IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WCAA Upstream, LLC, Petitioner	: :	
v.	:	No. 810 C.D. 2025
Department of Environmental Protection and Protect PT, (Environmental Hearing Board), Respondents	:	Argued: June 16, 2026

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION
BY JUDGE McCULLOUGH FILED: October 19, 2026

WCAA Upstream, LLC (WCAA)[1] petitions for review of the June 3, 2025 adjudication of the Environmental Hearing Board (EHB), which upheld the Department of Environmental Protection's (DEP) issuance of two, now expired, unconventional gas well permits and added certain conditions to those permits. On appeal, WCAA challenges the EHB's imposition of the additional conditions on the permits as exceeding the scope of its authority. The DEP counters that this appeal must be dismissed as moot because the permits at issue have expired. After careful review, we dismiss this appeal as moot.

Background

The relevant facts and procedural history of this case are as follows. WCAA is a natural gas development company that owns leasehold interests to develop

[1] WCAA acquired Apex Energy (PA), LLC, (Apex) in January of 2025, and the EHB amended the caption accordingly. To avoid confusion, we refer to both entities as "WCAA" in this opinion, unless the context necessitates otherwise.

oil and natural gas rights on a site known as the Drakulic well pad located in Penn Township, Westmoreland County. On August 17, 2022, the DEP issued permits to WCAA to drill two unconventional gas wells on the Drakulic well pad (Initial Permits). On September 16, 2022, Protect PT, a nonprofit organization based in Westmorland County, appealed the DEP's permitting decision to the EHB.

Because the Initial Permits were set to expire one year after they were issued pursuant to the applicable statutory provision, WCAA applied for a two-year renewal of the permits on July 20, 2023.[2] The DEP granted the permits in August of 2023, with an expiration date of August 17, 2025, if drilling did not begin before that date (Renewal Permits). On September 14, 2023, Protect PT appealed the issuance of the Renewal Permits to the EHB, which consolidated the appeals.

On June 3, 2025, following an eight-day hearing, the EHB entered an adjudication upholding the Renewal Permits based on its determination the DEP fulfilled its statutory and constitutional duties in issuing them. (EHB Adjudication, 6/03/25, at 1.) However, the EHB also amended the Renewal Permits to incorporate a number of conditions included in a consent judgment filed in the U.S. District Court for the Western District of Pennsylvania in December of 2016, in a matter involving Apex and Penn Township (Consent Judgment). *See Apex Energy (PA), LLC v. Penn Township*, Case 2:16-cv-00759MAK (W.D. Pa., December 16, 2016); (*see also* Reproduced Record (R.R.) at 608a.) The DEP and Protect PT were not parties to this federal litigation. The conditions at issue addressed certain measures to be taken at the well site, including noise and light mitigation, air monitoring, and truck traffic. The EHB explained that it incorporated these conditions into the Renewal Permits because

[2] *See* 58 Pa.C.S. § 3211(i) (providing that well permits expire one year after issuance unless they are renewed in accordance with DEP regulations); *see also* 25 Pa. Code § 78a.17(b) (permitting a well operator to request a single two-year renewal of an unexpired well permit).

although "Penn Township has a vested interest in ensuring compliance with the Consent Judgment, it does not have the resources or the enforcement authority of the [DEP]." (EHB Adjudication, at 101.) WCAA then petitioned this Court for review of the EHB's adjudication.[3]

On September 12, 2025, the DEP filed an application seeking dismissal of this appeal as moot because the Renewal Permits expired on August 17, 2025. WCAA opposed the application, contending that the Renewal Permits do not pose a mootness problem and its issues must be addressed by this Court on the merits. On October 14, 2025, we ordered that the application to dismiss be listed for consideration along with the merits of this appeal.

Issues[4]

On appeal, WCAA contends the EHB erred by incorporating conditions from the Consent Judgment into the Renewal Permits.[5] According to the WCAA, the EHB exceeded its authority and violated its federal and state due process rights by *sua sponte* imposing these conditions and allowing the DEP, which was not a party to the federal action, to interpret and enforce the conditions. (WCAA's Br., at 17-20.) On the issue of mootness, WCAA acknowledges that the Renewal Permits have expired,

[3] While Protect PT initially filed a petition for review in this Court at Docket No. 807 C.D. 2025, it later filed a praecipe to discontinue its appeal based on its agreement with the DEP that the appeal is moot. Protect PT has also filed a notice of non-participation in this case, as it no longer desires to be involved in this litigation.

[4] Our review of a decision by the EHB "is limited to determining whether it committed an error of law or violated constitutional rights, or whether substantial evidence supports its findings of fact." *Department of Environmental Protection v. Clearfield County*, 283 A.3d 1275, 1280 n.3 (Pa. Cmwlth. 2022). The issue of mootness is a question of law, subject to a *de novo* standard of review. *Gray v. Philadelphia District Attorney's Office*, 311 A.3d 1230, 1236 (Pa. Cmwlth. 2024).

