



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

JOHN E. YODER AND
LAURA D. YODER

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

:
:
:
:
:
:
:
:
:

EHB Docket No. 2024-097-BP

Issued: May 29, 2026

**OPINION AND ORDER ON
MOTION TO COMPEL DISCOVERY**

By Paul J. Bruder, Jr., Judge

Synopsis

The Environmental Hearing Board (“Board”) grants in part and denies in part the Department of Environmental Protection’s (“Department”) Motion to Compel Discovery.

OPINION

Factual Background

This appeal pertains to the Appellants’ challenge of the Department’s April 10, 2024 Administrative Order addressing alleged violations of the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101- 6018.1003 (“Solid Waste Management Act”).

Appellants John and Laura Yoder jointly own real property in Chest Township, Clearfield County, identified in the Clearfield County Tax Assessment Office as Tax Parcel Number 1090F1700000079 (“Site”). (See April 10, 2024 Admin. Order ¶ C). The Site is used for the operation of a sawmill, where logs are sawed into lumber for use in wood products.

The Department has alleged that after the logs are sawed, remnants of the timber unusable for wood products (“wood waste”) are then burned at the Site without a permit or approval by the Department, in violation of the Solid Waste Management Act. (*See* April 10, 2024 Admin. Order ¶ D). Appellants do not dispute that the timber is burned, but rather assert that “the timber being burned by Mr. Yoder is nonhazardous agricultural waste” and that they beneficially use the ash from the burned timber as fertilizer for their soil. (NOA Objections, ¶¶ 3-4). Appellants further contend that complying with the Department’s Order would substantially burden the Appellants’ exercise of their religious freedom and Amish lifestyle, in violation of the Religious Freedom Protection Act, 71 P.S. 2401 et seq. (*Id.* at ¶ 5).

Procedural Background

Procedurally, this appeal has undergone a series of deadline extensions and discovery disputes. Specifically, on December 23, 2024, the Department filed a Motion to Compel full and complete discovery responses to the Department’s First Set of Interrogatories, First Request for Production of Documents, and First Request for Production of Financial Documents. No response was received by the Yoders. Therefore, on January 9, 2025, the Board granted the Department’s Motion to Compel. (*See* January 9, 2025 Discovery Order).

On January 10, 2025, the Yoders filed a Motion to Compel the depositions of the Department as well as a Motion for Reconsideration of the January 9, 2025 Discovery Order. A conference call was held with all parties on January 22, 2025 to discuss the pending motions. On January 23, 2025, the Board issued a lengthy Order detailing what specific discovery must be exchanged, including but not limited to, the following:

2. Appellants shall have sixty (60) days, until March 24, 2025, to serve revised answers to the Department’s Interrogatories, with the exception of Interrogatory Nos. 17, 19, 22(b), 22(c) – which have been withdrawn by the Department – and Interrogatory Nos. 21, 24, & 26 – which have been deemed overly broad,

redundant, or otherwise not reasonably likely to lead to the discovery of admissible evidence by the Board;

3. The Department's Motion to Compel answers to its Request for Financial Documents is granted in part, as the information requested is reasonably likely to lead to the discovery of admissible evidence considering the claims made by Appellants in their Notice of Appeal and answers to interrogatories. Appellants shall have sixty (60) days, until March 24, 2025, to serve their responsive documents. However, because it is unlikely that 2024 Tax Returns and Financial Statements will be completed within 60 days, only 2022 and 2023 documents must be produced by March 24, 2025. The 2024 documents should be produced upon completion by Appellants. The parties are urged to work together to discuss the limits of the information that the Department requests and discuss whether any redactions of alleged confidential information can be agreed upon. Appellants may also move for protection of information as Confidential Business Information under standards previously established by the Board.

(See January 23, 2025 Order).

On July 7, 2025, Appellants' Counsel filed a Motion for a Protective Order requesting that the Yoders be precluded from attending depositions in this matter as they would be invoking their Fifth Amendment privilege. On July 14, 2025, the Department filed its Response. On August 6, 2025, the parties attended another conference call with Judge Bruder where the pending discovery disputes were discussed. On August 11, 2025, our Board issued an Order denying Appellant's Motion for a Protective Order and stated in part that:

2. Appellants' counsel and the Department shall engage in communication to reach a mutually agreeable verification agreement, which shall document the Appellants' invocation of their Fifth Amendment rights. Such verification must be signed by both Appellants and exchanged with the Department by September 8, 2025.

3. Alternatively, if Appellants reconsider their position and withdraw their previous stance on signing a verification, the deposition of Appellants must take place at a mutually agreeable location within 20 miles of Appellants' home on or before October 31, 2025.

...

6. Failure to abide by this Order may result in the imposition of sanctions.

(See August 11, 2025 Order on Appellants' Motion for a Protective Order).

The parties thereafter mutually agreed to extend case management deadlines. Most recently, the discovery deadline was set for March 30, 2026. (*See* February 6, 2026 Order Extending Deadlines). On April 30, 2026, the Department filed a second Motion to Compel discovery and deposition testimony. That is the matter before us today.

