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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NEW HOPE CRUSHED STONE & LIME COMPANY	:	
v.	:	**EHB Docket No. 2016-028-L**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, SOLEBURY SCHOOL and SOLEBURY TOWNSHIP, Intervenors	:	**Issued: September 12, 2016**

OPINION AND ORDER ON
MOTION FOR PROTECTIVE ORDER

By Bernard A. Labuskes, Jr., Judge

Synopsis

The Board grants in part and denies in part an intervenor's motion for a protective order. A protective order is granted where discovery sought by a permittee is not relevant to the action under appeal, not proportional, and where the discovery pertains to issues that are foreclosed by administrative finality due to final orders of the Department, and/or pertains to issues that were previously litigated by the permittee, decided by a Board Adjudication, and are now barred by the doctrine of collateral estoppel. The Board denies the motion insofar as the permittee's discovery seeks relevant communications occurring after the date of the action under appeal.

O P I N I O N

New Hope Crushed Stone & Lime Company ("New Hope") has appealed the Department of Environmental Protection's (the "Department's") January 29, 2016 letter disapproving and modifying New Hope's reclamation plan for the limestone quarry it operates in Solebury Township, Bucks County. Mining at the quarry property has taken place since at least 1829. The Department issued New Hope its first mining permit in 1976. This Board's first

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involvement was in 2002 when Solebury Township challenged the Department's decision to renew New Hope's NPDES permit. We issued an Adjudication in that case holding that the Department failed to adequately consider the impact to the area's hydrologic balance caused by the quarry's continued operation. *Solebury Twp. v. DEP*, 2004 EHB 95. There have been a number of appeals involving the quarry since then. (*See* EHB Docket Nos. 2005-183-MG, 2006-116-MG, 2011-135-L, 2011-136-L, 2015-164-L, and 2015-187-L.) The appeal docketed at EHB Docket No. 2011-136-L culminated in the Board's issuance of an Adjudication on July 31, 2014 rescinding a depth correction the Department had issued to New Hope, which would have allowed it to mine 50 feet deeper to a level of 170 feet below mean sea level (-170 MSL). *Solebury School v. DEP*, 2014 EHB 482. The Adjudication followed a hearing lasting ten days during which numerous fact and expert witnesses testified and hundreds of exhibits were admitted into evidence. That appeal was initiated by Solebury School, a private school whose campus is located immediately adjacent to the New Hope quarry. Solebury School complained that New Hope's quarrying, and the associated need to pump water out of the quarry to keep it dry to facilitate mining, had depressed the water table beneath the School by approximately 100 feet, which led to the propagation of at least 29 collapse sinkholes between 1989 and the time of the hearing in the fall of 2013. Some of the sinkholes were as large as a quarter of an acre in size, while others were small but no less dangerous.

Although New Hope and the Department raised several defenses in support of the Department's issuance of the depth correction, there actually was no dispute "that New Hope's continued mining is at the very least contributing to an intolerable and dangerous sinkhole problem at the School." *Solebury School*, 2014 EHB 482, 521. Instead, New Hope and the Department argued that the quarry should be allowed to go deeper because doing so would not

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"increase the frequency and severity of sinkhole formation." In other words, it would perpetuate a bad situation but not make it worse. They also argued that the School's campus development was contributing to sinkhole formation, even though the School has been in place since the 1920s and sinkholes did not begin to form on the campus until 1989. They further defended the Department's action by arguing that New Hope was required by the permit modification to fix the sinkholes as new ones formed and closely monitor groundwater levels moving forward.

In our Adjudication we agreed with the School and sustained its appeal. We found that the continuing occurrence of sinkholes presented an unreasonable threat to the health, safety, and welfare of the children and faculty that lived on and used the campus. 2014 EHB at 495, 543. In our 67-page Adjudication and Order, we first noted the undisputed point[1] that the quarry was causing the sinkholes:

> The School presented a compelling case that it is suffering from an alarming collapse sinkhole problem on its campus. To their credit, neither the Department nor New Hope disputed this point, nor could they. The School has now been the site of 29 sinkholes, and that does not include the 12 known sinkholes that have formed on nearby properties. The sinkholes appear suddenly and without warning. At least one person has already fallen into one. Some holes are small, but others have been as large as a quarter of an acre. One hole was narrow and deep enough to potentially cause entrapment. It would seem that it is only a matter of time before someone gets hurt.
>
> Aside from the danger to adults and children, the School is being deprived of the quiet use and enjoyment of its property. The School must operate under the constant threat that at some unknown time and location, the ground will collapse underfoot. There is no dispute that this will occur again and again so long as New Hope keeps mining. The School has lost grant money, foregone construction projects, and cancelled—sometimes permanently—school activities.
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> ….
>
> Despite a hearing on the merits lasting ten days, there was a remarkable lack of disagreement among the credible experts regarding many of the key facts in this case. As previously mentioned, there was no disagreement that the School is enduring a severe sinkhole problem, and that the problem presents a significant risk to the health, safety, and welfare of the children and adults who live, work, and go to school on its campus. Perhaps somewhat surprisingly, none of the

[1] One Department witness opined that the matter required further study. We did not credit his testimony.

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> credible experts disagree that New Hope's mining is at least a contributing factor that is causing the hazard.

2014 EHB at 522, 529 (citation omitted).

We then went on to reject on both legal and scientific grounds the Department's standard that mining should be allowed to go deeper so long as the "frequency and severity of sinkholes" did not increase:

> The Department was fully aware of the School's precarious situation. Indeed, the Department's lead permit reviewer was taken aback when he first learned of the School's sinkhole problem. Yet, for reasons we find difficult to understand, the Department decided that New Hope's ability to continue mining must take precedence. Toward that end, the Department fashioned and applied an unlawful and unreasonable standard for reviewing the depth correction application. The Department decided that the depth correction would be approved unless the School proved to the Department's satisfaction that the additional 50 feet of mining authorized by the depth correction, and only that narrow band of mining, would "increase the frequency and severity" of collapse sinkhole formation on the School's campus. Every aspect of this standard of permit application review is wrong.

2014 EHB at 523 (citation omitted). We described how the Department's standard was inconsistent with applicable statutes and regulations, that it improperly placed the burden of proof on the School, that there was no scientific basis for evaluating the effect of only one small band of mining in a deep pit, that the question was ill-defined at best, and indeed, in all likelihood impossible to meet, and that it was unacceptable to hold that "the odds of someone getting hurt must increase before the Department does something about it."

