



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



A.W. LONG COAL COMPANY, INC.	:	
	:	
v.	:	EHB Docket No. 2025-137-L
	:	(Consolidated with 2026-021-L)
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL	:	Issued: September 30, 2026
PROTECTION	:	

**OPINION AND ORDER ON
MOTION FOR ISSUANCE OF SUBPOENA**

By Bernard A. Labuskes, Jr., Board Member and Judge

Synopsis

The Board denies a motion for issuance of a subpoena to the Pennsylvania State Police seeking the deposition of a state trooper and the production of a police report where the appellant has failed to adequately explain how that material is relevant to the orders that are the subject of this appeal.

OPINION

In this consolidated appeal, A.W. Long Coal Company, Inc. (“Long Coal”) has appealed a December 1, 2025 administrative order issued by the Department of Environmental Protection (the “Department”) requiring Long Coal to cease all surface mining activities at its Long #1 Operation in Morris Township, Clearfield County and to commence reclamation or submit an application for a surface mining permit. Long Coal has also appealed a subsequent compliance order issued on February 3, 2026 alleging that Long Coal failed to comply with the December 1, 2025 order and again requiring Long Coal to commence reclamation at the Long #1 Operation. We consolidated the two appeals on July 17, 2026. The requirement to begin reclamation or submit a permit application arises from the Department’s June 2025 denial of Long Coal’s surface mining permit

renewal application for the Long #1 Operation. Long Coal did not file an appeal from the permit renewal denial.

Long Coal seeks to serve a subpoena on the Pennsylvania State Police. The subpoena asks that a state trooper appear at the law offices of Miller Kistler & Campbell in State College to testify and to bring with him a May 2025 police report that apparently concerns alleged animosity between a Department inspector and/or his supervisors and Long Coal and/or its president and owner.¹ In its motion for issuance of the subpoena, Long Coal says it is entitled to the police report because it shows that the Department inspector was biased against Long Coal or had a conflict of interest that should have precluded him from being involved in matters concerning Long Coal. The Department objects based on relevance.

When assessing objections to a subpoena and the appropriateness of a given subpoena more generally, we must ground that analysis in the proper scope of discovery for the appeal. Much like subpoenas, discovery before the Board is governed by the Pennsylvania Rules of Civil Procedure. 25 Pa. Code § 1021.102(a). Discovery may be obtained regarding any matter, not privileged, that is relevant to the subject matter involved in the appeal. Pa.R.Civ.P. 4003.1(a). The information sought does not need to be ultimately admissible at a hearing, as long as the information appears reasonably calculated to lead to the discovery of admissible evidence. Pa.R.Civ.P. 4003.1(b).

¹ The Department initially brought Long Coal's subpoena to our attention by filing objections to the proposed subpoena and requesting that the Board sustain its objections. Although the Department did not title its filing as a "motion," we interpreted its request and proposed order seeking to sustain its objections as a motion. We issued an Order sustaining the objections after not receiving a response from Long Coal after 20 days. The day after we issued our Order, Long Coal filed a motion for reconsideration arguing that the proper procedures for addressing objections to a subpoena were not followed. Long Coal also filed its motion to overrule the Department's objections to the proposed subpoena and allow the subpoena to be issued. We issued an Order granting reconsideration over the Department's objection and requiring the Department to file a response to Long Coal's motion so that we could address the merits of the subpoena. The Department filed its response on September 8. Although there are various procedural requirements for subpoenas that are frankly somewhat unclear, the fundamental question that has been put at issue is whether Long Coal's subpoena is an appropriate use of discovery in this appeal.

Relevance is the threshold question for determining the scope of discovery. *PQ Corp. v. DEP*, 2017 EHB 707, 708. The Board is charged with overseeing the discovery process during litigation and we have broad discretion to ensure that discovery is being conducted appropriately by limiting or allowing discovery as needed. *Yoder v. DEP*, EHB Docket No. 2024-097-BP, slip op. at 5 (Opinion and Order on Motion to Compel issued May 29, 2026); *Northampton Twp. v. DEP*, 2009 EHB 202, 205.

The police report is not the proper subject of discovery because the information is only sought to support a claim that a Department inspector and/or his supervisors are biased against Long Coal or its president. It is not sought to show there is some other defect in the orders, such as improper or untimely reclamation, or the Department got the wrong operator or mine site, for example. We can assume for our current purposes that the Department personnel bear such ill will. It does not matter. It does not follow, certainly in any way that has been explained to us, that the Department erred in issuing the orders under appeal or that the orders should be vacated in their entirety as requested by Long Coal. The alleged bias does not appear to be relevant to either the merits of the orders or fashioning any the relief we could offer. Therefore, the police report, sought for no other purpose, is irrelevant.