In its Motion, the Departments states that on February 17, 2026, the Department deposed Appellant John Yoder. During Mr. Yoder's deposition, he asserted the Fifth Amendment privilege to every question other than his name. (*See* DEP's Ex. "C" to April 30, 2026 Motion to Compel). Additionally, Appellant Laura Yoder did not appear for her deposition; however, her counsel read the following stipulation on the record that stated:

This is Kurt Mitchell. I represent Ms. Laura Yoder. Due to her health and the stress that this is involved, she did not appear as noticed. However, the Appellants are hereby stipulating that had Ms. Yoder appeared, she would have invoked her Fifth Amendment right against self-incrimination and Ms. Yoder's testimony will not be used at any proceeding in this matter, whether it be summary judgments or final hearing.

(*Id.*)

Additionally, the Department states that on February 18, 2026, Appellants' Counsel, Mr. Mitchell, deposed Anthony Pennington, Solid Waste Specialist for the Department. During the deposition, Mr. Mitchell displayed Mr. Pennington's Commonwealth of Pennsylvania employee identification badge and inquired about the date and manner that Mr. Pennington lost his badge. This was the first time anyone with the Department was aware that the Yoders were in possession of Mr. Pennington's Commonwealth employee badge. The Department seeks information on the Yoders' possession of the badge in discovery. Further, on February 26, 2026, the Department served its Second Set of Interrogatories and Second Request for Production of Documents. The Yoders did not respond to the Department's second written discovery requests.

The Department, through its Motion, requests that the Board: 1) compel the Yoders to

provide full and complete substantive responses, without objection, to the Department’s Discovery Requests within thirty (30) days; 2) compel the Yoders to be sworn and answer, under penalty of contempt, the Department’s deposition questions; 3) compel the Yoders to provide full and complete substantive responses to the Department’s Second Discovery Requests, without objection, within thirty (30) days; 4) extend the discovery deadline to allow the Department to follow up with additional discovery, if necessary; and 5) extend the deadline set for the filing of Dispositive Motions to allow the Department additional time to file dispositive motions.

On May 5, 2026, the Yoders filed a response to the Department’s Motion to Compel. In opposition, Appellants argue that they should not be compelled to testify or answer discovery based on their assertion of their Fifth Amendment privilege. Specifically, the Yoders state that “the questions concerning farming and crop yield were designed to directly address any alleged use of ash on [Mr. Yoder’s] fields and alleged lack of proper permitting to fertilize his fields” and “[s]imilarly, the questions concerning the alleged holding of government property could potentially lead to criminal charges given the actions of the Government to date in this case.” (*See* Yoder’s Response in Opposition to Motion to Compel at ¶¶ 11-12).

Standard of Review

Discovery

Discovery before the Board is guided by the relevant Pennsylvania Rules of Civil Procedure. 25 Pa. Code § 1021.102(a). “[T]he Board is charged with overseeing ongoing discovery between parties during the litigation and has wide discretion to determine appropriate measures necessary to ensure adequate discovery while at the same time limiting discovery where required.” *Northampton Twp. v. DEP*, 2009 EHB 202, 205. 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.Civ.P. 4003.1. No discovery may be obtained that is sought in bad faith or would cause unreasonable annoyance, embarrassment, oppression, burden, or expense with regard to the person from whom discovery is sought. Pa.R.Civ.P. 4011; *Haney v. DEP*, 2014 EHB 293, 296-97.

In a motion to compel to discovery, the moving party needs to put forth a threshold showing of the relevance of the information sought. Only then, after the party seeking the discovery makes some argument of potential relevance, will the burden shift to the party objecting to the discovery request to demonstrate its right to refuse to produce the requested information. *PQ Corp. v. DEP*, 2017 EHB 707, 709 (citing *Consol Pa. Coal Co. v. DEP*, 2015 EHB 505, 506; *Wallace Twp. v. DEP*, 2002 EHB 841, 844; *Estate of Charles Peters v. DER*, 1991 EHB 653, 656).

Fifth Amendment Privilege

The Fifth Amendment of the United States Constitution provides, in relevant part, that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. Amend. V. The Fifth Amendment privilege against self-incrimination is applicable to the States via the Fourteenth Amendment. *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973); *City of Philadelphia v. Kenny*, 369 A.2d 1343, 1347 (Pa. Cmwlth. 1977), *cert. denied*, 434 U.S. 923, 98 S. Ct. 401, 54 L. Ed. 2d 281 (1977).

