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 16, 2026**

OPINION AND ORDER ON
APPELLANTS' MOTION FOR SUMMARY JUDGMENT AND DEPARTMENT AND CONSERVATION DISTRICT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

By MaryAnne Wesdock, Judge

Synopsis

A Motion for Partial Summary Judgment filed by the Department and Conservation District is granted in part on issues where the Appellant has failed to make out a prima facie case or has failed to demonstrate the continuing relevance of errors made during the application process for coverage under a general permit. The motion is also granted on the question of whether the Department was subject to Section 507 of the Administrative Agency Law in its review of the Conservation District's action in this matter. The Appellants' Motion for Summary Judgment is denied because they have not established that the facts in support of their motion are undisputed or that they are entitled to judgment as a matter of law.

O P I N I O N

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 coverage under Chapter 105 Bureau of Waterways Engineering and Wetlands General Permit-4 (referred to herein as BWEW General Permit-4 or simply General Permit-4) 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 storm sewer project.

Pending before the Board are a Motion for Summary Judgment filed by the Trust and a Motion for Partial Summary Judgment filed by the Department and Conservation District.[1]

Background

Although the appeals at issue were filed in 2025, this matter has a long and complex history. The project involved in this appeal, identified as the Asbury Storm Sewer Relocation Project (project), is part of a larger system aimed at managing stormwater in the area across from the Trust property along Sterrettania Road in Millcreek Township. According to the Trust, in 1992 a 24-inch pipe aimed at managing stormwater from the Walnut Creek Middle School was placed on property owned by the Trust. Some years later, the Asbury Elementary School was also constructed on the property across from the Trust. It is the Trust's contention that the 24-inch stormwater pipe was unlawfully installed on its property and has been used to unlawfully discharge stormwater onto the Trust's land. The Trust also contends that the pipe is too small to manage

[1] The Department and the Conservation District are both represented by the same legal counsel.

flooding. This issue has been the subject of litigation involving the Trust, School District and Millcreek Township before the Erie County Court of Common Pleas since 2013.

In an effort to resolve claims in the 2013 lawsuit with the Trust, the School District developed a plan to relocate the stormwater pipe and outlet from the Trust property to a downstream neighboring property known as Brown's Farm. (School District Response to Trust's Statement of Material Facts, para. 2.) In furtherance of this project, on January 7, 2025, the School District submitted a registration application to the Conservation District for the construction of an outfall structure under the coverage of BWEW General Permit-4. Pursuant to a delegation agreement with the Department, the Conservation District reviews and approves applications for General Permit-4 coverage.

By letter dated January 14, 2025, the Conservation District approved coverage under General Permit-4 for the outfall structure on Brown's Farm. On February 5, 2025 the Trust appealed the approval of coverage, and the appeal was docketed at EHB Docket No. 2025-005-W.

On April 2, 2025, the School District notified the Conservation District that it was modifying the design of the outfall structure with the proposed addition of a riprap apron. In support of the modified design, the School District submitted plan drawings depicting the addition. By letter of April 10, 2025, the Conservation District acknowledged receipt of the modified plan drawings and updated the file for the project. It did not issue a new approval of coverage under the General Permit-4. On April 18, 2025, the Trust appealed the Conservation District's letter of April 10, which was docketed at EHB Docket No. 2025-022-W.

In addition to appealing the Conservation District's April 10, 2025 letter to the Board, the Trust also lodged an appeal with the Department pursuant to Section 17(c) of the Dam Safety and

Encroachments Act, 32 P.S. § 693.17(c).[2] On October 9, 2025, the Department issued a decision by letter upholding the Conservation District. This decision was appealed by the Trust to the Board on November 6, 2025 at EHB Docket No. 2025-118-W. All three Trust appeals filed with the Board have been consolidated at 2025-005-W and have been amended.

The Trust has moved for summary judgment and the Department and Conservation District for partial summary judgment. Responses to the Trust's motion were filed by the Department, Conservation District and School District. The Trust filed a response to the Department and Conservation District's motion. Replies were filed on March 3 and 4, 2026. This matter is now ready for review.

Standard of Review

Pursuant to the Pennsylvania Rules of Civil Procedure and in accordance with Board case law, there are two scenarios under which summary judgment may be granted:

(1) When the record, including pleadings, depositions, answers to interrogatories, and other related documents, shows that there is no genuine issue of material fact in dispute and the moving party is entitled to judgment as a matter of law. Pa. R.C.P. 1035.2(1).

(2) If, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense – in other words, where the party bearing the burden of proof has failed to make out a prima facie case. Pa. R.C.P. 1035.2(2).

See Yoder v. DEP, 2025 EHB 613, 615; *Barr Farms, LLC. v. DEP,* 2025 EHB 256, 257-58.

[2] Section 17(c) authorizes that "any person aggrieved by an action of a county conservation district or other agency pursuant to a delegation agreement may appeal such action to the department within 30 days following notice of such action."

In evaluating whether either summary judgment scenario is appropriate, the Board views the record in the light most favorable to the non-moving party. *Liberty Township v. DEP*, 2024 EHB 872, 874 (citing *Stedge v. DEP*, 2015 EHB 31, 33); *Sierra Club v. DEP*, 2023 EHB 97, 98–99; *Kinsey v. DEP*, 2020 EHB 105, 108. All doubts as to whether genuine issues of material fact remain must be resolved against the moving party. *Barr Farms,* 2025 EHB at 258 (citing *Sierra Club*, 2023 EHB at 99). Summary judgment may only be granted in cases where the right to summary judgment is clear and free from doubt. *Scott v. DEP*, 2024 EHB 318, 319; *Amerikohl Mining Inc. v. DEP,* 2023 EHB 348, 352 (citing *Tri-Realty Co. v. DEP*, 2016 EHB 214, 217).

