COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

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| **ANDREW CHURCH** | : | |
| | : | |
| **v.** | : | **EHB Docket No. 2026-038-BP** |
| | : | |
| **COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION and ERIE AGGREGATES, INC., Permittee** | : | **Issued: November 9, 2026** |

**OPINION AND ORDER ON**
**PERMITTEE ERIE AGGREGATES, INC.'S MOTION TO LIMIT ISSUES OR ALTERNATIVELY MOTION FOR A PROTECTIVE ORDER**

**By Paul J. Bruder, Jr., Judge**

**Synopsis**

The Environmental Hearing Board ("Board") denies Permittee Erie Aggregates, Inc.'s ("Permittee" or "Erie Aggregate") Motion to Limit Issues, or alternatively, Motion for a Protective Order. The Board finds that Permittee's Motion seeks a *de facto* judgment on the pleadings, which the Board generally does not entertain.

**O P I N I O N**

**Procedural Background**

On May 4, 2026, Appellant Andrew Church, *pro se*, filed a Notice of Appeal challenging the Department of Environmental Protection's ("Department") April 10, 2026 approval of GP-104 general permit renewal for Erie Aggregates' Noncoal Surface Mining Permit No. 25020305, located at 7535 Middleton Road, Waterford, PA 16441. Mr. Church also challenged the Department's alleged failure to adequately investigate his environmental complaints, assess civil penalties, and enforce environmental acts. (Church NOA, at ¶¶ 2, 4). Mr. Church filed an

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Amended Notice of Appeal on May 19, 2026 that contained 133 paragraphs of allegations, including: a historical factual background of the case; claims against the Department for issuing a permit and failing to investigate his Clean Streams Law and Solid Waste Management Act complaints; alleged retaliation claims against Mr. Church by Permittee; and accusations of a forged lease agreement that the Department relied upon in issuing the Permit. (Church Amended NOA, at ¶¶ 1-133).

On September 11, 2026, Erie Aggregates filed a Motion to Limit Issues, or alternatively, a Protective Order specifically requesting the Board to:

1. Limit the issues in this appeal to those objections properly within the Board's jurisdiction, and exclude and strike paragraphs: 8-12 (regarding the former property owner's historical dispute with Erie Aggregates); 31-32 (regarding zoning classification); 43 (regarding withdrawn EHB docket No. 2025-112); 106-112 (regarding retaliation); 113-133 (regarding criminal investigation/lease validity fraud).
2. Or, alternatively, a protective order under Pa.R.C.P. No. 4012 limiting the scope of discovery to matters relevant to the Department's appealed permitting decisions and relieving Permittee of any obligation to respond to discovery on the excluded categories.

(Permittee's Motion to Limit Issues, at Wherefore Clause and Proposed Order).

On September 14, 2026, the Board issued an Order for Responses.[1] Notably, the Department did not file any supporting or responsive brief to Permittee's Motion. On October 13, 2026, Mr. Church filed his Response in Opposition. Permittee did not file a Reply Brief.

[1] The Order allowed for any party supporting the motion to file a memorandum of law by September 28, 2026; any party opposing the motion to file a response by October 13, 2026; and any reply briefs to be filed by October 28, 2026. (Docket #24).

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**Discussion**

Upon review of Permittee's motion, Erie Aggregates has failed to include any standard of review section, citations to Board case law, or any analogous case law examples on the matter before us. Thus, looking at the relief sought, the Board deduces that what Erie Aggregates is seeking is a *de facto* motion for judgment on the pleadings. Erie Aggregates stated it was filing its motion as a dispositive motion under 25 Pa. Code § 1021.94, or alternatively, as a motion for protective order under 25 Pa. Code § 1021.102(a). (Permittee's Motion to Limit Issues, at ¶ 1). However, these two motions are not interchangeable.

A motion to limit issues generally seeks to exclude a particular issue's consideration because of a procedural or evidentiary defect in its assertion. *Perkasie Borough Authority v. DEP*, 2002 EHB 764, 769 (citing *Smedley v. DEP*, 1998 EHB 1281, *Tinicum Twp. v. DEP*, 1996 EHB 816; *Koretsky v. DER*, 1994 EHB 905). The Board treats a motion to limit issues the same way it treats a motion to dismiss. *Smedley*, 1998 EHB at 1282; *Tinicum*, 1996 EHB at 816.[2] Whereas a motion for protective order, by contrast, is a discovery motion governed by a distinct set of Board rules and is subject to a separate standard of review. Indeed, any discovery motion would require the attachment of the contested written discovery at issue with specific objections. 25 Pa. Code § 1021.93. It also requires a certificate of good faith. *Id.* Permittee did not attach any of this material in its motion. As such, the Board was not provided with the opportunity to review this essential information.