It is well-settled that “the privilege against self-incrimination can be asserted ‘in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory.’” *Maness v. Meyers*, 419 U.S. 449, 464 (1975) (citation omitted). The Pennsylvania Supreme Court has stated that the trial judge, or in this case the Board, must evaluate the use of the privilege against self-incrimination to determine whether that proposed use is real or illusory. *See Commonwealth v. Long*, 625 A.2d 630, 631 (Pa. 1993). The individual asserting the privilege bears the burden to demonstrate that he or she has “reasonable cause to apprehend danger from a direct answer.” *See*

Veloric v. Doe, 123 A.3d 781, 787 (Pa. Super. 2015); *Veloric v. Doe*, 2015 Pa. Super. Unpub. LEXIS 2420, *23 (citing *Hoffman v. United States*, 341 U.S. 479, 486 (1951); *Commonwealth v. Carrera*, 227 A.2d 627, 629 (Pa. 1967)). As the Supreme Court of the United States explained in *United States v. Reynolds*, 345 U.S. 1 (1953):

Indeed, in the earlier stages of judicial experience with the problem, both extremes were advocated, some saying that the bare assertion by the witness must be taken as conclusive, and others saying that the witness should be required to reveal the matter behind his claim of privilege to the judge for verification. Neither extreme prevailed, and a sound formula of compromise was developed. ... There are differences in phraseology, but in substance it is agreed that the court must be satisfied from all the evidence and circumstances, and ‘from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result.’ If the court is so satisfied, the claim of the privilege will be accepted without requiring further disclosure.

Id. at 8-9.

In civil cases, an adverse inference may be drawn from an individual’s invocation of the Fifth Amendment. *See Crozer-Chester Med. Ctr. v. May*, 531 A.2d 2, 6 (Pa. Super. 1987) (“while a defendant in a civil case may invoke the privilege [of the Fifth Amendment against self-incrimination] and it may not be used against him in any way in a subsequent criminal prosecution, the court in the civil case may draw any adverse inference which is reasonable from the assertion of the privilege”), citing *City of Philadelphia v. Kenny*, 369 A.2d 1343, 1349 (Pa. Cmwlth. 1977); *see also Caloric v. Unemployment Compensation Bd. of Rev.*, 452 A.2d 907 (Pa. Cmwlth. 1982) (“This court has candidly stated that the factfinder may make an adverse inference where a party in a civil proceeding exercised his Fifth Amendment privilege against self-incrimination.”). We will apply the same reasoning in this administrative proceeding as well.

Discussion

The Fifth Amendment privilege is a shield, not a sword. *See Commonwealth v. Copenhefer*, 719 A.2d 242, 252 (Pa. 1998); *Commonwealth v. Dieffenbach*, 2020 Pa. Super. Unpub. LEXIS

2398, *26 (Pa. Super. 2020). It provides a shield against self-incrimination and cannot be used as a blanket exception from complying with discovery obligations. Appellants initiated this appeal and thereby availed themselves of the administrative review process. They are therefore subject to litigate their claims within the parameters of Pennsylvania Administrative Law¹ and the Environmental Hearing Board's² rules of practice and procedure regarding discovery. The United States Supreme Court has made clear:

The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself — his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified, and to require him to answer if “it clearly appears to the court that he is mistaken.”

Veloric v. Doe, 123 A.3d 781, 789 (Pa. Super. 2015) (quoting *Hoffman v. U.S.*, 341 U.S. 479, 486 (1951)).

In the instant matter, Appellants wholesale argue that they should not be compelled to provide deposition testimony or provide discovery responses because the Department is

¹ Appellants' claims that they are entitled to a jury trial has no relevance to the pending motion to compel. Specifically, the Board has previously found these due process claims were not included in the genre of issues discussed in their Notice of Appeal and cannot say they are properly before the Board. (See August 8, 2025 Opinion and Order on Appellant's Motion for Summ. J. at pg. 7-8). Furthermore, these claims are not proper under Pennsylvania law. *Goldata Computer Services, Inc. v. Dep't of Banking*, 350 A.3d 278, 311 (Pa. Cmwlth. 2025) (a right to a jury trial only exists if the cause of action existed in 1790 or if it is required by statute); See also 35 P.S. §§ 6018.101- 6018.1003; *Washington v. Baxter*, 719 A.2d 733, 741 n.12 (Pa. 1998) (Our Supreme Court has stated that “[n]either the Pennsylvania nor the United States Constitution grant an absolute right to a jury trial in a civil action”); Pa. CONST. art. I, § 6; *Wertz v. Chapman*, 741 A.2d 1272, 1276 (Pa. 1992) (finding plaintiff was not entitled to a jury trial under the Pa Constitution nor the PHRA statute).

² We note for the record Appellants' and their counsel's statements throughout these proceedings - the latest being Footnote 1 in their response to the Motion to Compel - claiming that the proceeding before the Board itself is “an *ultra vires* act,” and questioning the appropriateness of this matter being heard before the Board. Appellants, as they have done before, appear to question the independence and neutrality of the Environmental Hearing Board, calling the Board the “[Department's] own court.” (See Appellants' Response to Motion to Compel at ¶ 5). To be clear once again, the Board is NOT an arm of the Department. The Board was created by the Pennsylvania General Assembly to be completely independent of the Department by the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. §§ 7511-7516. The Board's primary, though not sole, function is to review final actions of the Department when appeals of those actions are properly and timely filed. These argumentative statements by Appellants, without any basis in the factual record or legal support, are again without merit.

