



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

LAURA M. TIGHE AND MATTHEW A. TIGHE	:	
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	:	
v.	:	EHB Docket No. 2023-046-B
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COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	Issued: February 7, 2024
	:	

OPINION AND ORDER ON MOTION TO QUASH/PROTECTIVE ORDER

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

The Board grants the non-parties’ motion to quash subpoenas issued by the appellants. In order to be subject to discovery, the information sought must be relevant to the issues under appeal or reasonably calculated to lead to discovery of admissible evidence. The information sought by appellants from the non-parties does not satisfy this requirement because it is not relevant to the narrow legal questions before the Board in this appeal and is not likely to lead to the discovery of admissible evidence.

OPINION

Laura and Matthew Tighe (“the Appellants”) filed an appeal with the Environmental Hearing Board (“the Board”) of a letter issued by the Department of Environmental Protection (“the Department”) following an informal hearing held by the Department pursuant to 25 Pa. Code § 102.32(c). 25 Pa. Code § 102.32(c) provides as follows:

A person aggrieved by an action of a conservation district under this chapter shall request an informal hearing with the Department within 30 days following the notice of the action. The Department will schedule the informal hearing and make a final determination within 30 days of the request. Any final determination by the

Department under the informal hearing may be appealed to the EHB in accordance with established administrative and judicial procedures.

The conservation district action that was the basis for the informal hearing in this case was a Chapter 102 inspection report dated March 3, 2023 (“March 2023 Report”) that documented a February 24, 2023 inspection (February 2023 Inspection”) conducted by the Erie County Conservation District. The February 2023 Inspection was conducted at the Lovett’s Mobile Home Park (“LMHP”) in Washington Township, Erie County. Following the informal hearing, the Department set forth its final determination in a letter to the Appellants dated April 19, 2023 (“the Determination Letter”). The Determination Letter set forth the following determination: “The Department has determined that the Inspection Report is informative in nature and merely records the inspector’s observations. The Inspection Report is descriptive and advisory and not prescriptive or imperative. Accordingly, the Inspection Report is not a challengeable action.” (Notice of Appeal at 8).

The Appellants’ appeal of the Determination Letter was filed with the Board on May 18, 2023. The parties have been proceeding with discovery in this case. The Appellants have issued several subpoenas to parties and non-parties as part of their discovery efforts. On January 8, 2024, the Appellants issued subpoenas to the engineer of Washington Township, Steve Halmi (“Mr. Halmi”), and Washington Township’s manager, Norm Willow (“Mr. Willow”) (collectively, “the Movants”) both of whom are non-parties in this action. The subpoenas sought to depose the Movants on January 26, 2024 at the Department’s Meadville office. The subpoenas further directed Mr. Halmi to bring all engineering records, invoices, and correspondence regarding LMHP from 2006 to the present and for Mr. Willow to bring “all documents provided to council members since 2016 regarding the Lovett’s Mobile Home Park [...] and all Right-to-Know

requests and responses involving the Lovett’s Mobile Home Park [...] since 2005.” (Movants’ Motion to Quash, Ex. B).

On January 12, 2024, the Movants filed a Motion to Quash/Request for Protective Order (“Motion to Quash”). Following the Motion to Quash, the Board received two additional motions requesting that it quash additional subpoenas issued by the Appellants. The Board conducted a conference call with the Appellants and the Department on January 23, 2024, and following the call, issued an order setting deadlines for responses to the Motion to Quash and further ordered that all depositions of any persons that were subject to the Motion to Quash were stayed until the Board ruled on the Motion to Quash and the other pending motions¹. The Appellants filed their Opposition to the Motion to Quash and Brief in support thereof on January 30, 2024 and filed several supplements in the forms of photos and exhibits the next day. This matter is now ripe for decision.

Discovery before the Board is governed by the relevant Pennsylvania Rules of Civil Procedure. 25 Pa. Code § 1021.102(a). Generally, a party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action and appears reasonably calculated to lead to the discovery of admissible evidence. Pa.R.C.P. No. 4003.1. Since it can be difficult to tell early on in a case whether a matter is relevant, we interpret the relevancy requirement broadly and generally allow discovery into an area so long as there is a reasonable potential that it will lead to relevant information. *Cabot Oil & Gas Corp.*, 2016 EHB 20, 24; *Parks v. DEP*, 2007 EHB 57. No discovery may be obtained that is sought in bad faith or would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the

¹ Along with the Motion to Quash discussed herein, the Board’s January 23rd Order also applied to the Department’s motion for a protective order and another non-party’s motion to quash/protective order.

person from whom discovery is sought. Pa.R.C.P. No. 4011. "[T]he Board is charged with overseeing ongoing discovery between the parties during the litigation and has wide discretion to determine appropriate measures necessary to insure adequate discovery while at the same time limiting discovery where required." *Northampton Twp. v. DEP*, 2009 EHB 202, 205.

