the opinions offered by Dr. Santella are sufficient to remove the causation question from the realm of conjecture, but not so substantial that it provides a full and complete explanation of the event, whether that is the June 30, 2021, spill, or the overall application of FPR.[101] The Joneses were responsible for both of those activities at the Barr Farms' fields in question.[102] Dr. Santella's expert report and supplement sufficiently eliminate other causes of the Plaintiffs' well contaminations.[103] Those eliminated sources or causes include septage originating from Plaintiffs' own private septage systems and a separate entity's application of biosolids at another Barr Farms' field.[104] Lastly, this Court is not aware of any expert opinions offered by the Jones Defendants rebutting Dr. Santella's opinions.

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[101] See Toogood v. Owen J. Rogal, D.D.S., P.C., 824 A.2d 1140, 1149–1150 (Pa. 2003)(reasoning only when each of the three conditions is satisfied may an inference of negligence be drawn from the occurrence of an injurious event). Despite the difficulty of determining when a plaintiff has proven too much to be entitled to a *res ipsa* instruction, "the great majority of the courts appear to have accepted the rule than an unsuccessful attempt to prove specific negligence on the defendant's part, or the introduction of evidence of specific negligence not clearly establishing the precise cause of injury, will not deprive the plaintiff of the benefits otherwise available under the [*res ipsa*] doctrine." D'Ardenne by D'Ardenne v. Strawbridge & Clothier, Inc., 712 A.2d 318, 324 (Pa. Super. 1998)(internal citations omitted)(reasoning further our Superior Court adopted this doctrine in 1979 in Hollywood Shop, Inc. v. Pa. Gas & Water Co., 411 A.2d 509, 513 (Pa. Super. 1979)).

[102] See Brian Barr, Dep. Trans., 45:4-10 (1/17/25).

[103] See Gilbert v. Korvette, Inc., 327 A.2d at 101 (internal quotation omitted).

[104] See, Dr. Santella Report, 17-20; see also, Dr. Santella Supplement, 2.

As the motion before the Court is summary judgment, we are required to view the record in the light most favorable to the non-moving party, the Plaintiffs. With that in mind, we find the Jones Defendants have not met their burden as a matter of law that Plaintiffs cannot show the Joneses were negligent and that the Joneses proximately caused Plaintiffs' well contaminations. Where the Joneses did not file a reply brief or request leave to file same challenging Plaintiffs' assertion of causation through *res ipsa loquitor*, Plaintiffs may attempt to prove the Section 328D elements to a jury with regard to both their claim of improper application of the FPR on the Barr fields adjacent to their homes, and the specific negligence involved in the June 30, 2021, spill of material. Subsequently, the jury may or may not infer negligence on the part of the Jones Defendants for Plaintiffs' claims.[105] It must be noted, credibility determinations are within the jury's realm, as they are free to believe or disbelieve Dr. Santella's testimony.[106]

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[105] See Restatement (Second) of Torts §328D(3).

[106] See, *e.g.*, Lykes v. Yates, 77 A.3d 27, 31 (Pa. Super. 2013)(citing Renna v. Schadt, 64 A.3d 658, 670 (Pa. Super. 2013)). The jury will evaluate the credibility of Dr. Santella when the Jones Defendants cross-examine Dr. Santella about never testing the spilled material in light of the fact the spill was not initially reported to DEP by the Joneses.

c. Plaintiffs' claims pursuant to the Clean Streams Law (CSL) are not moot even where DEP is enforcing the CSL against the Jones Defendants.