“harassing” them, and that if forced to comply, they would be waiving their Fifth Amendment privilege against self-incrimination. (See Yoder’s Response in Opposition to Motion to Compel at ¶¶ 4-6; 11-16). However, Appellants provide contradictory information and take inconsistent positions regarding the scope and application of their privilege.

For example, Appellants identify witnesses in their first set of discovery responses but refuse to discuss their relationship to those witnesses in depositions or in supplemental discovery. In the Department’s First Set of Interrogatories No. 1, when asked to identify any person known by Appellants who has any knowledge concerning the matters set forth in the Notice of Appeal, Appellants’ response identified:

ANSWER: Adam A. Miller and Reuben Byler – have permission to use property to operate a sawmill on Appellant’s property. Have knowledge of sawmill operation and of religious tenents [*sic*]. Marvin Yoder – partnership with Appellant’s in sawmill and has had contact with DEP. Norman and Nelson Yoder- Have permission to use property to operate a sawmill on Appellant’s property. Have knowledge of the sawmill operation and of religious tenents [*sic*]. Terry Collins Fire Chief – Knowledge that any burning conducted by Mr. Yoder is safe and acceptable. Larry Gardner – Township Supervisor – knowledge that any burning conducted by Mr. Yoder is safe and acceptable. Dan Sunderland – Township Supervisor – knowledge that any burning conducted by Mr. Yoder is safe and acceptable.

(See DEP’s Ex. “B” at December 23, 2024 Motion to Compel).

Contrastingly, when Mr. Yoder was deposed, he asserted his Fifth Amendment privilege to identify his relationship with the same individuals he named in discovery.

Q: And Mr. Yoder, where do you reside?

A: I plead the fifth.

Q: Sir, have you previously completed with your Counsel, Appellant’s Response to the Department’s First Set of Interrogatories that was dated November 12th, 2024?

A: I plead the fifth.

Q: Are you familiar with Adam A. Miller?

A: The fifth.

Q: Are you familiar with Reuben Byler?

A: Fifth.

Q: Are you familiar with Marvin Yoder?

A: Fifth.

Q: Norman Yoder?

A: Fifth.

Q: Nelson Yoder?

A: Fifth.

Q: Are you familiar with Terry Collins?

A: Fifth.

Q: Larry Gardner?

A: Fifth.

Q: Dan Sunderland?

A: Fifth.

(See DEP's Ex. "C" 8:4-9:2 at April 30, 2026 Motion to Compel).

Likewise, Appellants' assert the government has infringed upon their exercise of religious freedom in their Notice of Appeal yet refuse to provide clarifying information or testimony regarding their religious beliefs underlying those claims in discovery. In the Department's First Set of Interrogatories, Appellants responded:

3. IDENTIFY any and all DOCUMENTS containing information relevant to the subject matter of this appeal.

ANSWER:

Holy Bible King James version. Discovery is ongoing.

47. State the FACTUAL BASIS for the contention made in Paragraph 4.4 of YOUR Notice of Appeal that "The Department's action is substantially burdening the Appellant's exercise of his religion."

ANSWER:

Mr. Yoder's Amish sect specifically rejects the operation of a large-scale business. Members of this sect are required to limit their contacts with the non-Amish world only to those that are necessary. The requirement that Mr. Yoder hire a third-party to remediate and haul away any ash along with the attendant cost would require Mr. Yoder to operate a business on scale not permitted by his religion. Further, consistent with all Christians, Mr. Yoder does not believe in wasteful actions and believes that resources obtained from God should be used wisely and not wastefully.

(See DEP's Ex. "B" at December 23, 2024 Motion to Compel).

However, Mr. Yoder asserted the Fifth Amendment privilege when deposed on his religious beliefs, how the Department’s Order impacted his religious beliefs, and whether he was familiar with the Holy Bible, King James Version. (See DEP’s Ex. “C” 9:6-9:14; 14:21-16:3; 20:17-21:4 at April 30, 2026 Motion to Compel). Appellants also failed to respond to the Department’s Second Set of Interrogatories Nos. 47 through 53, which sought the factual basis for Appellant’s contentions that the Department’s Order is substantially burdening their exercise of religious freedom. Most notably, Appellants seek to invoke the Fifth Amendment privilege with respect to matters involving the burning and spreading of ash on their fields even though such conduct forms the very basis of their legal claims and defenses they advance in this appeal.³

There must be something more than a feeling that the witness may be prosecuted in order to validly invoke the Fifth Amendment privilege. See *Veloric v. Doe*, 125 A.3d 465, 2015 Pa. Super. Unpub. LEXIS 2420, *20-22 (Pa. Super. 2015); see generally *United States v. Harper*, 397 F. Supp. 983, 993 (E.D. Pa. 1975) (The mere possibility of incrimination is insufficient to defeat policies in favor of disclosure). Our Superior Court has reiterated that a witness is not relieved of the obligation to answer questions “merely upon a declaration that in so doing it would be self-incriminating” and that courts must reject “illusory” claims of privilege. *Veloric v. Doe*, 123 A.3d 781, 787 (Pa. Super. 2015) (“When an individual . . . is called to testify . . . in a judicial proceeding, he or she is not exonerated from answering questions merely upon a declaration that in so doing it would be self-incriminating. It is also for the court to judge if the silence is justified, and an illusory claim should be rejected. . . .”).