[5] The Marcellus Shale Coalition and the Pennsylvania Chamber of Business and Industry filed *amicus curiae* briefs in support of WCAA's petition for review. *See* Pa.R.A.P. 531(b).

but nevertheless maintains that this case is justiciable because it remains aggrieved by the EHB's adjudication. WCAA alternatively claims applicability of the exceptions to mootness doctrine, positing that its issue challenging imposition of these conditions "is almost certain to repeat" because the DEP will be "hamstrung" to incorporate these same conditions into any future permits for wells subject to the Consent Judgment. (WCAA's Opposition to DEP's Motion to Dismiss, at 2-3.)

The DEP counters that this appeal is moot because the Renewal Permits expired on August 17, 2025, leaving no case, controversy or available relief. DEP contests applicability of any mootness exception, and maintains that real life events undercut WCAA's argument that the DEP is "hamstrung" to impose these same conditions in the future. More specifically, the DEP requests that this Court take judicial notice of its recent issuance of a well permit on January 29, 2026, for a site subject to the Consent Judgment that *did not include* the conditions.[6] (DEP's Br., at 10-26.) As to the merits, the DEP *agrees with* WCAA that the EHB erred by imposing the additional conditions, as the EHB improperly substituted its judgment for that of DEP. *Id.* at 15.

[6] The DEP has appended a copy of this permit to its brief, along with a supporting certification prepared by Chirstine A. Walker, Secretary to the EHB and custodian of the records, averring that no appeal of the permit has been filed. (DEP's Br., at 14; Exhibit A.); *see also* Pa.R.E. 201(b)(2), (d) (permitting courts to take judicial notice of an adjudicative fact at any stage of a proceeding if that fact "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.") Although "extra-record documents cannot become part of the record on appeal merely by being appended . . . to a brief[,] appellate courts may [] take judicial notice of extra-record materials where it is appropriate to do so and where notice could not have been taken by the [body below]." *S.E.N. v. Department of Education*, 324 A.3d 686, 696 (Pa. Cmwlth. 2024). Because this January 2026 permit is relevant to the issue of mootness in this case and was issued after the EHB proceedings closed, we grant the DEP's request and take judicial notice of its issuance of the permit.

Analysis

We first consider the issue of whether this appeal is moot, as the question is dispositive in this case. It is well settled that courts cannot decide moot or abstract questions. *In re General Election, 2024*, 328 A.3d 606, 611 (Pa. Cmwlth. 2024). "A case becomes moot if a change in circumstances has eliminated the controversy so that the court lacks the ability to issue a meaningful order, that is, an order that can have any practical effect." *Id.* "[T]he existence of a case or controversy requires a real and not a hypothetical legal controversy and one that affects another in a concrete manner so as to provide a factual predicate for reasoned adjudication, with sufficiently adverse parties to sharpen the issues for judicial resolution." *Consol Pennsylvania Coal Company, LLC v. Department of Environmental Protection*, 129 A.3d 28, 39 (Pa. Cmwlth. 2015). "The key inquiry in determining whether a case is moot is whether the court or agency will be able to grant effective relief and whether the litigant has been deprived of the necessary stake in the outcome of the litigation." *Id.* Additionally, "an issue may become moot during the pendency of an appeal due to an intervening change in the facts of the case." *Shirley v. Pennsylvania Legislative Reference Bureau*, 318 A.3d 832, 850 (Pa. 2024).

Our Supreme Court has recognized three limited exceptions to the mootness doctrine for issues that are of great public importance, are capable of repetition while evading review, or where review of an issue is appropriate because a party will suffer some detriment in the absence of a court decision. *Id.* The public importance exception is applied very rarely, and its application is warranted only where "exceptional circumstances" exist. *Driscoll v. Zoning Board of Adjustment of City of Philadelphia*, 201 A.3d 265, 270 (Pa. Cmwlth. 2018). Additionally, where parties have the option of exercising an appeals process, we have held that although the issue

underlying the appeal may be likely to recur, the question is not likely to escape judicial review. *Id*.

This Court's decision in *Consol*, 129 A.3d 28, is instructive. In that case, Consol applied to the DEP for a permit revision to allow it to conduct mining activities on land not covered by its initial permit. The DEP issued a revised permit granting Consol's request, subject to an additional condition obligating it to submit certain pre-mining biological data. Consol satisfied this condition, but nevertheless appealed the DEP's decision to the EHB. The DEP subsequently issued another permit revision removing the condition, along with a motion to dismiss Consol's appeal as moot. *Id.* at 33. Consol opposed the motion, contending that because it may "still [be] subject to potential future obligations" pursuant to the condition, the appeal was not moot. *Id.* at 35. Consol further maintained that, to the extent its claims were moot, exceptions to the mootness doctrine applied, rendering its appeal reviewable on the merits.