The Jones Defendants argue Plaintiffs' claims under the CSL are moot where DEP is already enforcing the CSL against the Jones Defendants and the Barr Defendants.[107] The Joneses further argue the CSL's private cause of action is for compliance with the law itself and Plaintiffs have intervened in the EHB appeals.[108] Plaintiffs' available legal remedy is already by enforced by DEP.[109]

Plaintiffs respond that the CSL expressly permits Plaintiffs to bring a private cause of action where the Department has not brought such an action in court.[110] The legislature, specifying private causes of action are barred only in the narrow context of court enforcement by the Department, recognized private suits remain available when the Department has administrative proceedings pending.[111] Plaintiffs point out the burden on the defense in establishing the mootness doctrine is heavy, and there have been no changes in circumstances at the EHB level warranting the application of the mootness doctrine.[112] Lastly, assuming *arguendo*

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[107] See Jones Defs.' Br. in Supp. Summ. J., 16 (referencing Exs. H, I, J, and K attached to Jones Defs.' M. Summ. J.).
[108] Id. at 16 (referencing Ex. J. attached to Jones Defs. M. Summ. J.).
[109] Id. at 16.
[110] See Pls. Br. in Opp'n. Summ. J., 21-22 (highlighting 35 P.S. §691.601(c), and 35 P.S. §691.601(e)).
[111] Id. at 22 (reasoning statutory interpretation method *expressio unius est exclusion alterius* provides "inclusion of a specific matter in a statute implies the exclusion of other matters")(other citations omitted)).
[112] See Pls. Br. in Opp'n. Summ. J., 23 (internal citations omitted).

the Joneses were correct about the mootness of Plaintiffs' CSL claim, their claim for attorneys' fees under the CSL is still viable and capable of review.[113]

"Mootness, like standing, is a question of law."[114] "As a general rule, an actual case or controversy must exist at all stages of the judicial process, or a case will be dismissed as moot."[115] "An issue before a court is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy."[116]

To that end, the existence of a case or controversy requires:

(1) A legal controversy that is real and not hypothetical;

(2) A legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for a reasoned adjudication; and

(3) A legal controversy with sufficiently adverse parties so as to sharpen the issues for judicial resolution.[117] Even if a case is moot, exceptions are made: (1) when the conduct complained of is capable of repetition yet likely to evade judicial

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[113] Pls. Br. in Opp'n. Summ. J., 23-24 (internal citations omitted).
[114] Crespo v. Hughes, 292 A.3d 612, 617 (Pa. Super. 2023)(citing Estate of Crowder, 262 A.3d 549 (Pa. Super. 2021)).
[115] Crespo, 292 A.3d at 617 (internal quotations omitted).
[116] Id. (quoting Printed Image of York, Inc. v. Mifflin Press, Ltd., 133 A.3d 55, 59 (Pa. Super. 2016)).
[117] See Reier v. Pennsylvania State Police, No. 354 C.D. 2024, 2025 WL 2470948, at *5 (Pa. Cmwlth. Aug. 28, 2025)(citing Cal. Borough v. Rothey, 185 A.3d 456, 463 (Pa. Cmwlth. 2018)(other citations omitted)).

review; (2) when the case involves issues of great public importance; or (3) when one party will suffer a detriment in the absence of a court decision.[118]

Here, the Jones Defendants do not cite any precedent or rule supporting their position on mootness of Plaintiffs' claims under the CSL.[119] The Joneses also do not analyze the factors concerning the existence of a case or controversy. In spite of our appellate courts' lack of case law in the realm of the CSL and private causes of action, a live controversy exists, at a minimum, regarding Plaintiffs' entitlement to attorneys' fees and costs under Section 691.601.[120]

Given the foregoing, the Jones Defendants have not met their burden in showing they are entitled to judgment as a matter of law on mootness. Summary judgment is denied on this issue.

d. Plaintiffs' negligence *per se* claim does not fail as matter of law because it is legally sufficient.

The Jones Defendants reiterate their prior argument that the CSL does not provide a basis for a negligence *per se* claim.[121] The Jones Defendants cite a non-

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[118] Kupershmidt v. Wild Acres Lakes Prop. Owners' Ass'n, 143 A.3d 1057, 1061 (Pa. Cmwlth. 2016)(citing Lutz v. Tanglwood Lakes Community Association, Inc., 866 A.2d 471, 473 (Pa. Cmwlth. 2005)).

[119] Issue and/or claim preclusion are not before the Court in the instant motion.