Board's Rule on Summary Judgment

A summary judgment motion record shall consist of the following: a motion and supporting brief, a statement of undisputed material facts, evidentiary materials relied upon by the movant, and a proposed order. 25 Pa. Code § 1021.94a(b)(1). As to the statement of undisputed material facts, the Board's rules require the following:

> A statement of undisputed material facts must consist of numbered paragraphs and contain only those material facts to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation must identify the document and specify the paragraphs and pages or lines thereof or the specific portions of exhibits relied on.

25 Pa. Code § 1021.94a(d).

The Department and Conservation District and the School District argue that we should strike the Trust's motion for summary judgment since a number of the paragraphs set forth in its statement of undisputed material facts do not contain a citation to the record, as required by 25 Pa. Code § 1021.94a(d). Additionally, the School District asserts that, rather than containing undisputed facts, the Trust's statement primarily contains disputed facts and legal conclusions. In

addition to addressing this matter in its response, the School District has filed a Motion to Strike Appellants' Reply in Opposition and Amended Statement of Undisputed Facts.

In its reply, the Trust acknowledges that a portion of the paragraphs in its statement of undisputed material facts do not contain a citation to the record. However, the Trust contends that a number of the paragraphs relate to each other and, where that is the case, at least one of the paragraphs contains a citation to the record. Nonetheless, with its reply, the Trust refiled its statement of undisputed material facts with each paragraph containing a citation. The Trust also appears to have withdrawn a few of the arguments raised in its motion.

We take this opportunity to caution parties that a statement of undisputed material facts is precisely what the title implies – 1) it should contain *facts* and 2) those facts should be *undisputed,* as demonstrated by the record. As the School District correctly points out, "legal conclusions masquerading as undisputed facts" violate both the letter and spirit of Board Rule 1021.94(d).

Here, we see no reason to strike the Trust's motion in its entirety, as requested by the School District and the Department and Conservation District, or to grant the School District's motion to strike the Trust's amended statement of facts. The lack of citation to the record in the statement of undisputed material facts has been corrected. Additionally, the Trust has withdrawn some of the arguments made in its motion where it acknowledges that facts are disputed. As to any statements that continue to lack a citation to the record or that contain disputed facts or a legal conclusion, we simply do not rely on those statements in considering the Trust's motion.

BWEW General Permit-4

Before reviewing the merits of the parties' arguments, we think it is helpful to set forth a brief background on permitting under the Dam Safety and Encroachments Act, Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. §§ 693.1 – 693.27 (Dam Safety Act). As we explained in *Beech Mountain Lakes Association, Inc. v. DEP*, 2023 EHB 221, "General permits function

somewhat differently than individual permits. The [Dam Safety Act] grants the Department the authority to develop and issue general permits for certain classes of activities, and to waive certain permit requirements where appropriate…." *Id.* at 224. Pursuant to Section 7(b) of the Dam Safety Act, "the [D]epartment may…issue general permits on a regional or Statewide basis for any category of dam, water obstruction or encroachment if the [D]epartment determines that the projects in such category are similar in nature, and can be adequately regulated utilizing standardized specifications and conditions." 32 P.S. § 693.7(b). Pursuant to Section 7(c), "General permits shall specify such design, operating and monitoring conditions as are necessary to adequately protect life, health, property and the environment, under which such projects may be constructed and maintained without applying for and obtaining individual permits." *Id.* at § 693.7(c).

As further explained in *Beech Mountain*, 2023 EHB at 225, "The regulations in [25 Pa. Code] Chapter 105 detail how a general permit satisfies the major regulatory permitting requirements and provides for a process of obviating the need for the submission of an individual permit application to utilize a general permit." Those requirements are set forth at 25 Pa. Code § 105.443. "Persons seeking to avail themselves of a general permit for their project register for coverage under that permit instead of submitting an application for an individual permit." *Beech Mountain*, 2023 EHB at 226 (citing 25 Pa. Code § 105.447).

The general permit at issue here, BWEW General Permit-4, was first published in the Pennsylvania Bulletin on February 4, 1984. 14 Pa. B. 396 (February 4, 1984) (Department and Conservation District Response to Trust Motion, Ex. P.) It authorizes the operation and maintenance of intake and outfall structures and is available for use by anyone with an eligible

project that satisfies the terms and conditions and registers the project with the Department. 25 Pa. Code §§ 105.443, 105.447.

Discussion

The arguments asserted by the Trust in its Motion for Summary Judgment can be summarized as follows: 1) errors in the School District's registration submission, including incomplete and inaccurate information and the use of an outdated form, should have prevented the Conservation District from granting coverage under the general permit and 2) the Conservation District and Department failed to conduct an adequate review. In response, the Department and Conservation District and the School District acknowledge that even if errors or omissions occurred during the registration process, the registration application is now complete and accurate and there is no basis for overturning the general permit coverage granted to the School District. The Department and Conservation District also dispute the Trust's contention that they failed to conduct an adequate review.

In their Motion for Partial Summary Judgment, the Department and Conservation District focus on certain objections raised by the Trust in its various notices of appeal and amendments thereto. They argue that the Trust has either failed to make a prima facie case in support of its objections or failed to provide legal support for its arguments. In its response, the Trust asserts that the Department and Conservation District have failed to demonstrate that the facts surrounding these issues are undisputed.

We examine the arguments raised in each of the parties' motions below.