Next, we evaluated the wealth of expert testimony in the case and concluded as follows:

> The evidence is overwhelming that New Hope's mining is the predominant cause of the sinkhole problem at Solebury School. The quarry pumps an average of between two and three million gallons of water per day out of its pits. Before New Hope's dewatering, the groundwater table underneath the School was about ten feet below the surface. It is now about 100 feet below the surface as a result of the quarry dewatering. The quarry is essentially draining all of the in-basin groundwater from the basin, and it is now pulling groundwater originating from outside of the basin as well. Since the basin itself has nothing left to give, future

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> effects will be muted, but groundwater levels will continue to go down. No expert testified that groundwater levels will return to natural levels so long as dewatering continues. No expert testified that groundwater levels will go up, or that sinkholes will stop forming.
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> The drop in groundwater caused by the quarry is what is in turn causing the sinkholes. The absence of water causes an immediate destabilizing effect as a result of a loss of cohesion, but the bigger problem is that the quarry opening, including the opening of high conductivity groundwater pathways, coupled with lower groundwater in general and a more extreme hydraulic gradient, induces regolith that formerly filled voids in the soluble karstic rocks to wash away. If this happens from the bottom up as it does under the School, the unconsolidated materials at the surface hold for a while with nothing but air beneath them. Then suddenly, the arch collapses and the School is left with a collapse sinkhole. This process will continue unabated until the quarry stops pumping. A lot of damage has already been done, but when the quarry stops pumping, the pit will fill up and the sinkholes will eventually stop.

2014 EHB at 533.

Next, we found New Hope and the Department's contention that the School was partially to blame "entirely unconvincing":

> First, in terms of the School's development, the School constructed a number of buildings between 1948 and 1968 without any sinkholes forming. Between 1978 and 1997 the School engaged in no campus development, yet saw eight sinkholes form from 1989 through 1997. In addition, the development that the School has engaged in from 1998 to the present has been done in a cautious and responsible manner, seeking out geotechnical consultants to ensure that development and post-construction drainage pathways would be done in ways that would not exacerbate the sinkhole problem. The School has taken all reasonable precautions to ensure that it did nothing to contribute to sinkhole formation. Furthermore, collapse sinkholes have formed both on and off the School's campus, in areas of long-existing buildings and in forested areas, such as the swallet in Primrose Creek….
>
> Putting aside its lack of technical merit, the Noncoal Act was not intended to elevate the right to mine above the right of the mine's neighbors to the quiet enjoyment of their property. As discussed above, the Act expresses the opposite intent. Through no fault of its own, Solebury School is now constrained in the lawful use of its property as an educational institution for children. There is no support in the law for the Department's decision to allow this situation to go forward.

2014 EHB at 534-35 (citations omitted).

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Finally, we discussed at some length the Department and New Hope's theories that natural features and permit conditions would help protect the School from more frequent and severe sinkholes:

> The Department and New Hope point to a number of natural and permit conditions that they believe will protect the School. The School's response is that none of these conditions are working now, so they are largely irrelevant. We agree. The conditions will not eliminate or even reduce the existing, ongoing hazard to health and safety. The Department and New Hope argue that the conditions will prevent the situation from getting worse, but as previously mentioned, that is an entirely inappropriate question and, in any event, in terms of risk to health and safety the situation cannot get any worse.

2014 EHB at 535. Putting aside our holding that the Department was asking the wrong question as a matter of law, we went on to accept the School's experts' view that the Department and New Hope's theories were also invalid as a matter of fact. In the end, we rescinded the depth correction because it would have perpetuated an ongoing threat to public health, welfare, and safety. Although we relied on the fact that the quarry was creating a public nuisance and the Department has a duty to abate and remove public nuisances, *see* 2014 EHB at 546 (citing 52 P.S. § 3311(b) and 71 P.S. § 510-17(3)), we did *not* direct the Department to take any specific actions going forward.

New Hope appealed our Adjudication to Commonwealth Court (Docket No. 1497 C.D. 2014). New Hope discontinued the appeal before any decision was reached.

Our Adjudication rescinding the depth correction did not otherwise affect New Hope's existing surface mining permit authorizing the quarry to be mined to a depth of -120 MSL. New Hope continued to mine out its reserves above the -120 MSL level. At some point, however, the Department decided that steps needed to be taken to abate the nuisance in a more timely manner than that provided for in the quarry's existing reclamation plan. In a series of meetings and letters, the Department told New Hope that it needed to submit a new reclamation plan. In

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response, New Hope submitted revised plans that were based on the time needed to mine out its existing reserves above -120 MSL. After some additional unproductive back-and-forth, the Department lost patience and issued an order to New Hope on October 1, 2015, formally requiring New Hope to modify its reclamation plan to begin expeditiously abating the public nuisance. The October order found that New Hope was in violation of Sections 7(c)(5) and 10 of the Noncoal Surface Mining Act, 52 P.S. §§ 3301 – 3326. The order stated:

> NHCS [New Hope Crushed Stone] has failed to submit a plan that includes all of the requested information required to bring both the mining permit and NPDES permit into compliance with the EHB Adjudication. Specifically, NHCS has failed to submit to the Department an adequate Reclamation Plan and Sequence that addresses an acceptable timeline for reclamation of the quarry and how the hydrologic balance will be restored in the surrounding area to abate the public nuisance caused by NHCS lowering of the groundwater. Specifically, the reclamation plan provided by NHCS fails to address the following: (1) The reclamation plan provided by NHCS is based on the time needed to mine out existing reserves instead of the time required to reclaim the quarry. Item no. 1 of the Department's letter dated July 10, 2015 specifically identified this proposal as unacceptable. (2) The reclamation plan does not provide a timetable for abating the public nuisance caused by the quarry's dewatering activities. The plan to begin flooding the pit in 2023 is unacceptable. Item no. 3a of the Department's letter dated July 10, 2015 specifically requests revisions to both the mining permit and the NPDES permit to abate the nuisance caused by NHCS' lowering of the water table. (3) The reclamation plan does not revise the existing NPDES permit to account for the flooding of the lower lifts of the quarry. Item no. 3 of the Department's letter dated July 10, 2015 specifically requests revisions to both the mining permit and the NPDES permit. (4) The reclamation plan does not address installation of a monitoring well on Solebury School's campus to monitoring groundwater elevations. Item no. 5 of the Department's letter dated July 10, 2015 specifically requests an update regarding the installation of the above-referenced monitoring well. (5) The reclamation plan does not identify approximate acreages that will be reclaimed during the proposed timeframe, nor does it identify these areas on a map.