[120] See 35 P.S. 691.601(g)(permitting Court to award attorneys fees and litigation costs in final order); see also Ladley v. Pennsylvania State Educ. Ass'n, 269 A.3d 680, 689 (Pa. Cmwlth. 2022)(reasoning if trial court had addressed Teachers' requests for attorney's fees on remand, the trial court's disposition would, by itself, result in a reviewable order in a subsequent appeal and "would effectively un-moot the case").

[121] Jones Defs.' Br. in Supp. Summ. J., 18.

precedential Superior Court decision, Conservano v. Parker Oil Co., for the proposition that our Legislature did not intend for the CSL to serve as the basis for a private claim for negligence *per se*.[122] The Joneses explain Conservano examined our Supreme Court's decision in Commonwealth v. Barnes & Tucker Co. where the CSL was not concerned with the *source* of the pollution but where the polluted water is discharged into a waterway located in the Commonwealth.[123] The strict liability imposed by the CSL is only permissible when the Commonwealth exercises its inherent police power as the CSL is not concerned with causation.[124] In turn, Plaintiffs should not be permitted to weaponize the Commonwealth's inherent police powers themselves by bringing an action under the CSL.[125]

Plaintiffs respond this Court has already ruled upon the issue of whether Plaintiffs may bring a claim of negligence *per se* for violations of the Clean Streams Law.[126] Plaintiffs argue there has been no subsequent change in law governing this issue, and that the Joneses rely upon an inapplicable, non-

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[122] Jones Defs.' Br. in Supp. Summ. J., 18 (citing 229 A.3d 364 (Pa. Super. 2020)(non-precedential)).
[123] Id. at 17-18 (citing Conservano at **14-15; Barnes, 371 A.2d 461, 466 (emphasis added by Defs. Jones)).
[124] Id. at 18 (citing Conservano at **14-15; Nat'l Wood Preservers v. Comm. Dept. of Envtl. Res., 414 A.2d 37, 43-45 (Pa. 1980)).
[125] Id. at 18.
[126] Pls. Br. in Opp'n. Summ. J., 7 (citing Opinion and Order, 22 (Meyers, P.J., July 23, 2024)).

precedential decision.[127] Plaintiffs state the Conservano Court misrelied upon the 1977 case of Barnes & Tucker.[128]

Specifically, Plaintiffs maintain Conservano misapplied reasoning in Barnes & Tucker, that the CSL was "not primarily concerned with the source of the polluted water, but the point where the polluted water is discharged into the Commonwealth's waterways.[129] Plaintiffs also highlight portions of Centolanza I and Centolanza II, which reinforce their contention that the CSL protects individuals from harm supporting the application of the negligence *per se* doctrine.[130]

Our Commonwealth's appellate landscape has not changed since this Court overruled the Jones Defendants' demurrer on whether the CSL provides for a private cause of action and in turn, whether the CSL provides the basis for a negligence *per se* claim. Stated differently, we have discovered no new, binding decisions concerning the application of the CSL to private causes of action. However, this Court previously held Plaintiffs may maintain a private cause of action under the CSL with abatement of the nuisance as their remedy, based on the

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[127] Pls. Br. in Opp'n. Summ. J., 7-8 (referencing Conservano).
[128] Id. at 8 (referencing 371 A.2d 461 (Pa. 1977).
[129] Id. (quoting Conservano, *12 (internally citing 317 A.2d at 466)).
[130] Id. at 9-10 (citations omitted).

plain meaning of Sections 601(c) and 701 of the CSL and the Pennsylvania Supreme Court's ruling in Commonwealth v. Barnes.[131]

As to Plaintiffs' negligence *per se* claim, we previously differentiated whether the CSL was being used as proof the Defendants breached a pre-existing duty, or whether the statute was being used to establish that the Defendants owed a duty in the first place.[132] If there was no duty owed by the Defendants to the Plaintiffs independent of the statute, or created explicitly in the statute by providing a private right of action, then we would need to impermissibly imply a cause of action.[133]