25 Pa. Code §§ 105.14 and 105.21

The Trust asserts that the School District failed to submit a complete and accurate application for coverage under the BWEW General Permit-4, and, therefore, the Conservation

District could not have carried out its regulatory obligations under Sections 105.14 and 105.21 of the Dam Safety regulations. These provisions mandate the review of a number of factors that the Trust contends were not considered when the Conservation District conducted its review. Section 105.14 is entitled "Review of applications" and falls under the general heading of "Permit Applications." It states, "An application will be reviewed to determine the proposed project's effect on health, safety and the environment." 25 Pa. Code § 105.14. Section 105.21 falls under the general heading of "Permit Issuance, Transfer and Revocation" and is entitled "Criteria for permit issuance and denial." This section states that a permit application will not be approved unless the applicant can demonstrate that "[t]he application is complete and accurate" and that "[t]he proposed project or action will adequately protect public health, safety and the environment." 25 Pa. Code § 105.21(a)(1) and (3). The Trust essentially argues that, without accurate and complete information, the Conservation District could not have fulfilled its duty to consider the project's effect on health, safety and the environment

In response, the Department and Conservation District assert that the factors set forth in 25 Pa. Code §§ 105.14 and 105.21 were already taken into consideration for the types of projects covered by the BWEW General Permit-4 when it was first issued (i.e, in February 1984). As such, it is the position of the Department and Conservation District that when an applicant seeks to register a project under the general permit, they are relieved of the need to independently meet the individual permitting criteria of 25 Pa. Code §§ 105.14 and 105.21.

The Department and Conservation District assert as follows:

> [W]hen the Commonwealth issues a general permit under Section 7 of the Dam Safety Act, 32 P.S. § 693.7, including the BWEW-[General Permit]-4 at issue here, it essentially certifies that the predictable effects of the structure on life, health, property, and the environment, i.e., the factors found in 25 Pa. Code §§ 105.14-17 and 105.21, have been considered as of the date of issuance of that

> permit[citation omitted]…The Commonwealth further certifies that the risks presented by these predictable effects have been deemed to be acceptable thereby obviating the need to obtain an individual permit. *Lyons v. Dep't of Env't Prot*., 2011 EHB 169, 180 ("We see the bifurcated approach to permitting as a reasonable way to apportion limited resources based on risk").

(Department and Conservation District Brief in Response to Trust Motion, p. 12-13.)

We believe this is an accurate statement of the law, and, therefore, we find that the Trust's reliance on Sections 105.14 and 105.21 is misplaced. In addressing this issue, it is helpful to keep in mind the difference between a "permit application" which is submitted to obtain an individual permit and an "application for registration of coverage under a general permit." The former requires compliance with the individual permitting requirements of Chapter 105, Subchapter A, as well as any other specific permit application requirements set forth for various projects (for example, § 105.81 for the construction and modification of dams and reservoirs; § 105.151 for the construction or modification of culverts and bridges; § 105.191 for the construction or modification of stream enclosures). The latter assumes that the general permit has already satisfied the major regulatory permitting requirements and obviates the need for the submission of individual information other than that required to show that a project falls under the terms and conditions of the general permit.[3] *Beech Mountain*, 2023 EHB at 225.

General permits are covered in Subchapter L of Chapter 105 of the regulations, encompassing Sections 105.441 through 105.449. Section 105.442(a)(3) provides that the Department may issue general permits if it determines that the "projects which are in the category and meet the specifications and conditions will comply with the requirements for permit issuance

[3] This distinction is reinforced by the language of 25 Pa. Code § 105.13, which addresses "[r]egulated activities" under Chapter 105. This section distinguishes between "[a]n application for a permit" and a "registration for a general permit."

in §§ 105.14—105.17 and 105.21 and the standards and requirements for design, construction, operation, maintenance and monitoring in this chapter." 25 Pa. Code § 105.442(a)(3). Thus, an application for registration of coverage under a general permit is not subject to the individual permitting requirements set forth in 25 Pa. Code § 105.14 and § 105.21 because those requirements were already taken into consideration at the time of the original permit issuance by the Department.

The appellant in *Beech Mountain* made a similar argument as that made by the Trust here. In that case, the appellant argued that the permittee had failed to provide information in his general permit registration application that illustrated how the project in question – a dock – would impact public safety. In rejecting the appellant's argument, the Board held that "[a]n assessment of public safety…[is a] requirement[ ] under the [Dam Safety Act] and must be submitted by applicants for individual permits, 25 Pa. Code § 105.14(b)(7), but registration for coverage under the general permit does not require the prospective permittee to submit individualized information on these questions." 2023 EHB at 229. Similarly, we reject the Trust's argument that the Department and Conservation District erred by failing to require the School District to submit individualized information pertaining to the criteria set forth in 25 Pa. Code §§ 105.14 and 105.21. The Trust has not demonstrated how these regulations are applicable to the Conservation District's consideration of whether the School District was eligible for coverage under the General Permit-4. Even to the extent it may be argued that these sections do apply here, we nonetheless find, for the reasons set forth below, that the Trust has not demonstrated that it is entitled to summary judgment.

Alleged Errors in the Registration Process

The Trust alleges that errors occurred in the registration process that warrant the revocation of the general permit coverage. The Trust also contends that certain information was not available

or considered by the Conservation District in its review of the application.[4] For their part, the Department and Conservation District argue that the Trust has failed to demonstrate that any alleged errors or omissions in the registration process have continuing relevance. The Trust and the Department and Conservation District have each moved for summary judgment on these objections. We examine each of the Trust's allegations below:

Use of an Old Registration Form

The Trust argues that the general permit registration application submitted by the School District was procedurally defective because it was an outdated version of the form. The School District submitted the May 2019 version of the registration form rather than the current version dated June 2024. The Department and Conservation District do not dispute that an old version of the registration form was used by the School District for its submission. However, they urge the Board to follow a long line of Board decisions holding that it is not enough for an appellant simply to point out errors in the permitting process or information that was not considered by the Department in its permit review; rather, an appellant must demonstrate how consideration of those matters would have made a difference.