The order thus established and memorialized New Hope's legal duty to abate the nuisance it was causing in a timely manner. After finding New Hope in violation of this duty, the order then required New Hope to submit the following:

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1. A reclamation plan based on the amount of time required to reclaim the quarry, not based on mineable reserves. Mining may occur concurrently with reclamation, however timely abatement of the public nuisance caused by NHCS's lowering of the water table under Solebury School is required.

   At a minimum, the reclamation plan and schedule submittal must include the following:

   A) A timetable for the reclamation of each highwall area of the quarry. This timetable must include a specific description of the reclamation methods for each highwall (i.e., blasting and/or backfilling), and the associated estimated reclamation costs. For each method to be utilized, the description must include the following:

      1) The amount of blasting needed for each highwall area in order to achieve the required final reclamation grades. This description must include, at a minimum, the required number of blasts, the time required to drill and blast each area and any other associated or pertinent information.

      2) The amount of excavation, filling and/or grading work required to achieve the final reclamation grades. This description must include, at minimum, the volumes of fill material required for each highwall area, the source of the fill material, the equipment to be utilized to achieve reclamation slopes, and the estimated time required for this equipment to backfill highwall areas.

      3) The reclamation plan must include a proposed timeframe for reclaiming all affected acreage within the surface mining permit. A map showing the stages of reclamation must be included.

      4) A detailed cost estimate, to include line items for each phase of reclamation.

   B) A timetable for the stream restoration work required under the existing Primrose Creek Consent Order and Agreement. The stream restoration timetable must be detailed in the same manner as the timetable for reclamation required under Section A above.

2. A schedule describing when the lower lifts of the quarry will be flooded. The EHB decision requires abatement of the public nuisance, thus restoration of water table under the school must be conducted concurrently with the reclamation plan.

3. A plan to install a monitoring well on Solebury School's campus to monitor groundwater elevations.

The order required New Hope to submit the revised reclamation plan and the other requested information by October 30, 2015. New Hope requested an extension from that deadline, and the Department issued another order on November 3, 2015, which amended the

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prior order by granting the extension for New Hope to comply, setting the date at November 30, 2015. The Department's November order stated that all terms and conditions of the October order remained in full force and effect, and indeed, the November order contains the same list of requirements that is quoted above. New Hope appealed both the October and November orders. (*See* EHB Docket Nos. 2015-164-L; 2015-187-L.) We consolidated those appeals into EHB Docket No. 2015-164-L. New Hope in those appeals objected to the Department's compliance orders because in its view the Department read too much into our Adjudication. New Hope said it was in compliance with all laws and permit conditions and the Department's insistence on expedited reclamation was unreasonable.

Thereafter, the Department and New Hope entered into a Consent Assessment of Civil Penalty. In the CACP, the Department made the following findings, which New Hope agreed were accurate and which New Hope agreed not to challenge in any future proceeding involving the Department:

> F. Section 7(c)(5) and (10) of the Noncoal Surface Mining Conservation and Reclamation Act, Act No. 1984-219, 52 P.S. § 3307(c)(5) and (10) provides that:
>
> > (c) Reclamation plan: The applicant shall also submit a complete and detailed plan for the reclamation of the land affected. Each plan shall include the following: (5) A detailed timetable for the accomplishment of each major step in the reclamation plan the operator's estimate of the cost of each step and the total cost to the operator of the reclamation program; and (10) Such other information as the Department may require.
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> G. On July 31, 2014, the Environmental Hearing Board (EHB) rescinded a depth correction that authorized NHCS to mine from -120' MSL to -170' MSL, citing that the quarry's ongoing dewatering operations are causing unabated sinkhole formation at the nearby Solebury School. The EHB also declared the quarry a public nuisance. Following the EHB's Adjudication, the Department and NHCS exchanged a series of correspondences culminating in the Compliance Order dated October 1, 2015.
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> H. On September 11, 2014, the Department sent NHCS a deficiency letter requesting revisions to the mining and NPDES permit to bring both permits into compliance with the EHB adjudication. The revisions were due October

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11, 2014. These revisions included requests for information concerning the Reclamation Plan for the quarry in Solebury Township.

I. On September 15, 2014, the Department received an email from EarthRes Group (ERG), NHCS' consultant, requesting an additional month as well as requesting a meeting with the Department.

J. On October 10, 2014, ERG sent a response to the Department's deficiency letter.

K. On February 24, 2015, the Department sent NHCS a letter stating that the October 10, 2014 response was unacceptable and again asked NHCS to provide the information requested in the September 11, 2014 deficiency letter.

L. On March 24, 2015, ERG, on behalf of NHCS, sent a letter attempting to address the Department's deficiency letter.

M. On May 13, 2015, Department staff, NHCS and its technical representatives met at the Pottsville District Mining Office to discuss Department expectations for how to bring the mining and NPDES permits into compliance with the EHB adjudication. The Department gave NHCS ninety days to provide a response.

N. On June 30, 2015, ERG, on behalf of NHCS, sent the Department a letter with a proposed reclamation and mine closure sequence for the quarry in Solebury Township.

O. On July 10, 2015, the Department sent NHCS a letter explaining why the proposed reclamation and mine closure sequence was unacceptable. The letter also gave NHCS thirty days to file a response.

P. On August 7, 2015, ERG submitted another Reclamation Plan on behalf of NHCS to the Department.

Q. On August 11, 2015, the Department sent a response to NHCS stating the Reclamation Plan was unacceptable and providing NHCS with fifteen days to file an acceptable plan.

R. On August 26, 2015, ERG submitted another Reclamation Plan on behalf of NHCS which the Department found to be unacceptable.