We ruled Section 3 of the CSL declared the "discharge of sewage or industrial waste or any substance into the waters of this Commonwealth, which causes or contributes to pollution" "to be against public policy and to be a public nuisance."[134] The statute clearly established that a discharge of sewage or substances causing pollution into waters was a public nuisance.[135] The resulting violation of the CSL can be litigated in law or equity by the Commonwealth[136] or

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[131] Opinion and Order, 16 (Meyers, P.J., July 23, 2024)(referencing Barnes, 371 A.2d 461 (Pa. 1977); 35 P.S. §691.701; 35 P.S. §691.601).
[132] Opinion and Order, 19 (Meyers, P.J., July 23, 2024)(internal reference omitted).
[133] Opinion and Order, 19-20 (Meyers, P.J., July 23, 2024)(internal reference omitted).
[134] Opinion and Order, 20 (Meyers, P.J., July 23, 2024)(quoting 35 P.S. §691.3).
[135] Opinion and Order, 20 (Meyers, P.J., July 23, 2024)(citing Centolanza I, 635 A.2d 143 (Pa. Super. 1994)).
[136] Opinion and Order, 20 (Meyers, P.J., July 23, 2024)(citing 35 P.S. §691.601(a)).

by an individual adversely affected.[137] As we previously concluded the CSL's section 691.601(c) provides a statutory basis for a private cause of action seeking abatement of the nuisance,[138] we determined our legislature intended the CSL to protect, at least in part, the interests of a specific class of individuals, *i.e.,* those who live near enough to the source of the water pollution and whose water supply has been adversely affected by said water pollution.[139]

We concluded the plain language of Section 3 of the CSL proscribed Defendants' conduct as described in the First Amended Complaint, conduct causing water pollution.[140] It naturally flows that the harm meant to be prevented by the CSL, pollution of water, was the injury Plaintiffs declared.[141] We also found the CSL by its very purpose did not limit Plaintiffs' claim for negligence *per se* based on Section 701 of the CSL. Section 701 states, the purpose of this act is to provide "additional and cumulative remedies" and nothing in the CSL shall abridge remedies now or hereafter existing in equity, or under the common law or

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[137] Opinion and Order, 20 (Meyers, P.J., July 23, 2024)(citing 35 P.S. §691.601(c)).
[138] Opinion and Order, 16 (Meyers, P.J., July 23, 2024).
[139] See also, Centolanza v. Lehigh Valley Dairies, 635 A.2d at 150.
[140] Opinion and Order, 21 (Meyers, P.J., July 23, 2024).
[141] Opinion and Order, 21 (Meyers, P.J., July 23, 2024)(noting "for example, "the Kershners noticed that their water was developing a cloudy appearance." First Am. Complaint, ¶17. "The Kershner's water developed a foul, fecal like smell." Id. at ¶18. The Groves noticed their water had developed a "foul and rotten odor." Id. at ¶20. The Cloppers' water had a "rotting decaying animals" smell. Id. at ¶21. The contamination of Plaintiffs' properties has not only affected their ability to access safe and clean water, but Plaintiffs have also suffered a serious and permanent diminution in the value of their properties. Id. at ¶48).

statutory law, criminal or civil, or prevent persons from enforcing their common law or statutory rights.[142] We concluded the CSL did not create a new standard of care, it merely codified the common law, thereby supporting the imposition of liability *per se*.[143] We also found the CSL protected a group of individuals, like Plaintiffs, not only the public at large, as evidenced by the CSL's providing a **private cause of action** to an individual adversely affected under **Section 601**.[144]

We now analyze the case most recently cited by the Joneses. The Superior Court, in Conservano v. Parker Oil Co., decided the plaintiffs' appeal from an unfavorable judgment following a 2019 jury trial.[145] Plaintiffs hired an oil delivery company to fill their residential tank located inside of their garage. About ten days after the oil delivery, plaintiffs noticed oil on their garage floor and could smell the oil emanating from the garage. The oil delivery company eventually remediated the oil spill. In their lawsuit, plaintiffs alleged the oil delivery company was negligent for overfilling and/or over pressurizing their tank.[146] The jury found in favor of the oil delivery company. The plaintiffs filed a post-trial motion, which the trial court denied.[147] On appeal, the Superior Court found the matter was not