[2] The Board evaluates a motion to dismiss in the light most favorable to the nonmoving party, which in practical terms means the Board must accept the nonmoving party's version of events as true. *Downingtown Area Regional Auth. v. DEP*, 2022 EHB 153, 155. Indeed, the Board must only grant a motion to dismiss when there are no material factual disputes and the moving party is clearly entitled to judgment as a matter of law. *Telford Borough Auth. v. DEP*, 2009 EHB 333, 335; *Blue Marsh Labs., Inc. v. DEP*, 2008 EHB 306, 307; *Butler v. DEP*, 2008 EHB 118, 119; *Borough of Chambersburg v. DEP*, 1999 EHB 921, 925.

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In its Motion to Limit Issues, Erie Aggregates argues that Mr. Church's Notice of Appeal contains 133 numbered paragraphs, many of which involve matters that do not fall under the Board's jurisdiction or current appeal, including: historical disputes between the former property owner and Permittee; allegations of retaliatory conduct; alleged criminal conduct; zoning issues before the Court of Common Pleas; and allegations from a withdrawn EHB appeal. (Permittee's Motion to Limit Issues, ¶¶ 3-4). Erie Aggregates also contends that Appellant has served it written discovery requests seeking documents and testimony concerning these matters outside the Board's jurisdiction and it should not be forced to respond to such requests. (*Id.* ¶ 5).

We find the current dispute to be analogous to the issue present in the Board's recent decision of *A.W. Long Coal Company, Inc. v. DEP*, 2025-137-L, slip. op. June 8, 2026. In *Long Coal*, the Department sought to file a motion to limit issues, or alternatively, a motion for summary judgment arguing that many of the allegations contained in Long Coal's amended notice of appeal were irrelevant, unrelated to the appealed action, or barred by administrative finality. *Id.* at pg. 2. However, the Board reminded the parties that our notices of appeal are not pleadings, and we do not generally entertain motions that seek judgment on the pleadings. *Id.* at 3. We interpret notices of appeal liberally and construe them broadly. *Protect PT v. DEP*, 2025 EHB 595, 600; *Rhodes v. DEP*, 2009 EHB 325, 327. As Judge Labuskes stated:

> It is true that the majority of the averments in the amended notice of appeal do not appear to be specific objections to the order. Instead, in Long Coal's words they provide "context and motives." (citation omitted). They constitute a detailed recitation of facts describing how Long Coal believes it has been treated unfairly over the last few years. It is not clear how those averments could support this Board ultimately ordering that Long Coal is not required to reclaim the site now that the permit for the site has expired, but neither is it required that a notice of appeal provide such clarity. It may be that Long Coal can explain as the appeal moves forward how its allegedly unfair treatment in the past justifies relief regarding the order that would leave an unpermitted, unreclaimed site in place. Perhaps, for example, the specific terms of the order can be shown to be unreasonable in light of past dealings, but we are only speculating. It is not for us at this early juncture

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> and in this context to suss out the relevancy of all 90 paragraphs in the amended notice of appeal.

*Id*. at 3-4.

As in the matter of *Long Coal*, we understand Permittee's position that many of the contentions contained within the Amended Notice of Appeal may not be relevant to the merits of the case. However, it is premature to set defined limits on the scope of discovery based solely on the averments in an amended notice of appeal. Permittee is free to object to written discovery or the issuance of a subpoena it deems irrelevant and force Appellant to file a discovery motion envisioned by our rules. Permittee is also free to file a dispositive motion or motion *in limine* to dispose of issues at a merits hearing at the proper time and in accordance with Board regulations. However, we find the motion before us is not the appropriate vehicle to dispose of these matters.

Accordingly, we issue the following order.

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**O R D E R**

AND NOW, this 9th day of November, 2026, it is hereby ordered that the Permittee's Motion to Limit Issues, or, in the alternative, Motion for Protective Order, is **denied without prejudice**.

**ENVIRONMENTAL HEARING BOARD**

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

**DATED: November 9, 2026**

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

**c:** **For the Commonwealth of PA, DEP**
Forrest Smith, Esq.
Jeffrey Bailey, Esq.
*(via electronic filing system)*

**For Appellant:**
Andrew Church, *pro se*
*(via electronic filing system)*

**For Permittee:**
Julia Gromacki, Esq.
*(via electronic filing system)*