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[4] In its memorandum of law supporting its Motion for Summary Judgment, the Trust argues that the Conservation District and Department failed to take wetlands into consideration in their review of the project. The Trust appears to have abandoned this argument as a basis for summary judgment in its reply, stating as follows:

> "[A]s acknowledged by the Department at page 2 of [ ] its Response, there are factual issues and disagreements about whether the Project will impact wetlands. The Trust can prove that [the Conservation District] ignored evidence of wetlands in its review. However, the Trust's Motion focuses on areas where there are no factual disagreements, largely relating to the [School District] Application and its supporting Erosion and Sediment Control Plan.

(Trust Reply to Department Response, p. 2.)

In the seminal case addressing this issue, *O'Reilly v. DEP*, 2001 EHB 19, Judge Labuskes explained:

> The goal of Board proceedings is not to go back through the entire course of permit application procedures to pick out errors that may have been made along the way. Indeed, the very purpose of a deliberative, iterative permit review process is to correct errors and ensure that, in the end, everything has been done correctly. The Board's objective is to determine whether any action needs to be taken regarding the final permit. There will be errors in virtually any permit application review of even modest complexity. If the errors have been corrected, there is no need to dwell upon them. Errors may have been rendered immaterial or moot by subsequent events or even the passage of time. *A party who would challenge a permit must show us that errors committed during the application process have some continuing relevance.*

Id. at 51 (emphasis added).

Similarly, in *Shuey v. DEP*, 2005 EHB 657, 712, the Board cautioned, "[I]t is not enough to argue there were minor errors during the permitting process…If there are errors in the permit, such errors must be material in order to warrant a revocation or remand of the permit." More recently, in *Beech Mountain*, the Board explained that "[p]arties who complain that the Department should have considered something in its review of a project need to 'tell us how that consideration would have made a difference.'" *Id*. at 226 (quoting *Sludge Free UMBT v. DEP*, 2015 EHB 469, 484). Here, the Department and Conservation District argue that the Trust has failed to demonstrate that errors in the registration process or information not considered by the Conservation District in its review would have made a difference in the outcome.

The Department and Conservation District assert that the May 2019 form and the June 2024 form contain only a slight difference in wording and request virtually the same information. They seek summary judgment on this issue on the grounds that the Trust has come forward with

no evidence in support of its objection that the general permit coverage should be overturned due to the use of an outdated form.

We agree. The Trust has not shown us how the use of an outdated registration form made a difference in the Conservation District's review. There is no discussion by the Trust of how the old form differs from the new form or whether additional information is required by the new form that is not required by the old form. Critically, it has not shown us, nor even alleged, that the use of the old form prevented the Conservation District from considering information crucial to its review. The Trust's argument simply seems to be "the School District used an old form so it must go back to square one." As we have explained in *O'Reilly*, *Shuey* and *Beech Mountain*, this is not enough.

Therefore, we grant summary judgment to the Department and Conservation District on this issue.

E&S Plan Submitted After Approval of General Permit-4 Registration

The Trust has raised two primary objections concerning the project's erosion and sedimentation control plan (E&S plan). First, it takes issue with the timing of the submission of the E&S plan, which occurred after the approval of the General Permit-4 registration for the project. Second, the Trust challenges the substance of the E&S plan, asserting that it fails to adequately address erosion and sedimentation concerns at the site. We examine each of these objections below.

The Trust objects to the fact that the E&S plan was not submitted by the School District until December 2025, with revisions to the plan submitted in January 2026, nearly a year after coverage under the general permit was approved. In paragraph 12 of its amended November 2025 notice of appeal, the Trust asserts that the approval of coverage under the General Permit-4 should

not have occurred until the Conservation District had reviewed the E&S plan. The Department and Conservation District disagree and assert there is no requirement that an E&S plan must be submitted prior to coverage being approved. Both sides have moved for summary judgment on this issue.

The Department and Conservation District do not dispute that a detailed E&S plan was not submitted by the School District with its general permit registration application. However, they argue that there is no requirement that an E&S plan must be submitted with the application. They point to the terms of the General Permit-4, which state, "*Prior to construction* an Erosion and Sediment Control plan must be reviewed and determined adequate by the County Conservation District in which the activities are proposed and implemented prior to, during and after construction." (Department and Conservation Response to Trust Motion, Ex. P at para. 20) (emphasis added). This language is also reflected in the general permit registration instructions, which state:

> For all other General Permit registrations [other than GP-9s (agricultural activities), GP-11s (maintenance, testing, repair, rehabilitation, or replacement of water obstructions and encroachments), and oil and gas activities]: *The E&S Plan is not required for registration.* However, prior to construction, an E&S Plan for the work authorized by the general permit must be approved by a District or DEP.

(Department and Conservation District Motion, Ex. C at p. 7–8) (emphasis added). Thus, the Department and Conservation District argue that an E&S plan was not required with the original registration application but only prior to the beginning of construction.

The Trust has provided no support for its argument that the E&S plan was required to be submitted with the general permit registration application. As the Department and Conservation District have pointed out, the instructions for the General Permit-4 application and the terms of the

General Permit-4 simply require the plan to be submitted prior to construction. The Trust has provided us with no statutory or regulatory basis for finding that the plan was required to be submitted with the application itself. Moreover, even if the Trust were correct that an E&S plan should have been submitted with the initial application for the General Permit-4 registration, we fail to see the continuing relevance of this argument. As the Trust itself acknowledges, an E&S plan has now been submitted in connection with the project.

Thus, on the question of whether the Conservation District erred by approving the General Permit-4 registration prior to the submission of the E&S plan, we find in favor of the Department and Conservation District.