S. On October 1, 2015, the Department issued Compliance Order No. 15-5-048-N requiring NHCS to submit the deficient information for its Reclamations Plan to the Department by 8:00 AM on October 30, 2015. The Compliance Order stated that NHCS failed to conduct mining and/or mining related activities in accordance with the terms and conditions of the permit and applicable rules and regulations of the Department. Specifically, NHCS failed to submit a plan that includes all of the requested information required to bring both the mining permit and NPDES permit into compliance with the EHB Adjudication. NHCS failed to submit an adequate Reclamation Plan and Sequence that addresses how the hydrologic balance will be restored in the surrounding area to abate the public nuisance caused by NHCS lowering of the groundwater within an acceptable schedule. The Reclamation Plan

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provided by NHCS did not address the following: (1) The reclamation plan provided by NHCS appeared to be based on the time needed to mine out existing reserves instead of the time required to reclaim the quarry. Item no. 1 of the Department's letter dated July 10, 2015 specifically identified this proposal as unacceptable. (2) The Reclamation Plan did not provide a timetable for abating the public nuisance caused by the quarry's dewatering activities. The plan to begin flooding the pit in 2023 was unacceptable. Item no. 3a of the Department's letter dated July 10, 2015 specifically requested revisions to both the mining permit and the NPDES permit to abate the nuisance caused by NHCS' lowering of the water table. (3) The Reclamation Plan did not revise the existing NPDES permit to account for the flooding of the lower lifts of the quarry. Item no. 3 of the Department's letter dated July 10, 2015 specifically requested revisions to both the mining permit and the NPDES permit. (4) The Reclamation Plan did not address installation of a monitoring well on Solebury School's campus to monitor groundwater elevations. Item no. 5 of the Department's letter dated July 10, 2015 specifically requested an update regarding the installation of the above-referenced monitoring well. (5) The Reclamation Plan did not identify approximate acreages that will be reclaimed during the proposed timeframe, nor did it identify these areas on a map.

T. On November 2, 2015, the Department issued Compliance Order No. 15-5-048-N(A) to amend the compliance date from October 30, 2015 as specified in Compliance Order No. 15-5-048-N to November 30, 2015. All terms and conditions specified in Compliance Order No. 15-5-048-N remained in full force and effect.

U. On November 30, 2015, ERG submitted another Reclamation Plan on behalf of NHCS to the Department. After review, the Department determined that the November 30, 2015 Reclamation Plan was also deficient.

V. On January 29, 2016, the Department issued a letter to NHCS modifying the November 30, 2015 proposed Reclamation Plan.

The Department found that New Hope's conduct constituted a violation of 52 P.S. § 3307(c)(5) and (10) because it failed to provide the Department with a complete and detailed plan for reclamation. It found that New Hope's violation constituted unlawful conduct under Section 23 of the Noncoal Surface Mining Act, 52 P.S. § 3323, and that New Hope was subject to civil penalty liability under Section 21 of the Noncoal Surface Mining Act, 52 P.S. § 3321. New Hope agreed to pay a civil penalty of $4,000 and withdraw its appeals from the Department's orders. New Hope then withdrew its consolidated appeal on February 12, 2016.

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In the meantime, New Hope on November 30 submitted its latest revised reclamation plan to the Department. After reviewing the reclamation plan, the Department in a letter dated January 29, 2016 determined that the plan was again deficient. The letter states that New Hope's reclamation plan is unacceptable in part because it does not expeditiously abate the public nuisance declared by our 2014 Adjudication. The Department's letter makes seven modifications to New Hope's reclamation plan so that the plan satisfies the Department's directives set forth in the October and November orders. The mandated modifications to the reclamation plan are as follows:

1. The Primrose Creek stream work and/or the highwall reclamation work currently underway shall continue to be conducted on a continuous basis until completed to the Department's satisfaction.
2. NHCS shall conduct the stream and reclamation work for a minimum of 160 hours per week, utilizing at least four (4) workers/laborers who each work a 40 hour week.
3. NHCS shall place a minimum of 200 cubic yards per hour of backfill material for reclamation purposes during the highwall reclamation phases of operation.
4. The flooding of the quarry and lowering of the required daily pumping of pit water to the permit-required minimum of 500,000 gallons per day shall begin immediately. Pumping rates may increase only if water levels rise to an elevation that prohibits safe reclamation of the quarry walls. There shall be at least two (2) safety benches below the active highwall reclamation area and the pit water. The Department reserves the right to modify pumping rates based on site conditions and other related issues.
5. A reclamation progress report shall be included with the quarterly groundwater and surface water monitoring report.
6. The quarterly report shall include the Mine & Reclamation Phase Development Plan map with the current +48' MSL contour and the inflow and outflow structure locations highlighted.
7. NHCS shall install a monitoring well designed to monitor groundwater elevations on the Solebury School property within 90 days of the date of this letter. Prior to installation of the monitoring well, NHCS shall discuss NHCS' plans for placement and design of the monitoring well with the Department.

It is this letter that is the subject of the current appeal.

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New Hope argues in its notice of appeal that is now before us that the Department acted unreasonably and contrary to law in modifying its reclamation plan. New Hope essentially repeats the objections set forth in its notices of appeal from the compliance orders themselves, which appeals were withdrawn. It contends that it had a valid and existing reclamation plan already in place and that the Department never informed New Hope that the existing plan violated any statutory or regulatory provisions. New Hope says that at the time the letter was issued it was in compliance with all statutes, regulations, and permit conditions. New Hope also argues that the Department's letter effectively revokes New Hope's existing surface mining and NPDES permits because the 500,000 gallons per day (gpd) pumping limit will cause water to accumulate in the quarry pits, thereby limiting the amount of mining and reclamation work that can be conducted under the current permits as the quarry gradually floods. Solebury School and Solebury Township have both intervened in the current appeal on the side of the Department.

New Hope filed a petition for supersedeas and an application for temporary supersedeas specifically contesting the Department's modification to its reclamation plan limiting the amount of water New Hope can pump out of the quarry to 500,000 gpd. We denied the application for temporary supersedeas following a conference call, and the hearing on the petition for supersedeas was held on May 5, 2016. Following a full day of testimony we denied the petition for supersedeas. Although New Hope showed that it would suffer some harm during the pendency of the overall appeal from the gradual flooding of the quarry, it did not show that it satisfied the other criteria for a supersedeas. *See* 25 Pa. Code § 1021.63(a). In addition, we noted that a supersedeas cannot issue where there would be a threat to public health during the time the supersedeas would be in place. 25 Pa. Code § 1021.63(b). No testimony or evidence presented at the supersedeas hearing showed that the continuing public nuisance had been abated.