As Long Coal correctly states, the orders at issue in this appeal are predicated on the Department's previous denial of Long Coal's permit renewal application. However, Long Coal did not appeal that permit renewal denial. As we previously explained,

Our role in this appeal is to determine whether the Department's *issuance of the order[s]* was lawful and reasonable. See *Carey v. DEP*, 2019 EHB 722, 729; *Corsnitz v. DEP*, 2018 EHB 174, 187. This appeal does not afford an opportunity to look back and determine whether the now administratively final permit renewal denial was lawful and reasonable. *New Hope Crushed Stone & Lime Co. v. DEP*, 2017 EHB 1005, 1019-20; *Winegardner v. DEP*, 2002 EHB 790, 793. In this appeal we essentially take the permit denial as a given and assess whether, now that the permit has expired, the order under appeal is lawful and reasonable.

A.W. Long Coal Co. v. DEP, EHB Docket No. 2025-137-L, slip op. at 2 (footnote omitted) (Opinion and Order on Motion for Partial Dismissal issued June 8, 2026). The merits of the permit denial are outside the scope of this appeal. Even if the denial was issued in error, it cannot be remedied in this case. We cannot go back in time and outside the confines of this appeal and vacate the permit denial or order the Department to issue a permit to Long Coal. The denial is administratively final and is now beyond challenge due to Long Coal's choice not to appeal it. *Winegardner*, 2002 EHB at 793 (the Board's role is circumscribed by the action under appeal; we cannot use an appeal of one Departmental action as a vehicle for reviewing the propriety of prior Departmental actions). Long Coal appears to acknowledge this reality because it has not asked us to reverse the permit denial, and we are informed that it is reclaiming the site.

Given that the validity of the permit denial is beyond dispute as a matter of law, the question presented in this case is whether the orders were lawful and reasonable in light of that denial. Long Coal has failed to explain how the inspector's bias could possibly factor into that determination. The relevancy of such bias is not apparent. *See Cabot Oil & Gas Corp. v. DEP*, 2016 EHB 20 (granting a protective order and quashing a subpoena on a non-party to the extent it sought to inquire into the personal animosity between the appellant and the non-party because it was not relevant to whether or not the Department's order could be upheld); *id.* at 28 ("neither party explains how their mutual disdain relates to the basic issue in this case" of whether the criteria for repair or replacement of a water supply were met).

Long Coal has asked for nothing less than the orders to be vacated in their entirety. In other words, Long Coal should be allowed to essentially abandon its mine in an unreclaimed condition because an inspector was biased against it. That is a *non sequitur*, and it is entirely inconsistent with the laws regarding surface mining that Long Coal agreed to comply with when

it obtained its permit. *See* 52 P.S. § 1396.4(a) (permit required to surface mine coal); 25 Pa. Code § 86.11(a) (no person may operate a surface mine without a permit); 25 Pa. Code § 87.141 (disturbed areas shall be returned to approximate original contour through backfilling and grading); 25 Pa. Code § 87.158 (permanently ceased surface mining operations shall be backfilled, closed, or permanently reclaimed); 52 P.S. § 1396.18f (it is unlawful to fail to comply with any rule, regulation, or order of the Department). If the mining pit must be reclaimed regardless of any bias, then the bias is irrelevant. To repeat, Long Coal has not challenged any particular aspect of the orders; it seeks to have the orders vacated in their entirety. The remedy for any improper bias or conflict of interest of Department personnel is not excusing Long Coal from complying with its reclamation duties.

Long Coal says the subpoena could support a finding of bias which could in turn affect the credibility of Department witnesses called to defend the issuance of the orders. Long Coal does not point to any issue where that credibility might come into play. It does not point to any fact in dispute regarding Long Coal's duty to reclaim its site as embodied in the orders.

Although we previously advised Long Coal in this appeal that it would need to explain how its allegations of bias could change our evaluation of the merits of *the orders* or the relief available in this case, *see A.W. Long Coal Co., supra*, slip op. at 3-4, it has once again failed to do so. In light of that failure, the subpoena of a police officer is not the appropriate subject of discovery and Long Coal's motion for issuance of the subpoena must be denied.

Accordingly, we issue the Order that follows.



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ORDER

AND NOW, this 30th day of September, 2026, it is hereby ordered that the Appellant's motion for issuance of subpoena is **denied**.

ENVIRONMENTAL HEARING BOARD

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

DATED: September 30, 2026

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