The Board will always seek to ensure that parties or witnesses before it are provided with the protection of the Fifth Amendment privilege, under proper circumstances. However, in this

³ Despite these contradictions, we do not find at this time that Appellants have waived their right to assert their Fifth Amendment privilege. See *Haas v. Brown*, 62 Pa. D. & C. 4th (Allegheny Cnty. Comm. Pl. 2003).

case, Appellants have failed to identify any specific discovery requests or deposition questions to which the privilege purportedly applies, and they do not explain to the Board why answering those questions would present a reasonable risk of self-incrimination.⁴ *See McDonough v. Cmwlth, Dep't of Transp., Bureau of Driver Licensing*, 618 A.2d 1258, 1261 (1991) (“The witness has the burden of demonstrating that he or she has a reasonable ground for asserting the privilege”). Indeed, Appellants’ only reference to potential criminal liability is their assertion that “the questions concerning farming and crop yield were designed to directly address any alleged use of ash on [Mr. Yoder’s] fields and alleged lack of proper permitting to fertilize his fields” and “[s]imilarly, the questions concerning the alleged holding of government property could potentially lead to criminal charges given the actions of the Government to date in this case.” (*See Yoder’s Response in Opposition to April 30, 2026 Motion to Compel at ¶¶ 11-12*).

Appellants have not engaged in any analysis or discussion with the Board on what possible criminal liability may be imposed if they engage in discovery. *See Veloric*, 123 A.3d at 789 (citing *Commonwealth v. Carrera*, 227 A.2d 627, 629 (Pa. 1967), superseded by statute on other grounds *Commonwealth v. Swinehart*, 664 A.2d 957 (Pa. 1995)). The Board can only reasonably infer that since this appeal involves the Solid Waste Management Act, Appellants may be concerned with the criminal penalties contained within the regulation, 35 Pa. Stat. § 6018.606. However, at this time, the Board has not been apprised of any cogent argument or supporting basis of any potential criminal conduct for which Appellants reasonably fear prosecution nor have they identified any criminal statute potentially implicated by their testimony other than possibly theft

⁴ Appellants likewise fail to meaningfully address the governing standards applicable to discovery disputes as they do not articulate the applicable standard of review or address the relevance or proportionality of the requested discovery. Appellants’ response largely contained unsupported accusations without any citations to the existing record.

of a Commonwealth employee badge. At no point have Appellants identified a pending criminal investigation, potential criminal prosecution, or any specific criminal exposure that would be within the statute of limitations. Thus, under these circumstances, the Board is hard-pressed to find how every deposition question and written discovery question could reasonably incriminate either Appellant based on Appellants' own arguments.

We find this case to be similar to *Veloric v. Doe*, 123 A.3d 781 (Pa. Super. 2015) (decided September 14, 2015) and *Veloric v. Doe*, 125 A.3d 465, 2015 Pa. Super. Unpub. LEXIS 2420 (Pa. Super. 2015) (decided July 30, 2015).⁵

In *Veloric*, a third-party witness, Brad Heffler, refused to answer ten deposition questions and invoked his Fifth Amendment privilege against self-incrimination. *Veloric, supra* at *1. On appeal, the Pennsylvania Superior Court rejected Heffler's Fifth Amendment claims and affirmed the trial court's order compelling him to answer the ten deposition questions. *Id.* at *30. The Court's analysis provided several important principles when determining whether the Fifth Amendment privilege is appropriate. The Superior Court found that the privilege only protects answers that could directly incriminate or provide a link in the chain toward criminal liability, and the individual asserting the privilege must show a reasonable cause to apprehend danger of criminal prosecution to properly assert the privilege. *Id.* at *14, 21.

⁵ Both the Department and Appellants cite to *Veloric v. Doe*, 123 A.3d 781 (Pa. Super. 2015) in support of their corresponding positions. Both Pennsylvania Superior Court decisions were issued in 2015 and involved a dispute between the Velorics and anonymous Defendants Doe, along with a third-party witness – Brad Heffler. While we find both *Veloric v. Doe* Superior Court cases to be relevant and analogous to the current matter, we find the unpublished case offers a more detailed analysis of the scope and application of the Fifth Amendment privilege. The Board acknowledges that the unpublished opinion of *Veloric v. Doe*, 125 A.3d 465, 2015 Pa. Super. Unpub. LEXIS 2420 (Pa. Super. 2015) (decided July 30, 2015) is not binding case law; however, we may still rely on it for its persuasive value on the matter of the Fifth Amendment privilege. Although the published September opinion does discuss in *dicta* the Fifth Amendment privilege, it ultimately quashed the appeal and did not reach the merits of the case because the issue of compelling the Doe Defendants to appear for depositions was considered an unappealable interlocutory appeal.