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By Order dated February 29, 2016, we directed that all discovery in this appeal was to be completed by August 29, 2016.[2] We are not aware of the full extent of discovery that has been conducted in this case, but we do know that in July New Hope served discovery requests on Solebury School and Solebury Township. Pursuant to Pennsylvania Rule of Civil Procedure 4009.21(a), New Hope also noticed on the other parties its intent to serve a subpoena for the production of documents on the Bucks County Water and Sewer Authority. Both the Department and the School filed objections to the subpoena on August 1 and August 2, respectively. To date, the Board has not received a motion from any party pursuant to Rule 4009.21(d)(1) to rule on the objections and decide whether the subpoena should be served.

The School, however, has filed a motion for a protective order from discovery sought by New Hope from the School. That is the only motion before us that is ripe for decision.[3] The discovery requests at issue in the School's motion include a request for a designated representative from the School to be deposed on certain topics, requests for document production, interrogatories, and a request to enter the Solebury School campus for an inspection by New Hope's counsel and their experts. Solebury Township has submitted a short memorandum in support of the School's motion. New Hope opposes the motion. The Department has remained silent, although its position generally appears to be reflected in its objections to the Bucks County Water and Sewer Authority subpoena.

The School sought within its motion for a protective order a temporary stay of its discovery obligations with respect to New Hope pending the Board's resolution of the motion. The request for a temporary stay was not opposed by any party and we issued the stay on August

[2] Any dispositive motions must be filed on or before September 26. The hearing on the merits is scheduled to begin on March 20, 2017.

[3] New Hope also has pending a motion to compel the Township to respond to discovery served by New Hope.

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16, 2016. Although that stay only applied to New Hope's discovery served on the School, New Hope by letter dated August 18 asked that the previously scheduled discovery deadline of August 28 be stayed indefinitely pending the Board's resolution of the School's motion for a protective order. All parties agreed to the request. We took it under advisement pending our consideration of the School's motion.

The notice to inspect the School's campus that New Hope served pursuant to Pa.R.C.P. Nos. 4009.31 and 4009.32 says that it needs to enter the campus for the purposes of "inspecting, photographing, videotaping, and otherwise observing the Solebury School and its surrounding grounds." Regarding New Hope's request to produce a designated representative of the School to provide deposition testimony, the School seeks protection from providing testimony on the following topics:

1. The effect of the requirements on the School of the Department's January 29, 2016 Letter that is the subject of this Appeal.
2. The construction of buildings on the School property since 2006.
3. The use of groundwater on the School from 2006 to the present.

The interrogatories the School seeks protection from are as follows:

1. Describe in detail all structures or features that have been constructed on the School Property since 1978, including the:
    a. Name of structure or feature;
    b. Date construction began;
    c. Date of the completion of construction;
    d. Purpose of the structure or feature;
    e. Location of the structure or feature.
2. Describe in detail the construction techniques used for all structures or features that have been constructed on the School Property since 1978, specifically with regard to the mitigation of the threat of sinkholes.
3. Describe in detail the specific actions taken or consideration given, if any, during construction, planning or execution to the possibility or existence of sinkholes on the School Property.
4. Describe in detail the specific actions taken, if any, by the School or at the School's direction relating to mitigation of sinkholes on the Property.

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5. Describe in detail the specific actions taken, if any, by the School or at the School's direction relating to remediation of sinkholes on the Property.

6. Describe in detail all geotechnical engineering or work performed, if any, on the School's Property, at the School's Request, or relating to the School's land or structures.

7. Describe in detail the costs [the School has] incurred as a result of the remediation or mitigation of sinkholes from July 31, 2014 to date.

….

9. Identify all persons affiliated with the School who have been involved in making any decision pertaining to the mitigation or remediation of sinkholes on the Property and any decisions relating to the Quarry. For each person, state the person's responsibility in making any decision pertaining to the reclamation which is the subject of the appeal, the School's involvement in the appeal, or the mitigation or remediation of sinkholes on the property.

10. Describe in detail each and every sinkhole, including those sinkholes you characterize as existing sinkholes that have "reopened," that have allegedly formed on the School's Property since July 31, 2014, along with all actions you have taken with respect to each sinkhole.

11. Describe in detail any investigation, if any, you have conducted since July 31, 2014 regarding sinkholes on the School's Property.

….

17. Identify all environmental, biological, water, air, or other tests or sampling results that you have undertaken or caused to be undertaken relating to the sinkholes, Quarry, and the Appeal. State with specificity the following:
    (a) The dates of tests;
    (b) The times of tests;
    (c) The individuals conducted each test/sampling result;
    (d) The reason the test sampling was completed;
    (e) The location where the test/sampling was completed; and
    (f) Produce all documents relating to these tests/sampling results

18. Describe in detail all groundwater withdrawals, deposits, injections, and related structures or features employed on the School Property since 1978, including the:
    a. Name of structure or feature;
    b. Date construction began;
    c. Date of the completion of construction;
    d. Purpose of the withdrawal, deposit or injection;
    e. Purpose of the structure or feature;
    f. Location of the structure or feature;
    g. Volumes of water handled monthly;
    h. Conveyance capacity of water; and
    i. Users of groundwater.

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19. Describe in detail all structures or features for the collection, control, deposition or any other type of management of sewage or stormwater on the School Property since 1978, including the:
    a. The function of the structure or feature;
    b. Date construction began;
    c. Date of the completion of construction;
    d. Purpose of the structure or feature;
    e. Location of the structure or feature;
    f. Volumes handled on a monthly basis;
    g. Improvements or renovations to those structures or features; and
    h. If maintained by others, the name of the party maintaining theirs.

….

23. Identify and describe in detail any communications you had with Solebury Township or any representative of Solebury Township relating to sinkholes at the School.

24. Set forth in detail the School's [policies and rules] relating to trespassing on Quarry property.

Finally, the School also seeks protection from the following requests for the production of documents:

7. All documents and communications containing or relating to building plans for any structure or feature constructed by or at the direction of the School.

8. All documents and communications relating to any geotechnical engineering or work performed on the School Property, at the School's request, or relating to the School's land or structures.