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[142] Opinion and Order, 22 (Meyers, P.J., July 23, 2024)(citing 35 P.S. §691.701).
[143] Opinion and Order, 22 (Meyers, P.J., July 23, 2024)(internal footnote omitted).
[144] Opinion and Order, 22 (Meyers, P.J., July 23, 2024)(emphasis added).
[145] No. 2094 EDA 2019, J-A04010-20, *1 (Pa. Super. March 23, 2020)(Panella, P.J., non-precedential memorandum).
[146] Conservano, *2.
[147] Conservano, *2-*3.

one where the court felt compelled to overturn the jury verdict as the jury was free to make its own credibility determinations.[148]

At trial, plaintiffs had requested a jury instruction on negligence *per se* for the oil company's violation of the CSL.[149] The Superior Court highlighted the "trial court should charge on a point of law when there is **some factual support in** the record for the charge."[150] Conservano conceded there were no state court decisions analyzing a negligence *per se* claim pursuant to the CSL.[151] Conservano did not analyze the specific CSL language, but nonetheless concluded the CSL "cannot serve as the basis of a negligence *per se* determination.[152] The Court reasoned Barnes II supported the proposition that the CSL "was not primarily concerned with the source of polluted water, but the point where the polluted water is discharged in the Commonwealth's waterways."[153]

Upon closer examination, the Superior Court in Conservano misinterpreted the Barnes II reasoning. Barnes II involved a mining company's appeal concerning the constitutionality of a remedy imposed on it by the Commonwealth

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[148] Conservano, *10.
[149] Conservano, *11.
[150] Conservano, *11 (quoting Meyer v. Union Railroad Co., 865 A.2d 857, 866 (Pa. Super. 2004)(internal citations omitted)(emphasis in original)).
[151] Conservano, *12.
[152] Conservano, *11 (quoting Wagner v. Anzon, Inc., 684 A.2d 570, 574 (Pa. Super. 1996)).
[153] Conservano, *12 (quoting Barnes, 371 A.2d 461, 466).

Court.[154] The mining company argued that, "since the requirements of The Clean Streams Law already have forced it for economic considerations to cease operation of Mine No. 15, to further compel it to take affirmative steps to treat the acid mine drainage emanating from its now abandoned mine is both an unreasonable exercise of the state's police power and a 'taking' of private property in violation of the Fourteenth Amendment to the United States Constitution."[155]

The Pennsylvania Supreme Court in Barnes II described both the hazards caused by the mining company and the Commonwealth's reasonable exercise of police power in their enforcement of the CSL, *i.e.* the steps the Commonwealth compelled the mining company to take to abate the nuisance the mining company caused.

> Here, as we acknowledged in Barnes & Tucker I, the conclusion created by **appellant's past mining operations constitutes a public nuisance which requires abatement. It is not the source of the polluted water itself, but the Source of the discharge of the acid mine water into the waters of the Commonwealth with which we are presently concerned.** As the Commonwealth Court recognized:
>
> 'Whether the impelling force which produced the public nuisance is solely or partially that of fugitive mine water flowing into and adding to the generated water of that mine, **The conduct of Barnes & Tucker in its mining activity remains the dominant and relevant fact**

[154] Com. v. Barnes & Tucker Co., 371 A.2d 461, 464 (Pa. 1977)(Barnes II). This Court previously analyzed Commonwealth v. Barnes & Tucker Co. 319 A.2d 871 (Pa. 1974)(Barnes I), in the Opinion dated July 23, 2024.
[155] 371 A.2d at 464.