The Department and Conservation District have also moved for summary judgment on the Trust's objections pertaining to the substance of the E&S plan and whether it adequately addresses erosion and sedimentation concerns.[5] For the following reasons we find that summary judgment is not warranted on this issue. The procedural posture of this case is complex: This matter consists of three consolidated appeals, all of which have been amended. The Trust most recently amended its notices of appeal on February 23, 2026,[6] adding objections providing: "All E&S Plans submitted with regard to this Project, including the one submitted on January 9, 2026, are insufficient, inaccurate, and incomplete." (EHB Docket No. 2025-005-W, Docket Entry No. 67 at para.19; Docket Entry No. 68 at para.21; Docket Entry No. 69 at para.20.) These objections were included in the amended notices of appeal *after* the dispositive motion deadline, and, therefore, were not addressed by the parties in their motions or responses. Additionally, the Trust is seeking

[5] By letter dated January 9, 2026, the Conservation District determined that the E&S plan was "adequate to meet the requirements of PA Title 25, Chapter 102, Erosion Control." (Trust's February 9, 2026 Motion for Leave to Amend Appeals, Ex. D.)

[6] An Order Granting the Trust's February 9, 2026 Motion for Leave to Amend the Appeals was issued on February 18, 2026.

additional discovery from the School District regarding the January 2026 E&S plan pursuant to a Motion to Compel that was granted by the Board on April 3, 2026. For these reasons, we find that summary judgment on the issue of the Trust's substantive challenges to the E&S plan is inappropriate at this time. There are clearly facts in dispute.

In connection with the E&S plan, the Department and Conservation District also seek summary judgment on the Trust's objections concerning stormwater management and the question of whether the general permit registration violates stormwater management laws and regulations. The Department and Conservation District assert that because an acceptable E&S plan has been submitted and approved, the stormwater management objections are now moot. However, as noted in the section addressing the Millcreek Township stormwater management ordinance later in this opinion, there appear to be factual disputes concerning stormwater management. Accordingly, we do not believe that the Department and Conservation District have demonstrated they are entitled to summary judgment on those objections.

Modification of Project Design After Registration Approval

In its Motion for Summary Judgment, the Trust takes issue with the fact that a portion of the design for the outfall structure was not developed until after the General Permit-4 coverage was approved by the Conservation District. Coverage under the permit was approved in January 2025. In April 2025, the School District submitted a modified design to add an energy dissipator in the form of a riprap apron. By letter dated April 10, 2025, the Conservation District "acknowledge[d] receipt of modifications to the previously authorized General Permit" and stated that "the project file has been updated and the revisions supersede the previous design." It is the Trust's contention that a new registration application should have been required for the April 2025 submission of plan drawings for the addition of a riprap apron to the project.

In their Motion for Partial Summary Judgment, the Department and Conservation District argue that the Trust, who has the burden of proof in this appeal, has not made out a prima facie case that a new registration application was required for the submission of the modified plan drawings. They assert that the addition of the riprap apron is a modification with a relatively minor impact in terms of practical effects. The Department's expert, Karl Gross, opines that the scope and location of disturbance associated with the project is not changing and therefore does not significantly change the impact on the waterway. In response, the Trust argues that the impact of the design change on the waterway was not adequately evaluated.

All parties here agree that the energy dissipator was a necessary element of the design and was added *after* the approval of General Permit-4 coverage by the Conservation District. The Trust argues that the revised design should not have simply been an after-the-fact "update to the file" but should have triggered the necessity for a new application for General Permit-4 coverage.

The Department and Conservation District dispute the Trust's assertion that a new application was required for the modification to the design of the project. In support of their argument, they point to 25 Pa. Code § 105.447(d), which states that "an amended registration shall be filed if there is a change in ownership of the dam, water obstruction, or encroachment." No one has alleged that there has been any change in ownership of the outfall.

However, while we agree with the Department and Conservation District that Section 105.144(d) requires an amended registration when there is a change in ownership, we disagree with the Department and Conservation District's position that this is the *only* circumstance under which an amended application should be filed. It is logical to conclude that a change in the design of a project may trigger the need for a new or revised registration application, depending on the scope and size of the design change.

While the Department and Conservation District rely on Section 105.447(d), the Trust hangs its hat on 25 Pa. Code § 105.13a, which it says requires that any changes to a project must be made within 60 days of submission of the application. Since the design modification here was made in April 2025, more than 60 days after submission of the application, the Trust argues that it was untimely. However, the language of Section 105.13a actually states as follows: "When the Department determines that an application is incomplete or contains insufficient information, it will notify the applicant in writing. The applicant shall have 60 days from the date of the Department's letter to complete the application or the Department will consider the application to be withdrawn." *Id.* at § 105.13a(b). Here there was no notification to the School District that the application was incomplete and, therefore, no 60-day clock that started running. It is also unclear whether this section even applies to registrations for general permits.

Nevertheless, the Trust argues that the Conservation District erred by approving General Permit-4 coverage for the project without having a complete design. As support for its argument, the Trust directs our attention to *Clearfield County v. DEP*, 2021 EHB 144, in which the Board granted an appellant's motion for summary judgment based on a permittee's failure to include certain information in its application for a landfill permit, as required by the statute and regulations. In that case, the Department argued that the permitting errors did not matter because they could be addressed by the Board following a hearing on the merits.

The Board rejected the Department's argument, finding that "there are obviously limits to what can be remedied by the Board…there are instances where a crucial, required analysis is absent and the applicant and/or the Department must perform that analysis in the first instance." *Id*. at 171. While the Board found that "there is a spectrum of what can be cured before the Board," the Board's *de novo* review authority cannot overcome a situation "where foundational aspects of the

application analysis are completely absent or based on incorrect authority, and that analysis cannot be adequately replicated in a hearing before the Board." *Id*. at 173. In other words, "[t]he Board's *de novo* review should not be seen as a license to ignore statutory and regulatory requirements during the permitting process." *Id.*

Here, the Trust argues that we should remand this matter back to the Conservation District to conduct a full review of the redesigned project.