9. All documents and communications relating to construction techniques considered or employed in the construction of any structure or feature on the School Property.

10. All documents and communications relating to the School's remediation of sinkholes.

11. All documents and communications relating to any consideration of sinkholes taken by the School in construction of any structure or feature on the School Property.

….

13. All design plans and as-builts of structures constructed on the School Property.

14. All design plans and as-builts for stormwater, sewage and rainfall controls or structures on the School Property.

15. All records concerning pumping of groundwater on the School Property since 1985.

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16. All documents reflecting governmental approvals of the items in 11, 12 and 13.

Discovery before the Board is governed by the relevant Pennsylvania Rules of Civil Procedure. 25 Pa. Code § 1021.102(a). 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.C.P. No. 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.C.P. No. 4011. "[T]he Board is charged with overseeing ongoing discovery between the parties during the litigation and has wide discretion to determine appropriate measures necessary to insure adequate discovery while at the same time limiting discovery where required." *Northampton Twp. v. DEP*, 2009 EHB 202, 205. We must also keep in mind that discovery is governed by a proportionality standard, and discovery obligations must be "consistent with the just, speedy and inexpensive determination and resolution of litigation disputes." 2012 Explanatory Comment Prec. Rule 4009.1, Part B. *See also Friends of Lackawanna v. DEP*, 2015 EHB 785; *Tri-Realty Co. v. DEP*, 2015 EHB 517. Pursuant to Rule 4012, the Board is empowered to issue a protective order upon good cause shown to protect a person from improper discovery or unreasonable annoyance, embarrassment, oppression, burden, or expense. *Haney v. DEP*, 2014 EHB 293, 297; *Chrin Bros. v. DEP*, 2010 EHB 805, 811.

In evaluating whether discovery regarding a matter should be permitted, we must first determine whether it appears to be reasonably calculated to lead to information that is relevant to the subject matter involved in the appeal. If the matter being inquired into is not likely to lead to the discovery of relevant evidence, that is the end of our inquiry. The discovery is not permitted. *Cabot Oil & Gas Corp. v. DEP*, EHB Docket No. 2015-131-L, slip op. at 7 (Opinion, Feb. 6,

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2016); *Sludge Free UMBT v. DEP*, 2014 EHB 939, 941. The subject of this appeal is the Department letter disapproving New Hope's reclamation plan and modifying it in seven aspects. As noted above, the letter follows up on two compliance orders the Department issued in the fall of 2015 requiring New Hope to submit a revised reclamation plan that would timely reclaim the quarry, restore the hydrologic balance in the area, and abate the public nuisance being caused by the quarry's lowering of the groundwater table, but this appeal is not from those orders; New Hope withdrew its appeals from those orders.

Thus, because the Board's role in hearing an appeal is necessarily circumscribed by the action under appeal, *Love v. DEP*, 2010 EHB 523, 530; *Winegardner v. DEP*, 2002 EHB 790, 793, the focus of this case is narrowly confined to the letter and the modifications to New Hope's reclamation plan made by the letter. Our role will be to decide whether the Department, in determining that New Hope's reclamation plan was deficient and modifying the plan in the way that it did, acted reasonably and in accordance with the law, whether its decision is supported by the facts, and whether the decision is consistent with the Department's obligations under the Pennsylvania Constitution. *See Borough of Kutztown v. DEP*, EHB Docket No. 2015-087-L, slip op at 12 n.2 (Adjudication, Feb. 29, 2016); *Brockway Borough Mun. Auth. v. DEP*, 2015 EHB 221, 236, *aff'd*, 131 A.3d 578 (Pa. Cmwlth. 2016); *Gadinski v. DEP*, 2013 EHB 246, 269.

Any attempt by New Hope to contest what has already been determined by the underlying orders is outside the scope of this appeal. The doctrine of administrative finality precludes a future attack on an action that was not challenged by a timely appeal. *Kalinowski v. DEP*, EHB Docket No. 2016-032-R, slip op. at 3 (Opinion, Jun. 28, 2016) (citing *Dep't of Envtl. Res. v. Wheeling-Pittsburgh Steel Corp.*, 348 A.2d 765 (Pa. Cmwlth. 1975), *aff'd*, 375 A.2d 320 (Pa. 1977), *cert. denied*, 434 U.S. 969 (1977)). "It is well-settled that a party may not use an

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appeal from a later DEP action as a vehicle for reviewing or collaterally attacking the appropriateness of a prior Department action." *Love v. DEP*, 2010 EHB 523, 525. By the same token, if a party appeals an order and then later withdraws that appeal before it is adjudicated, that order becomes final and cannot be attacked in another, separate appeal. *White Glove, Inc. v. DEP*, 1998 EHB 372. New Hope withdrew its appeals of the October and November orders and these orders are now final. Every aspect of the underlying orders has now been established and cannot be attacked in the current appeal of the letter.

Because the underlying compliance orders are final, the factual predicate giving rise to New Hope's submission of a revised reclamation plan is now beyond the purview of this appeal. Therefore, that New Hope's existing reclamation plan was in violation of the Noncoal Surface Mining Act and that it was required to revise its reclamation plan in a way that more expeditiously abated the nuisance being caused by the quarrying are determinations that are now final. New Hope can no longer contest that its prior reclamation plan was deficient in the ways that the Department found in its two orders. New Hope can no longer challenge whether it had to submit a new reclamation plan. New Hope cannot challenge that it had to submit a reclamation plan that timely abates the public nuisance. It cannot contest that the restoration of the water table underneath the School must occur with all deliberate speed concurrently with reclamation. All that remains, then, is the specifics of the reclamation plan, including the pumping schedule. The operative question being: Do the details of the plan as modified by the Department reflect a lawful and reasonable exercise of the Department's discretion? Accordingly, to be relevant, all discovery in this matter must be geared toward answering this question.

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The doctrine of collateral estoppel further restricts what is relevant and open to discovery in this appeal. Collateral estoppel is designed to prevent parties from being forced to relitigate the same static issues over and over again. *Lucchino v. DEP*, 1998 EHB 473, *aff'd*, No. 1730 C.D. 1998 (Pa. Cmwlth. Dec. 4, 1998). The doctrine "relieves parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and, by preventing inconsistent decisions, encourages reliance on adjudication." *Shaffer v. Smith*, 673 A.2d 872, 875 (Pa. 1996) (citing *Allen v. McCurry*, 101 S. Ct. 411, 415 (1980)). Collateral estoppel applies when:

> (1) The issue decided in the prior action is identical to the one presented in the action in which the doctrine is asserted;
>
> (2) The prior action resulted in a final judgment on the merits;
>
> (3) The party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action;
>
> (4) The party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action; and
>
> (5) The determination in the prior proceeding was essential to the judgment.