As in *Veloric*, the Board is now tasked with determining whether Appellants have some reasonable cause to apprehend danger of criminal liability in responding to the Department's discovery requests; and thus, we examine the discovery provided to date in this matter.

Written Discovery – First Set

In regard to the Department's first set of discovery, these issues have been fully briefed and discussed almost eighteen months ago. In January 2025, the Board rendered a decision and set forth an Order regarding these discovery responses. (*See* January 23, 2025 Order). We have now learned for the first time that the January 23, 2025 Order was never complied with, and Appellants' Counsel issued a response contained within a January 29, 2025 email stating that the Yoders intended to invoke their Fifth Amendment privilege to all questions. (*See* DEP Ex. "A" at April 30, 2026 Motion to Compel).

Thus, with the Fifth Amendment privilege in mind, we have examined the Department's first written discovery requests⁶ and find that the following interrogatories must be answered by Appellants:

- Nos. 1-3 - Seek self-identifying information;
- Nos. 4-8 - Seek information on expert witnesses;
- Nos. 9-10 - Seek information on non-expert testifying witnesses;
- Nos. 11-16 - Seek information on the factual basis for contentions made in the Appellants' own Notice of Appeal;
- No. 18 - Seeks to identify any business generating revenue at the Site;
- No. 23 - Seeks information on how the wood is transported to the Site;
- No. 56 - Seeks to identify individuals Appellants have communicated with regarding their Notice of Appeal; and
- No. 57 – Seeks to identify each person who participated in the preparation of the answers to each interrogatory.

⁶ We note that the Board had previously found interrogatory Nos. 17, 19, 22(b), 22(c) withdrawn by the Department and interrogatory Nos. 21, 24, and 26 to be deemed overly broad, redundant, or otherwise not reasonably likely to lead to the discovery of admissible evidence. (January 23, 2025 Order).

The Pennsylvania Supreme Court has recognized that an individual “does not have an expectation of privacy in his name and address that society is willing to recognize as reasonable and legitimate.” *Commonwealth v. Duncan*, 817 A.2d 455, 469 (Pa. 2003); *see also Commonwealth v. Durr*, 32 A.3d 781, 786 (Pa. Super. 2011) (the Fifth Amendment privilege may not be invoked to avoid identifying oneself). In review of these requests, we cannot find how answering the above-mentioned identification questions would reasonably present a risk of self-incrimination.

Based on Appellant’s own arguments that they are concerned with criminal liability from the “lack of proper permitting to fertilize fields” and the “holding of government property”⁷ in conjunction with Section 6018.606 of the Solid Waste Management Act, we find Appellants may properly invoke their Fifth Amendment privilege to the following interrogatories:

- No. 20 - Identify all permits help to operate business at the Site;
- No. 31 - Identify whether you burn any timber/wood at the Site;
- No. 32 - Identify any and all permits to burn timber/wood at the Site;
- No. 33 - Identify any and all fire control measures taken when burning of timber/wood;
- No. 34 - Identify any air quality measures taken when burning of timber/wood; and
- Nos. 54-55 - Identify alternatives to not burning the wood without a permit.

Additionally, the Board finds that the remaining interrogatories (listed below) are less clear cut and present a more complex analysis because they implicate Appellants’ own assertions that they use beneficial ash as fertilizer for their soil in accordance with their religious beliefs. These questions clearly are relevant to the issues present in this appeal as they directly address Appellants’ Notice of Appeal arguments and defenses.

Accordingly, the Board will provide Appellants the opportunity to either answer the below interrogatories or plead the Fifth Amendment privilege. If Appellants choose to plead the Fifth

⁷ (*See Yoder’s Response in Opposition to Motion to Compel at ¶¶ 11-12*).

Amendment, they will then be precluded from later introducing testimony or evidence relating to the withheld information at a hearing or in any pleading, as allowing such evidence would unduly prejudice the Department by depriving it of the opportunity to investigate these claims in discovery.

- No. 20(a) - Seeks information on whether there are any pieces, remnants or scraps of timber after the logs are sawed at the site for use in wood products;
- No. 22 - Identify the origin of the wood received at the Site prior to being cut into lumbar;
- No. 22(a) - Identify the type of wood;
- No. 22(d) - Identify if the wood was ever pressure treated prior to, during, or after it was cut into lumbar;
- No. 25 - Identify what happens to the remnants or scraps after they are cut at the Site;
- No. 27- Identify how the remnants or scraps are stored at the Site;
- Nos. 28-30 - Discuss identifying how the lumbar or product is transported/removed from the Site and what business or person receives the lumbar or product;
- No. 35 - Identify how Appellants store or dispose of the burnt timber/wood;
- No. 36 - Identify how Appellants move any bunt timber/wood;
- Nos. 37 - 46 - Discusses the burnt timber/wood being used as soil or a beneficial use; and
- Nos. 47-53 - Seeks the factual basis for Appellant's contentions that the Department Action is substantially burdening their exercise of religion and how their use of the ash on their soil is exercising their religious beliefs.

