



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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EHB Docket No. 2023-046-B

Issued: February 9, 2024

**OPINION AND ORDER ON  
MOTION FOR PROTECTIVE ORDER**

By Steven C. Beckman, Chief Judge and Chairperson

**Synopsis**

The Board denies the Department’s motion for a protective order where the individuals who the Appellants seek to depose have reasonable potential of producing relevant information pertaining to the issues in the appeal. The Board exercises its responsibility to oversee discovery and limits the length of the depositions and the scope of the subjects that the Appellants may raise in their questioning.

**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 (“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 (“ECCD”). The February 2023 Inspection was conducted at the Lovett’s Mobile Home Park (“LMHP”) in Washington Township, Erie County. Following the Informal Hearing, which was held on April 13, 2023, 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 December 29, 2023, the Appellants served Notices of Depositions to the Department for the depositions of Pete Schuster (“Mr. Shuster”), the Department’s Northwest Regional Waterways and Wetlands aquatic biologist, and Tom Revak (“Mr. Revak”), an ECCD employee.

On January 12, 2024, the Appellants filed a letter with the Board, requesting a “judicial conference” to address a discovery dispute between the Department and Appellants that involved the Department’s objections to the Appellants’ deposition requests. The Department filed a Response to Appellant’s Letter in the Nature of a Motion for Protective Order (“the Motion”) on January 18, 2024, requesting the Board to preclude the Appellants from deposing Mr. Shuster and

Mr. Revak. In addition to the Department's Motion, the Board received two other 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 the deadline for a response to the Motion and further stayed the depositions of Mr. Schuster and Mr. Revak until the Board ruled on the Motion and the other pending motions<sup>1</sup>. The Appellants filed their Opposition to the Motion and Brief in Support thereof on January 30, 2024 and filed several supplements in the form of 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 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.

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<sup>1</sup> Along with the Motion discussed herein, the Board's January 23<sup>rd</sup> Order also applied to other non-parties' motions to quash/request for protective orders.

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 Department’s Motion, we first must assess whether there is a reasonable potential that either Mr. Shuster’s or Mr. Revak’s testimony will lead to evidence relevant to this appeal. Looking first at the notice of deposition for Mr. Schuster, the Department argues that “Mr. Schuster has no material knowledge of the Informal Hearing, the [March 2023 Report], or the [February 2023 Inspection] and, accordingly, possesses no information that would be in any way relevant to this appeal” making it unlikely that his testimony would lead to admissible evidence. (Department’s Motion at 5). In this case, the Department action that is under appeal is the Determination Letter. The generation of the Determination Letter essentially arose from three separate but related occurrences – the February 2023 Inspection, the March 2023 Report, and the Informal Hearing. While the Appellants do not dispute that Mr. Schuster did not directly

participate in any of those three actions, the Appellants maintain that Mr. Schuster has information that is relevant to this appeal. It appears that the February 2023 Inspection was a follow-up to an earlier ECCD inspection that took place in March 2022. Following the March 2022 inspection, Mr. Schuster, accompanied by two ECCD staff, conducted a water obstruction/encroachment inspection at LMHP on May 12, 2022. Mr. Schuster then authored the accompanying inspection report on May 24, 2022. The exact relationship between the inspection conducted by Mr. Schuster and the ECCD's later February 2023 Inspection is unclear, but given the close timing between the March 2022 inspection and the May 2022 inspection, and the participation in the May 2022 inspection by ECCD staff, we find that the facts surrounding the May 2022 inspection are a proper line of inquiry in discovery as part of the developing record in this case. As the person who conducted the May 2022 inspection and author of the accompanying report, Mr. Schuster is in the best position to attest to any potentially relevant information pertaining to that inspection. In interpreting the relevance requirement broadly as we should, we find that there is a reasonable potential that Mr. Schuster's testimony could lead to relevant information.