Borough of St. Clair v. DEP, 2015 EHB 290, 310; *Kuzemchak v. DEP*, 2010 EHB 564, 566 (citing *Office of Disciplinary Counsel v. Kiesewetter*, 889 A.2d 47, 50-51 (Pa. 2005); *Church of God Home, Inc. v. Dep't of Pub. Welfare*, 977 A.2d 591, 593 (Pa. Cmwlth. 2009); *Emp'rs Mut. Cas. Co. v. Boiler Erection and Repair Co.*, 964 A.2d 381, 394 (Pa. Super. 2008)). Regarding the fifth element, the key is that the issue must have been put to the test. "A finding that was of no consequence in the first case should not be given immutable weight in another case where it could have determinative consequences." *Sedat, Inc. v. DEP*, 2000 EHB 927, 939-40.

Collateral estoppel has considerable application here. Many of the facts and legal conclusions underpinning the Department's letter cannot be relitigated in this appeal. For example, although we did not specifically direct the Department to do anything in our Adjudication, we did find that it had the legal authority, and indeed a duty, not to allow a

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noncoal operator to perpetuate an ongoing threat to the public's health and safety. We held that New Hope was perpetuating such a threat by continuing to draw down groundwater, which was in turn causing hazardous sinkholes on an ongoing basis. We held that the only way to abate the threat was to allow the groundwater to return to normal levels. These matters were all essential to our conclusion that a rescission was needed, which we decided in the course of rendering a final decision on the merits in a case vigorously disputed by the same parties in this case.

With these concepts of relevance, administrative finality, collateral estoppel, and proportionality in mind, we turn to New Hope's disputed discovery requests. The School argues that most if not all of New Hope's discovery requests are improper and burdensome because they seem to be aimed at the issue of sinkhole causation, and specifically New Hope's efforts to attribute causation to the School's use of its own property. The School contends that not only is sinkhole causation not relevant to the narrow appeal of the Department's letter modifying the quarry's reclamation plan, but that causation has already been conclusively established by our 2014 Adjudication and the Department's compliance orders. The School says that causation has been attributed to the quarry's pumping, and New Hope is barred from relitigating this in the current appeal.

New Hope responds that its discovery requests are not seeking information regarding causation, but rather its discovery is necessary to assess the effects of the Department's letter on the School. New Hope reiterates slight variations of this rather vague statement throughout its response. ("The desired discovery will assist [New Hope] in the important task of insuring that the Letter's requirements properly impact the area of the quarry"); ("discovery is needed for evaluation of the Letter's requirements related to the response at the quarry"); (discovery will "help us determine what advances safety and health at the School"); (discovery will "help [New

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Hope] determine how the requirements of the Letter affect the environmental conditions in the area of the quarry, the School, and the vicinity"); ("help determine the effect of the letter"); ("help assess the safety of the School"); and ("assess…whether the actions that are currently being taken are having any impact on the School"). We are certainly receptive to explanations of why discovery is relevant when the relevance is not obvious to us, but these vague statements are not particularly helpful. We have already held that the School grounds are unsafe because of the ever present threat of collapse sinkholes being caused by the quarry's groundwater pumping, and that the only way to make the School safe again is to allow groundwater levels to return to normal. Again, although we did not specifically require it to do so, the Department took our findings to heart and is requiring New Hope to immediately allow groundwater levels to gradually recover so that the School can, some day, eventually return to providing a safe environment for the children and faculty that live on and use its grounds. New Hope withdrew its appeals from the compliance orders requiring it to allow groundwater levels to begin to recover, and it signed a consent assessment promising not to challenge the Department's findings.

The basic flaw in New Hope's response is that it never truly articulates how the School's building records, historical construction of buildings and stormwater facilities since 1978, geotechnical studies, sinkhole remediation efforts, and groundwater use relate to any of the requirements of the letter. New Hope never tells us, for example, that if the School's gymnasium was built in such a way that it will exacerbate sinkhole formation, it somehow follows that the Department's limitation on the quarry's groundwater pumping should be lower or higher. The only reason we can think of why information regarding construction of the gymnasium would be relevant is if we were trying to determine what is causing sinkholes to form on the campus, but

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that issue is off the table. We simply cannot imagine how details regarding the School's gymnasium could possibly relate to the Department's modifications, nor should we need to. New Hope has not supplied an explanation.

New Hope never explains why it needs, say, a detailed history of the School's sinkhole repairs in order to be able to challenge the requirement that the quarry devote a certain number of man-hours per week to reclamation. It never connects the dots between the School's management of sewage going back to 1978 and the requirement to place a minimum of 200 cubic yards per hour of backfill material for reclamation purposes during highwall reclamation. We could go on along these lines, but the point is that we agree with the School's conclusion that the only logical reason for inquiring into these matters is to relitigate the sinkhole causation issue, and that we will not allow.

New Hope says that it "is attempting to address health and safety. It is attempting to determine the effect of the Letter's requirements on that health and safety and whether the requirements are arbitrary and capricious. Details relating to construction and safety will be able to determine whether the Department's requirements in the Letter are appropriate. Therefore, the information is relevant." We have a difficult time following New Hope's chain of deductive reasoning. While safety was of particular concern the last time around, and while that case serves as important context, this appeal is really about whether the Department's modifications to the reclamation plan are reasonable to bring about a goal that is no longer subject to challenge. New Hope never tells us how it reaches the conclusion that the information it seeks is relevant apart from stating it as self-evident when its relevance is in fact not readily apparent.

At one point New Hope argues that it "is not re-litigating the cause of the sinkholes—it is attempting to determine the effect of the Letter. Even if it were at this time, this would not be

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barred by collateral estoppel." Once again, we are not sure what this means. To the extent New Hope is arguing that, while collateral estoppel may bar issues from being relitigated at trial it does not operate to bar *discovery* on these issues, New Hope offers no support for this argument, and it is deeply flawed. If an issue is barred from being litigated at trial, we do not see how it can possibly be relevant to the subject matter of the appeal, and thus a proper topic of discovery.

