



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

LAURA M. TIGHE AND MATTHEW A. TIGHE	:	
	:	
	:	
v.	:	EHB Docket No. 2023-046-B
	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	Issued: February 8, 2024
	:	

**OPINION AND ORDER ON
MOTION TO QUASH/PROTECTIVE ORDER**

By Steven C. Beckman, Chief Judge and Chairperson

Synopsis

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. At some point prior to January 16, 2024, the Appellants issued a subpoena to Gene Clemente (“Mr. Clemente”), a former ECCD employee, who is non-party in this action. The subpoena sought to depose Mr. Clemente on January 26, 2024 at the Department’s Meadville office and did not direct him to provide any documents. (Mr. Clemente’s Motion to Quash, Ex. A).

On January 16, 2024, Mr. Clemente filed a Motion to Quash/Request for Protective Order (“Motion to Quash”). In addition to Mr. Clemente’s Motion to Quash, 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 to Quash and further stayed the deposition of Mr. Clemente 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

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 other non-parties’ motions to quash/protective order.

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.

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 Mr. Clemente’s Motion to Quash, we first must assess whether there is a reasonable potential that his testimony will lead to evidence relevant to this appeal. Mr. Clemente asserts that he is not in possession of relevant information pertaining to this appeal. In support of that assertion, Mr. Clemente points to the fact that his employment ended with the ECCD in September of 2022. As such, he had no personal involvement in the ECCD’s February 2023 Inspection, or in the preparation of the March 2023 Report, and has no knowledge of the Informal Hearing. While the Appellants do not dispute that Mr. Clemente was not involved in the February 2023 Inspection or March 2023 Report, they argue that Mr. Clemente has information relevant to their appeal. The Appellants state that “[t]he report of February 24, 2023 was the second in sequence of two related reports. The first report was conducted by the movant, Mr. Clemente, (Exhibit 3), on March 24, 2022 [...]” (Appellant’s Brief in Support of Opposition at 2; see, Appellants’ Supplements to Brief, Ex. 3). The Appellants also produced two additional inspection reports (an earth disturbance inspection report and a water obstruction or encroachment report) of LMHP that both took place in 2022. (See, Appellants’ Supplements to Brief, Exs. 3, 4, at Docket No. 30).

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 Mr. Clemente did not directly participate in any of those three actions, we find that the evidence produced by the Appellants creates a sufficient connection between Mr. Clemente and those actions that demonstrates that Mr. Clemente’s testimony has the potential to produce relevant evidence to the matter under appeal. The March 2023 Report indicates that the ECCD’s February 2023 Inspection was a follow-up to an earlier ECCD inspection pertaining to earth disturbance which was conducted by Mr. Clemente on March 24, 2022. Because the follow-up February 2023 Inspection necessarily flowed from the inspection Mr. Clemente conducted in March 2022 and from the subsequent inspection report he authored, his involvement is sufficiently related to the relevant ECCD actions that ultimately lead to this appeal. Further, Mr. Clemente was present on May 13, 2022 during a Department inspection of LMHP pertaining to water obstructions/encroachments. The exact relationship of this inspection to ECCD’s later February 2023 Inspection is unclear, but given the timing and the participation in the 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. Although Mr. Clemente did not conduct the May 2022 inspection, his attendance makes him a person who can attest to first-hand information in relation to that inspection. In interpreting the relevance requirement broadly as we should, we find that there is a reasonable potential that Mr. Clemente’s testimony could lead to relevant information.

Mr. Clemente further asserts that “[r]equiring [his] appearance and testimony at a deposition would be unreasonable and burdensome [...], requiring time away from his current employment, travel to another county, and related expenses.” (Mr. Clemente’s Motion to Quash at 2). We are mindful that any discovery is governed by a proportionality standard and one of the factors we must consider is the cost, burden, and delay that may be imposed on the parties to deal

with the information. *Cabot Oil & Gas Corp.*, 2016 EHB 20, 26; *Friends of Lackawanna v. DEP*, 2015 EHB 785, 787. Hence, even material that is likely to lead to relevant evidence may not be available in discovery if the burdens associated with producing it outweigh its value. When we consider the facts presented, we hold that the burden on Mr. Clemente does not outweigh the potential value of his testimony, particularly considering the restriction on the duration of the deposition we are putting in place. The Appellants have not requested for Mr. Clemente to produce any documents and the record demonstrates that his deposition will take both limited time and travel on his part. A separate motion for a protective order filed by the Department included an email from the Appellants to Department counsel, where Appellants state that the deposition of Mr. Clemente would take less than one hour. See, Department's Response to Appellants' Letter in the Nature of a Motion for Protective Order, Ex. 2 at Docket No. 21. In light of that declaration by the Appellants, we are restricting the time of the deposition to not exceed 1.0 hour. In conclusion, we find that the information sought in the subpoena served on Mr. Clemente has the potential to provide relevant information and that providing that information does not impose an unreasonable burden on him. We hold that the Motion to Quash should not be granted and that discovery sought by the subpoena directed at Mr. Clemente is permitted.

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

:
:
:
:
:
:
:
:
:
:

EHB Docket No. 2023-046-B

ORDER

AND NOW, this 8th day of February, 2024, it is hereby ORDERED that Gene Clemente’s Motion to Quash/Request for Protective Order is **denied**. Mr. Clemente may be deposed by Appellants at a time and location mutually agreed to by Mr. Clemente and the parties. The length of the deposition may not exceed 1.0 hour.

ENVIRONMENTAL HEARING BOARD

s/ Steven C. Beckman

STEVEN C. BECKMAN
Chief Judge and Chairperson

DATED: February 8, 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 Movant:

Gene R. Clemente

gr.clemente0710@gmail.com

(via electronic mail)