We disagree that *Clearfield County* is applicable to this matter. *Clearfield County* involved a challenge to an *individual permit* – a permit for the construction and operation of a landfill – a very different situation than the approval of coverage under a general permit. As we discussed extensively earlier, the approval process for each type of permit is very different. An applicant for coverage under a general permit is generally not required to submit extensive documentation in support of its application as is required for an individual permit. In *Clearfield County*, the permittee failed to include in its permit application information that was specifically required by the relevant statute and regulations. Here, the Trust's argument is not that the School District failed to submit a design of the project, as required by the General Permit-4 registration instructions (Department and Conservation District Motion, Ex. C.) but that the design was amended at a later date. For these reasons, we find that the Board's holding in *Clearfield County* has limited application to the circumstances of this appeal.

Moreover, even if we were to find the Board's holding in *Clearfield County* to be applicable, unlike the permit at issue in that case, here the School District has attempted to correct the deficiency relating to project design in the permit registration. Although the energy dissipator was not part of the design submitted with the registration application, all parties agree that it has

now been incorporated into the design. The School District provided modified design plans to the Conservation District in April 2025. Thus, this error in the registration process has been corrected.

A thorough review of the arguments put forth by the parties in their motions and the responses thereto leads us to the conclusion that neither side has demonstrated that they are entitled to summary judgment on the issues surrounding the modified project design. There are clearly facts in dispute. First, it is not clear to us what, if any, evaluation of the new project design was conducted by the Conservation District in its "acknowledgement" of the design change. Second, in their motions and responses, the Trust and the Department and Conservation District differ in their assessment of what impact, if any, the modified design will have on stormwater management. It is the Trust's contention that there is simply too little information provided by the School District to make that assessment. This appears to us to be a matter that would benefit from expert testimony. Accordingly, both the Trust's motion and the Department and Conservation District's motion are denied on this issue.

ARIT

One of the forms that must be submitted with an application for coverage under the General Permit-4 is the Aquatic Resources Impact Table (ARIT). An ARIT was included in the application package submitted by the School District to the Conservation District in January 2025. Among other things, the form requires information on watercourse impact, floodway impact and wetland impact. (Trust Motion, Ex. 2 at DEP 0000095.) In the ARIT submitted by the School District, the impact stated for all three categories – watercourse, floodway and wetland – is zero.

Department expert Karl Gross states in his expert report that "[t]he ARIT submitted with the registration *was not technically correct* as it indicated 0 as the dimension of the impact." (Trust Motion, Ex. 5 at p. 14, para. 3) (emphasis added). The impact that Mr. Gross appears to be

referring to is the floodway impact. While the Department and Conservation District acknowledge this statement in Mr. Gross' expert report, they point out that his next sentence goes on to state: "The actual permanent floodway impact is apparent from the plans provided, so the deficiency would be insignificant, and it would be at the discretion of the reviewer whether to require a correction by the applicant."

The Trust argues, however, that the Conservation District's and Department's failure to take floodway impact seriously is evidenced by the deposition testimony of the Department's Director of the Bureau of Waterways, Engineering and Wetlands, Domenic Rocco, who was deposed in the lawsuit involving the Trust and the School District in the Erie County Court of Common Pleas. When asked "what is the purpose of a [General Permit]-4," Mr. Rocco answered that it pertains to the outfall structure. He then stated, rather remarkably, that the pipe leading to the outfall "can be carrying anything," "[i]t can be carrying chocolate pudding." (Trust Motion, Ex. 4 at 88:18-20.) The Trust argues that, based on Mr. Rocco's testimony and Mr. Gross' expert report, it is clear that the ARIT form is incomplete and incorrect, and the Conservation District and Department did not take their role in reviewing this document seriously.

There are a number of questions surrounding the ARIT form. Based on the record before us, we cannot determine what, if any impact, the project will have on the floodway or, for that matter, any other area required to be considered by the ARIT. We believe this is an area on which we would benefit from hearing expert testimony.

PNDI

In their Motion for Partial Summary Judgment, the Department and Conservation District assert that the Trust has produced no evidence to support its objection that the Pennsylvania

Natural Diversity Index (PNDI) submitted by the School District is incomplete. As such, they contend that they are entitled to summary judgment on this issue pursuant to Pa. R.C.P. 1035.2(2). In response, the Trust points out that the PNDI must be certified by the person performing the evaluation in order to ensure that the information contained therein is "true, accurate and complete." It asserts that the PNDI submitted by the School District contains no signed certification.[7] (Trust Response, p. 11.)

In their reply, the Department and Conservation District assert that the PNDI certification was, in fact, signed. (Department and Conservation District Reply, Ex. J.) According to the affidavit of Thomas McClure, the District Manager of the Conservation District, the lack of a signature on the unsigned PNDI receipt was due to an inadvertent error that occurred when the Conservation District saved the signed PNDI receipt as a PDF document. (Affidavit of Thomas McClure at para. 5.) Mr. McClure affirms that the PNDI receipt reviewed by him and by Conservation District staff was, in fact, signed and certified. (*Id*. at para. 4.)

Because the Trust has come forward with no other evidence in support of its claim that the PNDI was incomplete, we grant summary judgment to the Department and Conservation District on this issue.

Millcreek Township's Stormwater Management Ordinance

[7]In addition to addressing this issue in its response to the Department and Conservation District's Motion for Partial Summary Judgment, the Trust also raises this issue in its reply to the Department and Conservation District's response to the Trust's Motion for Summary Judgment. In *Yoder v. DEP*, 2025 EHB 613, we held that a party may not raise an issue for the first time in its supporting memorandum where it was not raised in the motion. Here, the Trust did not raise the issue in its memorandum in support of its motion for summary judgment, but rather, in its reply to the Department and Conservation District's response to its motion. (Reply to Department and Conservation District's Response to Trust's Motion, p. 9-10.)]