It is unknown if Appellants have complied with the disclosure of their financial documents contained within the January 23, 2025 Order; however, it has been long held that the Fifth Amendment privilege does not protect an individual from being compelled to produce “real or physical evidence.” *Schmerber v. Cal*, 384 U.S. 757, 764 (1966). Rather, the privilege “protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature.” *Id.*, at 761. Further, the Fifth Amendment does not protect any documents, including financial and other business records, absent proof that they were created under compulsion. *See Haas v. Brown*, 62 Pa. D. & C. 4th, *17 (Allegheny Cnty. Comm. Pl. 2003). Indeed, case law holds that tax returns are not created under compulsion for purposes of the Fifth Amendment’s protections against self-incrimination. *Id.* at n.3 (citing *Garner v. United States*, 424 U.S. 648 (1976)). Therefore, Appellants must comply

with the January 23, 2025 Order concerning the release of financial records or suffer the implication of sanctions.⁸

Written Discovery – Second Set

With respect to the Department’s second set of written discovery, again, at no point that the Board is aware of did Appellants prepare or serve specific objections to any interrogatory or request for production of documents nor did the Yoders submit verified responses as required by the Pennsylvania Rules of Civil Procedure. Pa. R.C.P. No. 4006(a)(1)&(2); 4009.12. Additionally, Appellants apparently made no attempt to place objections on the record of whether the requested discovery is privileged, irrelevant, unduly burdensome, or otherwise improper under the rules of civil procedure. *Id.*

In review of the Department’s Second Request for Interrogatories, the vast majority of the requests seek basic identifying and relational information. Specifically, Interrogatories Nos. 1 through 18 request information and identification of the Yoder’s business relationships with various individuals and entities. (*See* DEP’s Ex. “D” at April 30, 2026 Motion to Compel). Again, these are individuals that Appellants themselves identified in their First Responses to Interrogatories, *i.e.*, business relationships with Reuben Byler, Adam Miller, Marvin Yoder, etc. (*See* DEP’s Ex. “B” to December 23, 2024 Motion to Compel). Without some specific explanation as to how identifying a business relationship with individuals or entities could reasonably expose Appellants to criminal prosecution, the Board is yet again hard pressed to conclude this relational and identifying information is incriminating testimony.

⁸ The Department may have procedures through which Appellants could seek to have this information protected as Confidential Business Information (CBI).

Interrogatory Nos. 19 through 22 concern Appellants' possession of Anthony Pennington's Commonwealth Employee Badge. At present, the Board is unaware of the circumstances under which Appellants came into possession of the badge, including whether it was lost, misplaced, stolen, etc. Mere possession of a lost Commonwealth employee badge does not, by itself, establish criminal liability. However, if the badge has been unlawfully obtained, testimony concerning its acquisition could potentially implicate criminal exposure, as Appellants state in their Response in Opposition. Under those limited circumstances, the Board recognizes that invocation of the Fifth Amendment privilege may be appropriate.

Accordingly, the Board will not compel Appellants to answer Interrogatories Nos. 19 through 22. However, because Appellants have elected to assert their Fifth Amendment privilege to these questions concerning Mr. Pennington's badge and related circumstances, they will be precluded from later introducing testimony or evidence on these matters at any hearing or any pleading of any kind. Permitting Appellants to withhold discovery information on Fifth Amendment grounds while later offering testimony concerning the same subject matter would substantially prejudice the Department and undermine the purpose of the discovery process.

By contrast, the Board finds that Interrogatories Nos. 23 and 24 are not subject to the Fifth Amendment privilege. Interrogatory No. 23 requests identification of documents containing information relevant to the subject matter of the appeal. Interrogatory No. 24 seeks identification of individuals involved in preparing the interrogatory responses. Not only are these requests directly related in nature and scope to this appeal, but they do not qualify for protection under the privilege. As stated previously, the Fifth Amendment does not extend to non-testimonial acts or the disclosure of basic identifying information. *Pennsylvania Muniz*, 496 U.S. 582, 588-89 (1990); *Veloric v. Doe*, 123 A.3d 781, 787 (Pa. Super. 2015) (stating how courts have long recognized that

compelled appearance, identification, fingerprinting, and similar noncommunicative acts fall outside the protections of the Fifth Amendment).

Thus, Appellants shall provide full and complete verified responses, without objections, to the Department's Second Requests for Interrogatories and Second Request for Production of Documents, with the exception of Interrogatories No. 19, 20, 21, and 22. As Appellants have elected to assert their Fifth Amendment privilege to these questions concerning Mr. Pennington's badge and related circumstances, they will be precluded from later introducing any and all testimony or evidence, including cross-examination, on these matters at any hearing or in any pleading of any kind.

Depositions

At this juncture, based upon the information before the Board, we do not believe that requiring Mr. Yoder and Ms. Yoder to sit for an additional deposition would serve any meaningful purpose. Appellants were already afforded a full opportunity to participate in discovery and respond in good faith to questioning concerning the matters at issue in this appeal. Instead, Ms. Yoder did not appear for her deposition and offered a stipulation on record that she would assert her Fifth Amendment privilege. Mr. Yoder invoked the Fifth Amendment privilege to every question, including the most basic identification and background questions, such as whether a sawmill operated on property he owned and whether he knows fellow Appellant, Laura Yoder. (*See* DEP's Ex. "C" 9:3-10:7 at April 30, 2026 Motion to Compel).