> **without which the public nuisance would not have resulted where and under the circumstances it did.'**
>
> Nor, does the fact that the present condition arises only from past activities affect the appropriateness of invoking the police power to dispel the immediate dangerous condition. **To permit appellant to avert responsibility for abating a nuisance which it created under the proposition that it may abandon its enterprise, rather than operate such enterprise within the parameters of the environmental regulations, would nullify the environmental policy of this Commonwealth.** We cannot say that, in light of the severity of harm which may occur from the continued discharge from Mine No. 15 of the acid mine water into the waters of the Commonwealth, the remedy ordered by the Commonwealth Court is an unreasonable exercise of the police power.[156]

Any argument that the Barnes court was not concerned with the **source** or **causation** of the nuisance, or that the Commonwealth did not consider who/what caused the acid mine water run-off prior to their enforcement of the CSL, simply misses the mark.

Thus, considering our analysis and the Barnes II quotation above, this Court concludes the Superior Court in Conservano misinterpreted the Supreme Court's position on causation of the nuisance.[157] It is likewise imperative to note the Superior Court in Conservano correctly reasoned the facts of their case **did not**

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[156] Com. v. Barnes & Tucker Co., 371 A.2d at 466–467 (internal citations omitted)(emphasis added).

[157] The other case cited in Conservano, National Wood Preservers, Inc. v. DER, also discussed the constitutionality of the CSL as a whole, and not its applicability or use by a private party in a negligence *per se* claim. See 414 A.2d 37 (Pa. 1980).

involve an actual or alleged violation of the CSL as such a violation was not supported by the factual record.[158]

Considering the foregoing, we continue to hold the Clean Streams Law provides for a private cause of action (for abatement) and in turn, permits Plaintiffs to allege a negligence *per se* claim based on the violation(s) of the CSL.

e. Plaintiffs' nuisance claims against the Jones Defendants are not barred by the Pennsylvania Right to Farm Act's statute of repose.

The Jones Defendants contend Plaintiffs' nuisance claims are barred by the Right to Farm Act's statute of repose.[159] The applicability of this statute of repose is a legal question for the Court to resolve.[160] The Joneses highlight that Barr Farms began receiving Food Processing Residuals (hereinafter "FPRs") in 2018 and stored those FPRs in two storage tanks located on Barr Farms' property.[161] The Jones Defendants hauled and spread the FPRs at Barr Farms since 2018 and did so for over a year prior to the institution of Plaintiffs' suit.[162] This practice "has not been substantially changed for at least over a year from the date this suit was filed."[163] The Joneses posit an agricultural operation need only be substantially compliant with applicable laws to satisfy the statute of repose, and the

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[158] Conservano, *13-*14 (reasoning DEP employee testified there was no violation of the CSL).
[159] See Jones Defendants' Br. in Supp. Summ. J., 19 (September 12, 2025)(internal citations omitted)(emphasis added).
[160] Id.
[161] Id. at 19 (referencing Ex. B at 22).
[162] Id. at 19-20.
[163] Id. at 19-20.

only violations claimed against Barr Farms or the Joneses directly stem from Plaintiffs' Complaint.[164]

Lastly, the Joneses maintain the spreading and storage of Food Processing waste (hereinafter "FPW") is a "normal agricultural operation."[165] Where an activity is a normal agricultural activity, the third requirement of the RTFA statute of repose is satisfied and bars Plaintiffs' claims.[166]

Plaintiffs respond that Jones's actions and inactions do not constitute a "normal agricultural operation" and that the material found in the Barr pits included unpermitted residual waste.[167] Plaintiffs specifically argue the "spilling of waste material, failure to clean the spill, and subsequent groundwater contamination" are not normal agricultural operations.[168] Plaintiffs also argue the agricultural operation must "substantially" comply with relevant federal, state, and local laws.[169] The Jones Defendants cannot claim substantial compliance where they violated multiple statutes and regulations as referenced by the Department of Environmental Protection's Order (hereinafter "Department") dated August 12, 2024.[170]

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[164] Jones Defs.' Br. in Supp. Summ. J., 20 (referencing n. 3).
[165] See Jones Defs.' Br. in Supp. Summ. J., 19 (citing Branton v. Nicholas Meat, LLC, 159 A.3d 540, 554-555 (Pa. Super. 2017)).
[166] Id. at 20.
[167] Pls. Br. in Opp'n. Summ. J., 24.
[168] Id. at 25.
[169] Id. at 25 (citing Branton v. Nicholas Meat, LLC, 159 A.3d 540, 554-555 (Pa. Super. 2017)).
[170] Id. at 25 (citing Ex. I to Pls. Br. Opp'n., Dep't. Admin. Order, ¶27, (August 12, 2024)).