The Trust asserts that the project is deficient because it is not in compliance with the Millcreek Township stormwater management ordinance requirement that municipal approvals be obtained for projects of this kind. The Trust relies on deposition testimony by Millcreek Township supervisor Dan Ouellet, which it says indicates that Mr. Ouellet did not comply with the certification requirement of the ordinance. (Trust Motion, Ex. 7 at 25:3-26:9.) In response, the Department and Conservation District point to documents in the record that indicate the Township did comply with certification requirements. These documents include letters from the Millcreek Township Engineer stating that both the original project and the redesigned project comply with the Township's stormwater management ordinance. (Trust Motion, Ex. 2 at DEP 000110-DEP 000111 and Ex. 10 at M-017071-M-017072.) Additionally, the School District points to the Trust's deposition of Gene Clemente, identified as Millcreek Township's permit reviewer, in which Mr. Clemente stated that he believed the project complied with the Township's stormwater management ordinance. (School District Response to Trust Motion, Ex. 1 at 111:7-14.) At a minimum, this creates a factual dispute as to the issue raised by the Trust regarding compliance with the Township's stormwater management ordinance.

For the reasons set forth herein, we find that the Trust has not established that it is entitled to summary judgment on this issue.

Section 507 of the Administrative Agency Law

As noted earlier in this Opinion, in April 2025, following the approval of coverage under the General Permit-4, the School District submitted modifications to its approved project design to the Conservation District. On April 10, 2025, the Conservation District issued a letter acknowledging receipt of the modifications. The Trust filed an appeal of the Conservation District's action with the Board on April 18, 2025 and also filed an appeal with the Department on

May 6, 2025 pursuant to Section 17(c) of the Dam Safety Act. Under Section 17(c), "any person aggrieved by an action of a county conservation district or other agency pursuant to a delegation agreement may appeal such action to the department within 30 days following notice of such action." 32 P.S. § 693.17(c). The Department conducted an informal hearing on the appeal on May 30, 2025 and issued its determination by letter on October 9, 2025, finding no basis to reverse or change the Conservation District's acknowledgment of the modification (the October 2025 letter). The Trust appealed the Department's determination to the Board on November 6, 2025 (the November 2025 appeal). The October 2025 letter simply provides a bit of background about the project and concludes with the following:

> Based on the Department's review of the information and positions provided on June 2, 2025, review of the information subsequently provided as follow-up, review of the modification submitted by Millcreek Township School District, and review of the District's acknowledgement of the modification, the Department finds no basis to reverse or change the District's acknowledgement of the modification.

(Notice of Appeal at EHB Docket No. 2025-118-W, Ex. A.)

In Objection 4(2) of its November 2025 appeal, the Trust argues that the Department's failure to provide "any reasons or support" for its October 2025 letter denied the Trust the "ability to understand the reasons for the Department's decision and to address the reasons for that decision in this appeal to the EHB, amounting to a lack of due process." (November 2025 appeal, p. 3; Amended Notice of Appeal, EHB Docket No.2025-005-W, Docket Entry 69 p. 4). Specifically, the Trust argues that the lack of detailed findings in the October 2025 letter constitutes a due process procedural defect pursuant to Section 507 of the Administrative Agency Law, which requires that "[a]ll adjudications of a Commonwealth agency shall be in writing, *shall contain*

findings and the reasons for the adjudication, and shall be served upon all parties or their counsel personally, or by mail." 2 Pa. C.S. 507 (emphasis added).

In their Motion for Partial Summary Judgment, the Department and Conservation District assert that Objection 4(2) fails as a matter of law. While they do not dispute the lack of detail in the October 2025 decision letter, they argue that Section 4(c) of the Environmental Hearing Board Act, 35 P.S. § 7514(c), authorizes the Department to take initial action without the formal findings and reasons required for an adjudication under Section 507 of the Administrative Agency Law.

Section 4(c) of the Environmental Hearing Board Act states as follows:

> The department may take an action initially without regard to 2 Pa.C.S. Ch. 5 Subch. A, but no action of the department adversely affecting a person shall be final as to that person until the person has had the opportunity to appeal the action to the board under subsection (g) [relating to procedure].

35 P.S. §7514(c).

The Department and Conservation District focus on the language saying that the Department may take action "without regard to 2 Pa.C.S. Ch. 5 Sub. Ch. A" -- which includes Section 507. They assert, "even assuming *arguendo* that the factual premise of Appellants' objection 4(2) of their November 2025 Notice of Appeal is true, their objection fails as a matter of law because the Department is not required to follow the Administrative Agency Law." (Brief in Support of Motion for Partial Summary Judgment at p. 15.)

In its brief in opposition to the Motion for Partial Summary Judgment, the Trust contends that the Department's October 2025 decision letter "underscores the correctness" of the Board's prior July 1, 2025 Opinion and Order in this matter which denied a Motion to Dismiss filed by the Department and Conservation District. (Appellants' Brief in Opposition to Motion for Partial Summary Judgment at p. 14.) The Department and Conservation District had sought to dismiss

the Trust's appeal of the Conservation District's approval of General Permit-4 coverage to the Board, arguing that the Board did not have jurisdiction over that action. *Angela Cres Trust of June 25, 1998 v. DEP*, 2025 EHB 567. In denying the Motion to Dismiss, the Board expressed concerns regarding "fundamental fairness" and the Trust's right to due process. *Id.* at 576-78.

However, while the July 1, 2025 Opinion and Order ensured the Trust's access to a forum, it is precisely that ability to be heard by the Board that ensures the Trust's right to due process and leads us to reject the Trust's assertion that the Department's failure to comply with Section 507 of the Administrative Agency Law constituted a violation of due process. The Trust, in its argument here, fails to consider the Department's statutory authority to take initial action without formal findings. We agree with the Department and Conservation District that the Trust's reliance on Section 507 of the Administrative Agency Law is misplaced in the context of an initial Department action. While Section 507 generally requires adjudications to contain findings and reasons, the Environmental Hearing Board Act provides a specific statutory exception for the Department's decisions.

