



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: October 8, 2026

**OPINION AND ORDER ON
PERMITTEE'S MOTION FOR STAY**

By MaryAnne Wesdock, Judge

Synopsis

The Permittee's Motion for Stay is granted where a ruling in a related action may render the subject matter of this appeal moot and where the Appellant does not object to a limited stay of proceedings.

OPINION

Introduction

This matter involves three consolidated appeals filed with the Environmental Hearing Board (Board) by Angela Cres Trust of June 25, 1998 by and through its trustee Laurel A. Hirt and by Laurel A. Hirt, individually (collectively, the Trust). The appeals challenge the grant of Chapter 105 Bureau of Waterways Engineering and Wetlands General Permit-4 (GP-4) coverage to Millcreek Township School District (School District) by the Erie County Conservation District

(Conservation District), as delegated by the Department of Environmental Protection (Department), in connection with a storm sewer project aimed at managing stormwater. The matter now pending before the Environmental Hearing Board (Board) is a Motion for Stay filed by the School District. The motion is consented to by the Department and objected to, in part, by the Trust.

Background

Concurrent with this appeal is a related action in the Erie County Court of Common Pleas (the Erie County litigation) that has been ongoing since 2013. That action centers around a stormwater pipe owned by the School District that is located on the Trust's property. It is the Trust's contention that the stormwater pipe was unlawfully installed on its property and has been used to unlawfully discharge stormwater onto the Trust's land. The action filed by the Trust sought to remove the stormwater pipe and also sought damages against the School District for what the Trust claims is an illegal trespass onto its property.

According to the School District's Motion for Stay, in 2024, in an effort to resolve the Erie County litigation, the School District applied for registration under the GP-4 for the purpose of moving the stormwater pipe from the Trust property to an adjacent property (the project). According to the School District, the intention of this project was to resolve claims asserted in the Erie County litigation by moving the stormwater discharge off the Trust property and onto a downstream neighboring property. The Conservation District, through a delegation agreement with the Department, granted the School District registration under the GP-4 in January 2025. This appeal ensued.¹

¹ Two related appeals by the Trust have been consolidated into this appeal.

In August of this year, the Erie County litigation went to trial. On August 17, 2026, the jury entered a verdict in favor of the School District on the Trust's claim of trespass. On the following day, August 18, 2026, the court issued a decision denying the Trust's quiet title and ejectment claims. Following the jury verdict and the court's decision, the Trust filed a post-trial motion, and the court set a briefing schedule.²

On September 22, 2026, the School District filed a motion to stay the proceedings before the Board, stating as follows: "With all claims resolved in the [School] District['s] favor[] in the Erie County 2013 Litigation, the [School] District has a legally recognized right to maintain its stormwater pipe on the Trust property and does not need, or intend to use, the permit underlying this appeal because it will not pursue the Project." (Motion, para. 10.) It states that it is simply waiting for resolution of the Trust's post-trial motion and a final appealable order from the Erie County Common Pleas Court before moving forward to rescind or withdraw the GP-4 registration that is the basis for this appeal. The School District contends that, if the court denies the Trust's post-trial motion, it "would obviate the need for the permit underlying this appeal which, in turn, would render this appeal moot." (Motion, para. 14.) Should that occur, the School District states that it anticipates filing a Motion to Dismiss this appeal on the basis of mootness. As such, the School District seeks a stay of this appeal until the related pending litigation in the Erie County Court of Common Pleas concludes following the resolution of the Trust's post-trial motion.

On October 5, 2026, the Trust filed an Opposition to the Motion to Stay. While the Trust does not oppose a limited stay pending resolution of its post-trial motion in the Erie County

² According to the Trust, a decision on the post-trial motion will be issued no later than December 22, 2026. However, after combing through the parties' filings, we found no documentation in support of that statement and, therefore, it is unclear to us when a ruling may be issued.

litigation, it opposes an indefinite stay, including a stay through any appeal of the Erie County litigation.

Discussion

All parties appear to agree that this appeal should be stayed at least pending resolution of the post-trial motion filed by the Trust in the Erie County litigation. Discovery has been completed and dispositive motions have been filed and ruled upon. The next step in this appeal would be to schedule a hearing. Based on the School District's statement that it intends to withdraw the GP-4 registration forming the basis for this appeal should the post-trial motion be resolved in its favor, it makes little sense at this stage of the proceeding to schedule a hearing on a matter that may well be moot.

The Trust, however, objects to any stay lasting beyond the court's ruling on its post-trial motion. The Trust states that if the ruling by the Erie County Court of Common Pleas is not in its favor, it intends to appeal that ruling, which, it points out could take years to resolve. It does not believe that this case should be held in abeyance indefinitely. It points out that the parties have engaged in extensive discovery and preparation of motions and delaying a hearing for years could result in the case being litigated when it is no longer fresh in everyone's mind and runs the risk of witnesses no longer being available. The Trust raises a further concern that, despite the School District's assurance that it does not intend to follow through on the GP-4 registration or the project which it covers, there is nothing to prevent the School District from pursuing this project again in the future should the Trust win its case on appeal. The Trust argues this would then force the parties to relitigate issues that have been substantially litigated in this appeal. It therefore asks that the Board limit any stay in this matter to the date of the Erie County Common Pleas Court's ruling on the Trust's post-trial motion.

While we understand the Trust's concerns, first of all it is not clear to us that the School District is seeking a stay beyond the court's ruling on the post-trial motion. In its motion the School District states the "the Board should stay proceedings in this consolidated appeal *until the Court issues a final appealable order in [the] Erie County 2013 Litigation following resolution of [the Trust's] post-trial motion.*" (Motion, para. 16) (emphasis added.) Moreover, the proposed order accompanying the motion states, "...it is ordered that the above-captioned proceedings are stayed until the related pending litigation in the Erie County Court of Common Pleas at Docket No. 11510-2013 concludes *following the resolution of Appellants' post-trial motion.*" (Motion, Proposed Order) (emphasis added.)

As to the Trust's argument that there is nothing to prevent the School District from pursuing the project again in the future should the appeal of the Erie County Common Pleas' decision not be in its favor, that argument may be addressed if and when the School District elects to file a Motion to Dismiss the appeal as moot. At this time, the only matter before the Board is whether to grant the School District's request for a stay. Since all parties are in agreement that this matter can or should be stayed until there is a ruling on the post-trial motion, we shall enter an Order to that effect.



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ORDER

AND NOW, this 8th day of October, 2026, it is hereby ordered as follows:

- 1) The Motion for Stay is **granted**.
- 2) This matter is stayed until **January 20, 2027**.
- 3) The Board will schedule a conference call with the parties prior to January 20, 2027 to address the status of this matter.

ENVIRONMENTAL HEARING BOARD

s/ MaryAnne Wesdock

MARYANNE WESDOCK
Judge

DATED: October 8, 2026

c: DEP, General Law Division:

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