



COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

ANGELA CRES TRUST OF JUNE 25, 1998 BY :  
AND THROUGH ITS TRUSTEE LAUREL A :  
HIRT and LAUREL A. HIRT, Individually :

v. :

EHB Docket No. 2025-005-W  
(Consolidated with 2025-022-W  
and 2025-118-W)

COMMONWEALTH OF PENNSYLVANIA, :  
DEPARTMENT OF ENVIRONMENTAL :  
PROTECTION and ERIE COUNTY :  
CONSERVATION DISTRICT and :  
MILLCREEK TOWNSHIP SCHOOL :  
DISTRICT, Permittee :

Issued: April 3, 2026

**OPINION AND ORDER ON  
APPELLANTS' MOTION TO COMPEL DIRECTED TOWARD THE PERMITTEE**

By MaryAnne Wesdock, Judge

**Synopsis**

Appellants' motion to compel is granted in part. Even though the discovery period has closed, where the motion to compel seeks information pertaining to an erosion and sedimentation control plan that was submitted by the Permittee following the close of discovery, the Appellants' motion is not untimely. Additionally, pursuant to the Board's de novo review power, the Board may consider evidence that was not submitted to the reviewing authority and, therefore, such evidence may be relevant in discovery.

**OPINION**

**Introduction**

This matter involves three consolidated appeals filed with the Environmental Hearing Board (Board) by Angela Cres Trust of June 25, 1998 by and through its trustee Laurel A. Hirt

and by Laurel A. Hirt, individually (collectively, the Trust). The appeals challenge the grant of Chapter 105 Bureau of Waterways Engineering and Wetlands General Permit-4 coverage to Millcreek Township School District (School District) by the Erie County Conservation District (Conservation District), as delegated by the Department of Environmental Protection (Department), in connection with a project known as the Asbury Storm Sewer Project. The Trust and School District are also involved in litigation pertaining to this matter in the Erie County Court of Common Pleas.

On March 4, 2026, the Trust filed a motion to compel directed at the School District, to which the School District responded. The Trust then sought leave to file a reply to the School District's response, which the School District opposed. We grant the Trust's motion to file a reply and for the reasons set forth below, we also grant the motion to compel in part.

### **Discussion**

In its motion, the Trust contends that the School District failed to provide compliant responses to the Trust's discovery requests "for documents and communications regarding the Asbury Storm Sewer Project..." (Motion to Compel, p. 1.) It asserts that the School District has produced no documents in response to the Trust's discovery requests since April 2025 nor supplemented its most recent discovery response in August 2025 despite having submitted a revised erosion and sedimentation control plan to the Conservation District in December 2025 and a final revised plan in early January 2026 (the revised E&S plan). In particular, it directs us to interrogatories served on the School District asking for communications related to the registration application and documents and communications related to the Asbury Storm Sewer Project.<sup>1</sup> (Trust Motion to Compel, para. B.9.) The Trust asserts that it is entitled to documents pertaining

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<sup>1</sup> Specifically, the Trust references Interrogatories nos. 23, 24, 25 and 28.

to the revised E&S plan such as studies, engineering plans, and bidding documents. The School District opposes the Trust’s motion on the grounds that 1) it is untimely, 2) it requests documents that are protected by attorney-client privilege and attorney work product, and 3) the discovery requested is not relevant.

The School District points out that the Trust’s motion to compel comes approximately four months after the close of discovery, which occurred on October 20, 2025.<sup>2</sup> As such, it argues that the motion is untimely. In support of its argument, it cites the Board’s decision in *DEP v. EQT Production Co.*, 2016 EHB 369, in which the Board found that a motion to compel filed two months after the close of discovery, which raised objections that the moving party knew about for at least six months, was untimely. There, we explained that “the Board will entertain motions to compel, even after the close of discovery, when (1) the motion is filed soon enough that it will not delay a hearing, and (2) where there is no undue delay in filing the motion.” *Id.* at 371.

Based on the criteria set forth in *EQT*, we find that the Trust’s motion is timely. The E&S plan for which it is seeking supplemental discovery responses was not submitted by the School District to the Conservation District until December 2025, with further revisions in January 2026, several weeks after the close of discovery. The Trust received a copy of the final E&S plan from the Department on January 9, 2026 as part of a supplemental discovery response by the Department. As such, the Trust could not have filed its motion to compel against the School District until several months after the close of discovery.