The only provision in the letter that at all relates to the School as far as we can tell is the final requirement, which provides that New Hope must install a monitoring well on the School's campus. It appears to us that the monitoring well requirement would support a site inspection strictly limited to finding an appropriate location for the well, but it does not justify New Hope's broadly worded request to inspect the entire campus or any of New Hope's other discovery requests. The Rules of Civil Procedure allow a party to request entry upon another party's property for purposes of inspection as a component of the discovery process. Pa.R.C.P. Nos. 4009.31 and 4009.32. However, Rule 4009.31 provides that such entries must be within the scope of discovery under Rules 4003.1 – 4003.6. In other words, a threshold consideration for determining whether to permit an entry for inspection, and defining the scope of that inspection, is whether the inspection is relevant to the appeal. Here, that relevant discovery is limited to devising a plan and determining an appropriate location for the installation of a monitoring well. We will permit entry onto the School's property for this purpose alone.

Regarding two somewhat outlier discovery requests, New Hope offers no explanation for why any trespassing policy the School may have developed is relevant to this appeal. New Hope has also not explained why any air, water, or biological sampling conducted by the School is relevant to the appeal. Without any explanation from New Hope, the relevance of these requests escapes us.

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Considerations of proportionality also come into play. The School is supposed to be in the business of educating students, but instead it has been forced at what we expect has been enormous expense to litigate before the Environmental Hearing Board in a continuing and undoubtedly frustrating effort to protect its campus from the never-ending assault of sinkholes. Indeed, we were told at the supersedeas hearing that several new sinkholes have emerged since our Adjudication. The School has already been subjected to comprehensive discovery in the prior case regarding its construction activities on its campus as well as all of the matters that New Hope is attempting to reopen. We agree with the School's complaint in its motion that it is being subjected to an unreasonable level of annoyance, oppression, burden, and expense. New Hope's discovery requests, other than its limited need for site access to determine the appropriate location for a monitoring well, go well beyond any demonstrable need to ascertain facts relevant to its challenge of the Department's modification letter. New Hope's discovery clearly retreads old ground. Allowing New Hope to once again subject the School to spending significant resources relitigating these issues would be entirely unfair to the School and amount to an abuse of the judicial process.

Finally, the School seeks a protective order from New Hope's discovery that requests information, documents, and deposition testimony regarding communications about the quarry between the School and the Department occurring after the date of the letter under appeal, January 29, 2016.[4] The School says that it has already provided New Hope with communications between the School and the Department occurring before the date of the letter. The School argues that any communications occurring after the date of the letter are irrelevant for determining whether the Department's issuance of the letter can be supported. The School

[4] The School does not appear to have moved for a protective order with respect to the School's communications with the Township.

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cites a federal case for the precept that judicial review of agency actions should focus on the reasoning of the agency at the time it made its decision, and argues that the Board should not concern itself with what the School calls after-the-fact communications. This is the School's only basis for a protective order regarding those communications.

Here, the School is incorrect. We are not like a federal court reviewing an agency action to determine whether the record that existed at the time the agency undertook the action supports the agency's decision. Our review is *de novo*, meaning we decide an appeal of a Department action based on the record that is developed before us. *Borough of Kutztown v. DEP*, EHB Docket No. 2015-087-L, slip op. at 12 n.2 (Adjudication, Feb. 29, 2016); *Dirian v. DEP*, 2013 EHB 224, 232; *O'Reilly v. DEP*, 2001 EHB 19, 32; *Young v. Dep't of Envtl. Res.*, 600 A.2d 667, 668 (Pa. Cmwlth. 1991); *Warren Sand & Gravel Co. v. Dep't of Envtl. Res.*, 341 A.2d 556 (Pa. Cmwlth. 1975). We do not step into the shoes of the Department to second-guess its decision based upon the record it had before it. Instead, we make our own decision based on a record created entirely before us that is not limited in either time or scope by what the Department considered. *Tri-Realty Co. v. DEP*, 2015 EHB 184, 188. *See also Pa. Trout v. Dep't of Envtl. Prot.,* 863 A.2d 93, 106 (Pa. Cmwlth. 2004); *R.R. Action and Advisory Comm. v. DEP*, 2009 EHB 472. Importantly, no action of the Department adversely affecting a person is final until that person has had the opportunity to appeal the action to the Board, meaning subsequent events are often relevant. 35 P.S. § 7514(c); *R.R. Action and Advisory Comm. v. DEP*, 2009 EHB 472. Indeed, we can consider evidence up until the time of the hearing on the merits. *See Borough of St. Clair v. DEP*, EHB Docket No. 2015-017-L, slip op. at 25 (Adjudication, Jun. 6, 2016). Therefore, because we consider documents created after the point in time that the Department took its action, and the School has not argued that communications between the School and the

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Department regarding the quarry are irrelevant for some other reason, the School's motion for protective order is denied with respect to those communications.

Accordingly, we issue the Order that follows.

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COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD

NEW HOPE CRUSHED STONE & LIME COMPANY	:	
v.	:	**EHB Docket No. 2016-028-L**
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, SOLEBURY SCHOOL and SOLEBURY TOWNSHIP, Intervenors	:	

O R D E R

AND NOW, this 12th day of September, 2016, it is hereby ordered that Solebury School's motion for protective order is **granted in part and denied in part**. The School is not excused from providing responsive discovery regarding communications between the School and the Department occurring after January 29, 2016, and the School shall allow New Hope access to its campus for the discrete purpose of facilitating the development of a plan for the installation of the monitoring well on the School's campus. The motion is in all other respects granted. The parties on or before **September 22, 2016** may submit a proposed plan for completing any remaining discovery beyond the existing discovery deadline which does not result in an extension of the hearing date.

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s/ Thomas W. Renwand
THOMAS W. RENWAND
Chief Judge and Chairman

s/ Michelle A. Coleman
MICHELLE A. COLEMAN
Judge

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

s/ Richard P. Mather, Sr.
RICHARD P. MATHER, SR.
Judge

s/ Steven C. Beckman
STEVEN C. BECKMAN
Judge

DATED: September 12, 2016

c: **For DEP, General Law Division:**
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(*via electronic mail*)

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