As for Mr. Revak, the Department asserts that Mr. Revak has limited knowledge of the matter. The Department argues that while Mr. Revak was present during the February 2023 Inspection and prepared the first draft of the March 2023 Report, he was merely shadowing the actual inspector, Tom McClure ("Mr. McClure"), as a trainee and that Mr. Revak's preparation of the first draft was only a training exercise. The Department argues that rather than Mr. Revak, Mr. McClure is in a better position to provide relevant information because it was Mr. McClure who conducted the February 2023 Inspection, authored the final March 2023 Report, and was training Mr. Revak at the time of the February 2023 Inspection and, as such, Mr. Revak's testimony would only be duplicative to Mr. McClure's resulting in unnecessary cost, burden, and delay in reaching

a resolution of this matter. We disagree. Even if it turns out that Mr. McClure’s testimony is more illuminating than the information that Mr. Revak can provide, that is not a sufficient reason to prevent the Appellants from deposing Mr. Revak. He can provide first-hand testimony surrounding the February 2023 Inspection and the creation of the March 2023 Report. Even if his knowledge is limited as the Department claims, Appellants should be permitted to hear his version of those key events in which he was an active participant, and which are clearly relevant to this appeal.

However, it appears the Appellants also wish to question Mr. Revak regarding several past work-related projects he was involved in pertaining to LMHP while he was employed by an engineering firm. The projects potentially date back as far as 2006. The Appellants assert that “[t]his appeal is a complex effort to show the Department that the inspection of February 24, 2023, was improper, did not address the issues raised in the complaint, and involves several different government agencies.” (Appellants’ Opposition to Motion at 16). In actuality, the scope of this appeal is much narrower than what the Appellants believe it to be. 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. Questioning Mr. Revak about his past work involvement at LMHP is not a line of inquiry that is likely to produce relevant evidence that will inform us regarding the narrow issues in this appeal, which are whether or not the March 2023 Report (1) is informative in nature and merely recorded the inspector’s observations; (2) is descriptive and advisory and not prescriptive or imperative, and; (3) is a challengeable action. Therefore, the deposition of Mr. Revak is restricted to inquiries

regarding his knowledge pertaining to the February 2023 Inspection, the March 2023 Report, and the Informal Hearing while employed by the ECCD.

In its motion, the Department expressed concern that “[it] has reason to believe Appellants will spend significant time attempting to go far beyond the scope of this appeal in any deposition, as was evidenced during third party depositions that were already taken in this matter where Appellants posed several hours of questions regarding a host of irrelevant information dating back to approximately 2004.” (Department’s Motion at 5-6). Attached to the Department’s Motion is an email from the Appellants to Department counsel where Appellants state that the deposition of Mr. Schuster would take less than one hour and Mr. Revak’s deposition would take one and a half hours. (See, Department’s Motion, Ex. 2). Additionally, in their Opposition to the Motion, the Appellants state that they “anticipate being able to elicit more relevant testimony and information from Mr. Revak than Mr. McClure, which is why the Appellants anticipate that they need him to testify for ½ hour longer than Mr. McClure.” (Appellants Opposition to Motion at 15). Presumably, the additional information the Appellants anticipated they could elicit from Mr. Revak was in relation to his past work activities involving LMHP. In light of the declaration by the Appellants in the email sent to the Department, and of the restrictions we are placing on the scope of the inquiries the Appellants may pose to Mr. Schuster and Mr. Revak, we are limiting the time of their depositions to not exceed 1.0 hour each. In conclusion, we find that the notice of depositions served to Mr. Schuster and Mr. Revak have the potential to provide relevant information and hold that the Department’s Motion should not be granted to the extent the depositions conform to the Board’s restrictions.

Therefore, we issue the following Order:



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**ORDER**

AND NOW, this 9<sup>th</sup> day of February, 2024, it is hereby ORDERED that the Department’s Motion for a Protective Order is **denied** in accordance with the foregoing Opinion. Mr. Schuster and Mr. Revak may be deposed by Appellants at a time and location mutually agreed to by the parties. The length of Mr. Schuster’s deposition may not exceed 1.0 hour. The length of Mr. Revak’s deposition may not exceed 1.0 hour and is limited as to subject matter as set forth in the Opinion.

**ENVIRONMENTAL HEARING BOARD**

s/ Steven C. Beckman

**STEVEN C. BECKMAN**

**Chief Judge and Chairperson**

**DATED: February 9, 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*)