The Right to Farm Act (hereinafter "RTFA"),[171] provides, in pertinent part,

> (a) No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation and are normal agricultural operations, or if the physical facilities of such agricultural operations are substantially expanded or substantially altered and the expanded or substantially altered facility has either: (1) been in operation for one year or more prior to the date of bringing such action, or (2) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation pursuant to section 6 of the act of May 20, 1993 (P.L. 12, No. 6),[1] known as the Nutrient Management Act, and is otherwise in compliance therewith: Provided, however, That nothing herein shall in any way restrict or impede the authority of this State from protecting the public health, safety and welfare or the authority of a municipality to enforce State law.
>
> (b) The provisions of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in violation of any Federal, State or local statute or governmental regulation which applies to that agricultural operation or portion thereof.[172]

Additionally, the RTFA defines various terms, including,

> **"Normal agricultural operation."** The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for

[171] 3 P.S. §§951–957.

[172] 3 P.S. §954 (n. 1 in quoted material: "3 P.S. § 1706 (repealed); see now, 3 Pa. C.S.A. §506.").

> market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is:
>
> (1) not less than ten contiguous acres in area; or
>
> (2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least $10,000.
>
> The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing and those items of agricultural equipment and machinery defined by the act of December 12, 1994 (P.L. 944, No. 134), known as the Farm Safety and Occupational Health Act. Custom work shall be considered a normal farming practice.[173]

Section 954(a) of the RTFA is a statute of repose, and as such, it is jurisdictional and its scope is a question of law for courts to determine.[174] The inquiry regarding whether the biosolid application conformed to industry standards and best practices went to the "merits of the nuisance action and was not reached because the action was barred by the statute of repose."[175] Gilbert v. Synagro

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[173] See 3 P.S. §952 (Definitions)(emphasis in original)(other footnotes omitted).
[174] Gilbert v. Synagro Cent., LLC, 131 A.3d 1, 15 (Pa. 2015)(reasoning there was no pertinent question regarding the character of the substance spread in that specific case or appellants' use of the substance at the farm).
[175] Gilbert, 131 A.3d at 16 (recognizing there may be instances where a statute of repose's applicability turns on resolution of factual issues that are so intertwined with those relating to the merits of the action, the jurisdictional determination will involve "fact finding").

further reasoned courts must apply the RTFA's definitions to achieve a "meaningful degree of legal certainty, uniformity, and consistency that the RTFA was intended to provide to farms."[176]

In turn, we must determine whether the following three prongs have been met:

> (1) the agricultural operation against which the action is brought must have lawfully operated for at least one year prior to the filing of the complaint; and
> (2) the conditions or circumstances that are the basis for the complaint are normal agricultural operations; and
> (3) either the conditions or circumstances that are the basis for the complaint must have existed substantially unchanged since the established date of operation, or if the physical facilities have been substantially expanded or altered such facilities must have: (i) operated for at least one year prior to the filing of the complaint or (ii) been addressed in a nutrient management plan approved prior to the commencement of such expanded or altered operation.[177]

Regarding the first prong, our Superior Court, in 2018, examined the three appellate decisions that addressed the application of section 954(a) to nuisance claims, and concluded no court had clarified what exactly qualifies as "the agricultural operation against which the action is brought."[178] Those appellate decisions were Horne v. Haladay, Gilbert, and Branton.[179] Burlingame narrowed

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[176] Gilbert, 131 A.3d at 18.
[177] Burlingame v. Dagostin, 183 A.3d 462, 467 (Pa. Super. 2018).
[178] Burlingame, 183 A.3d at 468 (quoting 3 P.S. §954(a)).
[179] Burlingame, 183 A.3d at 468-470 (referencing Horne, 728 A.2d 954 (Pa. Super. 1999), Gilbert, 131 A.3d 1 (Pa. 2015), and Branton, 159 A.3d 540 (Pa. Super. 2017)).