Our Supreme Court has interpreted the plain language of Section 4(c) of the Environmental Hearing Board Act to mean that any action that has yet to be appealed to the Board is not final. In *Cole v. Department of Environmental Protection*, 329 A.3d 1228 (Pa. 2025), the Court rejected the notion that "finality is achieved before EHB review is sought or the option to do so expires." *Id*. at 1245. To hold otherwise, the Court reasoned, "would fly directly in the face of our General Assembly's manifestly contrary intention" set forth in Section 4(c) of the Environmental Hearing Board Act. *Id*. The Court stated as follows:

> The General Assembly's express reservation of finality in Section 7514 reflects the Pennsylvania legislature's own view of the nature of state proceedings. The General Assembly intended that, despite their organizational independence, the DEP and the EHB

> work *together* in sequence to ensure sufficient process and oversight to rule soundly upon a given environmental application.
>
> *****
>
> [W]here a state has provided a two-stage process for the issuance and final recognition of an environmental permit, those two stages combined are the administrative process, not merely one of them.

Id.

In *Solomon v. DEP*, 2000 EHB 227, the Board addressed a similar question, i.e., whether the Department was required to hold a hearing under Section 504 of the Administrative Agency Law before denying or issuing a permit. Similar to Section 507, that section states, "No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard." 2 Pa. C.S.A. § 504. Based on the clear language of Section 4(c) of the Environmental Hearing Board Act, the Board rejected the appellant's argument that Section 504 of the Administrative Agency Law applied to Department actions. *Solomon*, 2000 EHB at 240-41. Likewise, based on the explicit language of Section 4(c), we reject the Trust's argument that the Department was required to comply with Section 507 of the Administrative Agency Law when it issued its determination in this matter.

Furthermore, even if the October 2025 letter's lack of detail were viewed as a procedural due process defect, this error is rendered harmless by the Board's *de novo* review power. The Commonwealth Court and the Board have consistently held that the Board's *de novo* review is protective of an appellant's due process rights, as it allows for the development of a full and fair record anew. *See Warren Sand & Gravel v. Department of Environmental Resources*, 341 A. 2d 556 (Pa. Cmwlth. 1975) (finding that the Board's *de novo* review provides due process where it was lacking when the Department decision was rendered); *Pequa Township v. Herr*, 716 A.2d 678 (Pa. Cmwlth. 1998) (holding that the Board is not limited to the evidence received at the

Department's factfinding hearing); *United Refining Co. v. Department of Environmental Protection*, 163 A.3d 1125, 1135-36 (Pa. Cmwlth. 2017) ("It is important to remember that the Board is not tasked with the duty to review the Department's decision-making process. Rather, the Board reviews the Department's issuance of a permit *de novo*…"); *Whitehall Township v. DEP*, 2018 EHB 609, 658-59 (holding that even if there were a due process violation, the appeal to the Board and the Board's *de novo* review is fully protective of the Township's due process rights); *Smedley v. DEP*, 2001 EHB 131, 155-60 (citing *Warren Sand & Gravel*, *supra*, holding that the Board must decide the case anew and is not bound by prior determinations of the Department); *Solomon,* 2000 EHB at 239-40 (holding that the appellants were not denied due process by the Department's action because they had a full and fair opportunity to raise their claims in their appeal before the Board).

In sum, we conclude that, pursuant to Section 4(c) of the Environmental Hearing Board Act, the Department may take an action without formal findings required by Section 507 of the Administrative Agency Law, as such action does not attain finality until the opportunity for appeal is provided. Moreover, even if the Department's October 2025 informal letter were found to be procedurally defective, the Board's *de novo* review serves as a "safety net" that cures such claims. Accordingly, the Department's Motion for Partial Summary Judgment is granted with respect to Objection 4(2) of Appellants' November 2025 Notice of Appeal.

In conclusion, we enter the following order:

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	:	

O R D E R

AND NOW, this 16th day of April, 2026, it is hereby ordered as follows:

1) The School District's Motion to Strike the Trust's Reply and Amended Statement of Undisputed Material Facts is **denied**.

2) The Trust's Motion for Summary Judgment is **denied**.

3) The Department's and Conservation District's Motion for Partial Summary Judgment is **granted in part and denied in part**. The Department and Conservation District are granted summary judgment on the following issues: a) failure to conduct a review pursuant to 25 Pa. Code §§ 105.14 and 105.21; 2) failure to submit an E&S plan with the registration application; 3) failure to submit a complete PNDI; and 4) failure to comply with Section 507 of the Administrative Agency Law. Summary judgment is denied as to all remaining issues.

ENVIRONMENTAL HEARING BOARD

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

s/ Bernard A. Labuskes, Jr
BERNARD A. LABUSKES, JR.
Judge

s/ Sarah L. Clark
SARAH L. CLARK
Judge

s/ MaryAnne Wesdock
MARYANNE WESDOCK
Judge

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

DATED: April 16, 2026

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

For the Commonwealth of PA, DEP:
David R. Hull, Esquire
Dearald W. Shuffstall, Esquire
Jennifer N. McDonough, Esquire
(via electronic filing system)

For Appellants:
Philip L. Hinerman, Esquire
Sharon Oras Morgan, Esquire
Jana Volante Walshak, Esquire
(via electronic filing system)

For Conservation District:
David R. Hull, Esquire
Dearald W. Shuffstall, Esquire
Jennifer N. McDonough, Esquire
(via electronic filing system)

For Millcreek Township School District:
Michael J. Musone, Esquire
Vegas Kastberg, Esquire
(via electronic filing system)