"The privilege against self-incrimination can only be asserted when the witness is being asked to testify to self-incriminating facts and only when a witness is asked a question demanding an incriminating answer." *McDonough v. Cmwltth, Dep't of Transp., Bureau of Driver Licensing*, 618 A.2d 1258, 1261 (1991). Despite repeatedly invoking the Fifth Amendment, Appellants have

failed to identify any legitimate basis for doing so to every question asked during the depositions. They have not articulated any concrete risk of criminal liability arising from the issues in this administrative proceeding beyond the Solid Waste Management Act or possession of a Commonwealth of Pennsylvania employee badge. Appellants blanket refusal to answer virtually any substantive questions therefore cannot be characterized as a good-faith or legally substantiated assertion of the privilege. We do not believe further depositions will change this fact, and we will not compel Appellants to be deposed again under these circumstances. If, after consideration of the rulings in this Opinion and Order, the parties can reach an agreement on depositions, they are free to conduct them as they see fit.

Conclusion

Under the circumstances detailed in this Opinion, the Board finds that sanctions are appropriate and warranted. As Appellants have declined to participate meaningfully in discovery when given the opportunity, they cannot use the Fifth Amendment as both a shield during discovery and a sword at a hearing. Accordingly, Laura D. Yoder and John E. Yoder shall be precluded from offering any testimony or evidence on matters to which they refuse to provide discovery responses. The Board concludes that an adverse inference is appropriate in this civil administrative proceeding, pursuant to Pennsylvania law. Appellants shall also properly respond to the discovery the Board has Ordered below or suffer the imposition of further sanctions. This matter has been pending for more than two years and must proceed toward adjudication.

Accordingly for the above reasons, we issue the following order.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

**JOHN E. YODER AND
LAURA D. YODER**

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

:
:
:
:
:
:
:
:
:
:

EHB Docket No. 2024-097-BP

ORDER

AND NOW, this 29th day of May, 2026, upon consideration of the Department’s Motion for Compel Discovery Responses and Appellants’ Response thereto, it is hereby ordered that the motion is **granted in part and denied in part** in accordance with the following:

1. **The June 4, 2026 conference call to discuss pre-hearing deadlines is cancelled and will be rescheduled at a later time, when the discovery and dispositive motion deadlines are complete.**
2. The deadlines set forth in the Board’s February 6, 2026 Order **shall be extended** as follows:
 - a. All discovery in this matter shall be completed by **Thursday August 27, 2026;**
 - b. All dispositive motions shall be filed by **Tuesday September 29, 2026.**
3. Based on the stipulation of record by counsel, Appellant Laura D. Yoder will not be permitted to testify or offer evidence at the time of a merits hearing. Her lack of testimony may be used as evidence at the time of a hearing or in a dispositive motion.

4. John E. Yoder will not be compelled to give another deposition. His deposition testimony and discovery responses provided to date may be used as evidence at the time of a hearing or in a dispositive motion.
5. Within (30) thirty days of this Order, Appellants shall comply with the Board's outstanding January 23, 2025 Discovery Order and provide full and complete verified responses, without objections, to the Department's First Set of Interrogatories Nos. 1-16, 18, 23, 56 and 57.
6. Within (30) thirty days of this Order, Appellants shall comply with the Board's outstanding January 23, 2025 Discovery Order and supply the financial records ordered to be disclosed.
7. Within (30) thirty days of this Order, Appellants may choose to assert their Fifth Amendment Privilege or provide full and complete verified responses, without objections, to the Department's First Set of Interrogatories Nos. 20, 31-34, and 54-55. If Appellants choose to assert their Fifth Amendment privilege, they may not offer any evidence or testimony on these matters at a hearing or in any pleading.
8. Within (60) sixty days of this Order, Appellants shall provide full and complete verified responses, without objections, to the Department's Second Requests for Interrogatories and Second Request for Production of Documents, with the exception of Interrogatories No. 19, 20, 21, and 22. As Appellants have elected to assert their Fifth Amendment privilege to the questions concerning Mr. Pennington's badge and related circumstances, they will be precluded from later introducing any and all testimony or evidence, including cross-examination, on these matters at a hearing or in any pleading.



9. This Order shall not preclude the use of previously identified Discovery Responses at a hearing or in a dispositive motion.
10. If Appellants do not comply with the terms of this Order, they will suffer the imposition of additional sanctions.

ENVIRONMENTAL HEARING BOARD

s/ Paul J. Bruder, Jr. _____
PAUL J. BRUDER, JR
Judge

DATED: May 29, 2026

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

For the Commonwealth of PA, DEP:
Robert Cronin, Esquire
Brent Fuller, Esquire
David R. Stull, Esquire
(via *electronic filing system*)

For Appellants:
Kurt D. Mitchell, Esquire
(via *electronic filing system*)