The Trust asserts that, once the School District submitted the revised E&S plan to the Conservation District, it had a duty to supplement its discovery responses. Pa. R.C.P. 4007.4

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<sup>2</sup> The discovery deadline of October 20, 2025 was extended to November 21, 2025 for the limited purpose of allowing the Department to serve additional discovery, if necessary, following the review of answers to discovery obtained from the Trust.

addresses the circumstances in which a party is required to supplement its responses to discovery. While there is no general duty to supplement discovery responses, “[a] party or expert witness is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which he or she knows that...the response though correct when made is no longer true.” Pa. R.C.P. 4007.4(2)(b). While the School District’s prior discovery responses may have been correct at the time they were exchanged with the Trust, it is not clear whether that remains the case following the submission of the revised E&S plan. Where the duty to supplement exists, it extends beyond the close of discovery. *Berks County v. DEP*, 2012 EHB 16, 18.

Finally, we note that no hearing has yet been scheduled in this matter and granting the Trust’s motion to compel will not delay the proceedings. For these reasons, we reject the argument that the Trust’s motion to compel is untimely.

The School District argues that the information sought by the Trust is not relevant because it requests information that was not part of the general permit registration and was not reviewed by the Conservation District. Specifically, the School District argues as follows:

If this appeal is a genuine [ ] challenge [to] [the Conservation District’s] review, approval, and issuance of the District’s general permit for the Project...then only the documents and communications [the Conservation District] relied upon to reach that permitting decision are relevant.

(School District Response to Motion to Compel, p. 12.)

We respectfully disagree with the position stated by the School District. The Board’s standard of review is de novo. *Smedley v. DEP*, 2001 EHB 131, 156. Thus, we can consider evidence that was not considered by the Conservation District. As we explained in *O’Reilly v. DEP*, 2001 EHB 19:

"De novo review involves full consideration of the case anew. The [EHB], as a reviewing body, is substituted for the prior decision

maker, DER, and redecides the case." *Young v. Department of Environmental Resources*, 600 A.2d 667, 668 (Pa. Cmwlth. 1991). We assess whether the issuance of the permit is consistent with the law and is otherwise appropriate.

*Id.* at 32.

As we explained further in *City of Philadelphia v. DEP*, 2014 EHB 156:

The Board is substituted for the Department and redecides the case based solely on the record before us, rather than deferring in any way to the Department's findings. *Young v. DER*, 600 A.2d 667, 668 (Pa. Cmwlth. 1991); *Jake [v. DEP]*, 2014 EHB 38, 47-48] (quoting *Smedley v. DEP*, 2001 EHB 131, 156). In other words, the important question is not whether the Department's action was appropriate based upon the facts as they existed at the time. The operative question is whether the Department's action was appropriate knowing what we know now. *R. R. Action and Advisory Comm. v. DEP*, 2009 EHB 472, 476-77.

*Id.* at 161.

Although *O'Reilly* and *City of Philadelphia* discussed the Board's de novo review power in the context of an appeal of a Department permitting action, the same holds true where the reviewing authority is a county conservation district acting pursuant to a delegation agreement with the Department.

Thus, pursuant to our de novo review, we may consider evidence that was not presented to the Conservation District by the School District. Therefore, where information is requested by the Trust in discovery, there is no basis for asserting that such information is not relevant simply because it was not considered by the Conservation District in its review of the general permit registration application.

Finally, the School District argues that it should not be required to produce information that is covered by attorney-client privilege or the attorney work product doctrine. We agree, and this restriction is incorporated into our order herein.



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DISTRICT, Permittee :

**ORDER**

AND NOW, this 3<sup>rd</sup> day of April, 2026, it is hereby ordered as follows:

- 1) The Trust’s Motion for Permission to File a Reply is **granted**.
- 2) The Trust’s Motion to Compel is **granted in part**.
- 3) On or before **April 21, 2026**, the School District is ordered to produce all documents, not privileged, that are responsive to Trust Interrogatories no. 23, 24, 25, 28 (as set forth in Exhibit 1 to the Trust’s Motion to Compel), pertaining to the revised erosion and sedimentation control plans submitted to the Conservation District in December 2025 and January 2026, to the extent that any such documents exist.

**ENVIRONMENTAL HEARING BOARD**

s/ MaryAnne Wesdock  
**MARYANNE WESDOCK**  
**Judge**

**DATED: April 3, 2026**

**c: DEP, General Law Division:**  
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*(via electronic mail)*

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