the interpretation of "agricultural operation" under the first prong of Section 954(a) and held the **agricultural operation was the farm**, **not** the concentrated animal feeding operation (**CAFO**).[180]

Here, we have two classes of Defendants: Barr Farms, the farmers, and the Joneses, the commercial haulers. Under the holding of Burlingame, the RTFA's statute of repose only protects the farmers from a nuisance suit, assuming the farmers meet the other two prongs of the RFTA Section 954(a). Accordingly, we find the RTFA does not protect the Joneses, the commercial haulers and appliers, as they are neither the farmers nor the lessors of the farmland.

Regarding the second prong, assuming *arguendo* the Joneses' activities were included within the definition of "agricultural operation," the alleged, nuisance causing activity was the Jones' **spill of waste material on June 30, 2021**. Plaintiffs do not allege the agricultural activity of spreading FPW or FPR at Barr Farms was a nuisance.[181] Yet, this Court will not equate the potential "technological advancements" in various, fertilizing methods with the act of spilling waste material. Such an equation would contradict the RTFA's purpose.[182] Additionally, the RTFA specifically states, "[t]he provisions of this section shall

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[180] Burlingame, 183 A.3d at 470 (emphasis added).
[181] See Pls. Br. in Opp'n. Summ. J., 25.
[182] See Gilbert, 131 A.3d at 20–21 (reasoning RTFA's purpose was to protect Pennsylvania's agricultural resources by limiting the circumstances under which farms may be sued for nuisance).

not affect or defeat the right of any person … to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation…"[183] In sum, the RTFA's statute of repose does not protect a commercial hauler from its acts causing damages to neighboring landowners. Accordingly, we find the Jones Defendants have not met their burden in showing the RTFA statute of repose bars Plaintiffs' nuisance claim against them as a result of the June 30, 2021, spill.[184]

V. Conclusion

After reviewing the record in the light most favorable to Plaintiffs, as we are required to do on summary judgment, we find the Jones Defendants are not entitled to judgment as a matter of law on the issues raised.

Plaintiffs have proven a *prima facie* claim of negligence. As far as the June 30, 2021, spill is concerned, an average Franklin County juror has the relevant life experience in using a hose such that an expert on hose use is not required. We next turn to the handling and spreading of FPR. Considering our analysis of the Althaus factors, we conclude the Joneses, the commercial haulers and appliers of the FPR at issue, owe a duty of care to Plaintiffs under the circumstances. At trial, a jury

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[183] See 3 P.S. §954(b).

[184] The question of whether the Barr Defendants may avail themselves of the RTFA's statute of repose is not before the Court.

may infer negligence on the part of the Jones Defendants once Plaintiffs introduce Dr. Santella's expert opinions on causation under the theory of *res ipsa loquitor*.

This Court's reasoning remains unchanged *vis a vis* a limited, private cause of action under the Clean Streams Law (CSL). As such, the Clean Streams Law may serve as the basis for Plaintiffs' negligence *per se* claim. Plaintiffs' CSL claim also stands where the Jones Defendants do not cite any precedent or rule supporting their position on mootness of this claim. A live controversy exists, at a minimum, regarding Plaintiffs' potential entitlement to attorneys' fees and costs under Section 691.601 of the CSL.

Lastly, where our Superior Court interpreted the definition of "agricultural operation" to include only the "farm," and not the practice or operation occurring at the farm,[185] we hold the protection of the Right to Farm Act (RTFA) cannot be extended to a commercial hauler or applier of FPR at a farm. As a result, we deny the Jones Defendants' summary judgment under the RTFA.

Given the foregoing, this Court is unable to grant summary judgment in favor of the Jones Defendants. This Opinion is pursuant to the attached Order.

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[185] See Burlingame, 183 A.3d at 470.