The Board authorizes parties to serve subpoenas in accordance with the applicable Pennsylvania Rules. 25 Pa. Code § 1021.103. Under the Rules, a party may obtain through subpoena on a non-party any documents that are normally within the scope of discovery under Rules 4003.1 - 4003.6. Pa.R.C.P. No. 4009.1(a). A person who is the subject of a subpoena may move for a protective order under Rule 4012. Pa.R.C.P. No. 4009.21(d)(2). Pursuant to Rule 4012, the Board is empowered to issue a protective order upon good cause shown to protect a person from improper discovery or unreasonable annoyance, embarrassment, oppression, burden, or expense. *Haney v. DEP*, 2014 EHB 293, 297; *Chrin Bros. v. DEP*, 2010 EHB 805, 811. "[I]n evaluating whether discovery regarding a matter should be permitted, we must first determine whether it will lead to information that is relevant to the subject matter involved in [the] appeal. If the matter being inquired into is not likely to lead to the discovery of relevant evidence, that is the end of our inquiry. The discovery is not permitted." *Cabot Oil & Gas Corp.*, 2016 EHB 20, 26.

In ruling on the Movants' Motion to Quash, we first must assess whether there is a reasonable potential that their testimony and the documents that the Appellants are requesting will lead to evidence relevant to this appeal. The Movants argue that they have no relevant evidence to offer in this case as they did not participate in the February 2023 Inspection, or in the preparation of the March 2023 Report. They state that they were not present at the informal hearing and played no role in the Department's determination set forth in the Determination Letter that is under appeal.

They further assert that “the subpoenas are nothing more than an impermissible fishing expedition meant to cause unreasonable annoyance, oppression burden or expense upon Washington Township[...].” (Movants’ Motion to Quash at 3). The Appellants naturally disagree but offer no evidence that contradicts the facts set forth regarding the Movants’ lack of involvement in the February 2023 Inspection and March 2023 Report or in the informal hearing. Instead, the Appellants argue that “[a]lthough the Movants were not asked to participate in any inspection, they do have some knowledge of the violations that should have been noted on the February 24, 2023 inspection report.” (Appellants’ Brief in Opposition to Motion to Quash at 11).

In paragraph 5 of their Opposition to the Motion to Quash, the Appellants describe that they are appealing “the findings in the Department’s 102 Inspection Report” and go on to clarify that they are also appealing “[the March 2023 Report’s] directive therein to ‘continue work as per approved plans’ and the Department’s findings in other inspection reports regarding earth moving activities from 2012, and the action to permit developer to ‘[c]ontinue to follow E/S plan & permit conditions including temporary stabilization, & operation & maintenance of E/S BMP’s’ of 01/30/2024, the report dated March 24, 2022 to the developer of Lovett’s Mobile Home Park as well as every inspection report prior to the report under appeal given their interrelated nature. The Appellants’ Appeal is also from the Department’s decision not to act on certain findings noted in Department’s Chapter 102 Inspection Report, and also its failure to act on the Appellants’ complaint to resolve the issues contained in the letter to ECCD dated June 5, 2017 regarding the GP-7 permit issued October 1, 2012 by the ECCD (i.e. GP072512637) to the developer of Lovett’s Mobile Home Park that was signed by all the neighboring property owners.” (Appellants’ Opposition to Motion to Quash at 7-8). The problem for the Appellants is that the list of actions they assert are part of their appeal, and which form the basis for the subpoenas directed to the

Movants, are not the Department action that they ultimately appealed. Those concerns are not before us in this case. The Board has jurisdiction over final actions of the Department. *Jake v. DEP*, 2014 EHB 38, 59. In this case, the Department’s “final action” under appeal is very limited and involves only the determination that the Department outlined in the Determination Letter it issued after the informal hearing took place. Despite the Appellants desire to challenge past inspection reports, past permits, past earthmoving activities and Department inaction, those issues are not on appeal here. This appeal involves a discrete action – the determinations contained in the Department’s Determination Letter which are that the March 2023 Report (1) was informative in nature and merely recorded the inspector’s observations; (2) was descriptive and advisory and not prescriptive or imperative and; (3) is not a challengeable action. The appeal is limited to challenging those three determinations.

Given the limited nature of the action under appeal, we find that the information sought through the subpoenas issued to the Movants is not relevant to the subject matter under appeal and is not likely to lead to the discovery of admissible evidence. The Appellants failed to provide any persuasive evidence that the Movants had direct involvement in the Department’s determination or in any of the actions of the conservation district (the February 2023 Inspection and the March 2023 Report) that were the actions leading to the informal hearing. In addition to the lack of relevancy to the action under appeal, the document requests set out in the subpoenas seek documents dating back almost twenty years including council documents, right to know requests, engineering records, invoices and LMHP correspondence. These requests are clearly overly burdensome to the Movants and appear to be principally related to issues that are not part of the pending appeal. In conclusion, we find that the subpoenas directed at Mr. Halmi and Mr. Willow should be quashed as requested.



Therefore, we issue the following Order:



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

LAURA M. TIGHE AND MATTHEW A.
TIGHE

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

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ORDER

AND NOW, this 7th day of February, 2024, it is hereby ORDERED that Movants Steve Halmi’s and Norm Willow’s Motion to Quash/Request for Protective Order is **granted**.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman
STEVEN C. BECKMAN
Chief Judge and Chairperson

DATED: February 7, 2024

c: DEP, General Law Division:
Attention: Maria Tolentino
(via electronic mail)

For the Commonwealth of PA, DEP:
Carl D. Ballard, Esquire
Jennifer N. McDonough, Esquire
Dearald Shuffstall, Esquire
(via electronic filing system)

For Appellants, Pro se:
Laura M. Tighe
Matthew A. Tighe
(via electronic filing system)



For Movants:
Andrew M. Schmidt, Esquire
(via *electronic mail*)