This Court disagreed, determining that Consol's arguments on appeal were speculative and presented us with an invitation "to engage in pure conjecture[.]" *Id.* at 41. We also determined that none of the exceptions to the mootness doctrine operated to save the appeal from dismissal. In doing so, we concluded Consol's argument that the DEP exceeded its authority in imposing the condition did not implicate a matter of great public importance, as the condition was handcrafted to address issues unique to its permit application. This Court also found that any future challenge to the condition would not evade review, as it could be challenged if and when the DEP imposed it. Lastly, we determined that Consol would not suffer a detriment if it were required to wait until it experienced an actual harm to seek review, noting that should it be subjected to a similar condition again, it could immediately appeal the DEP's decision at that time. *Id.* at 42.

Similarly, here, the Renewal Permits and attendant conditions forming the basis of this litigation no longer exist because they expired nearly one year ago, in August of 2025. Hence, at the present time, there is no concrete legal controversy before us to adjudicate in an effective, meaningful manner. Since the Renewal Permits are now a nullity, any order we issued concerning their validity could have no practical effect. This appeal also lacks "sufficiently adverse parties," because no adverse party remains in this case. *Id.* at 39. As noted, Protect PT has discontinued its own appeal of the EHB's decision, and it has withdrawn as a participant in this appeal. The DEP is not a sufficiently adverse party because it *agrees with* the WCAA's argument on the merits, *i.e.*, that the EHB erred by incorporating the additional conditions. Therefore, we agree with the DEP that this appeal is moot.

As to the mootness exceptions, WCAA's claim is not one of great public importance because it concerns the imposition of conditions formulated to address issues unique to its permit application. The record does not reveal the existence of any "exceptional circumstances" necessary to warrant application of the great public importance exception. *See Driscoll*, 201 A.3d at 270. We likewise reject WCAA's argument that the DEP's conduct is capable of repetition yet likely to evade review, as it hinges on WCAA's hypothetical assertion that "there is every reason to believe" the DEP and the EHB will continue to impose these obligations. (WCAA's Opposition to DEP's Motion to Dismiss, at 11.) Not only is this claim speculative, but as the DEP notes, it is undercut by the fact that the DEP has recently issued a permit concerning a well subject to the Consent Judgment, which did not include the challenged conditions. Thus, real life events have shown that the DEP is not "hamstrung" to continue imposing the conditions. Further, even if the DEP were to impose similar conditions, the issue is not inherently likely to evade review, as WCAA would have the option of exercising

an appeals process at that time. *See Driscoll*, 201 A.3d at 270. Lastly, declining to rule on the merits of WCAA's claim at this time will not cause it to suffer a detriment because, as we explained above, WCAA has not identified any concrete manner in which reversing the EHB's decision could meaningfully impact it, as the permits have expired and are a nullity.[7]

In sum, based on the foregoing, we conclude that the issues WCAA advances on appeal challenging the conditions incorporated in the now expired Renewal Permits are moot and that none of the limited exceptions to the mootness doctrine apply under the circumstances of this case. Accordingly, we dismiss this case as moot.[8]

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PATRICIA A. McCULLOUGH, Judge

[7] We note that the record in this case belies the Dissent's position that this issue will evade review, as a review of the docket shows that WCAA did not seek to expedite the proceedings below, and instead prolonged them by requesting or consenting to **ten extensions** of prehearing deadlines. (R.R. at 1-10a.) I also disagree with the Dissent that the issue raised here qualifies for application of the great public importance exception we rarely employ to address issues impacting the broader general public, as this case involves the interests of a private natural gas company. Lastly, I note that a ruling on the merits would amount to purely advisory opinion, as the challenged permits have expired.

[8] We observe that WCAA has pointed to our Supreme Court's recent decision in *Punxsutawney Hunting Club, Inc. v. Pennsylvania Game Commission*, __ A.3d__ (Pa., No. 23 WAP 2023, filed July 21, 2006), 2026 WL 2111761, as supportive authority for invoking the great public importance exception to the mootness doctrine. However, *Punxsutawney* is readily distinguishable from the instant case as it did not involve an issue of mootness and, accordingly, did not discuss the mootness doctrine or any exception thereto. *Punxsutawney* instead involved a constitutional challenge by hunting clubs to certain statutory provisions authorizing Pennsylvania Game Commission officials to enter private property without obtaining a search warrant. *Punxsutawney* therefore involved a wholly different set of circumstances and is inapposite to our disposition of this case.

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v.	:	No. 810 C.D. 2025
Department of Environmental Protection and Protect PT, (Environmental Hearing Board), Respondents	:	

ORDER

AND NOW, this 19th day of October, 2026, the above-captioned matter is dismissed as moot.

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PATRICIA A. McCULLOUGH, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WCAA Upstream, LLC, Petitioner	:	
v.	:	No. 810 C.D. 2025 Argued: June 16, 2026
Department of Environmental Protection and Protect PT, (Environmental Hearing Board), Respondents	:	

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

DISSENTING OPINION
BY SENIOR JUDGE LEAVITT FILED: October 19, 2026

The majority dismisses this appeal as moot because the drilling permits issued to WCAA Upstream, LLC (WCAA) expired during the pendency of WCAA's appeal of the conditions that the Environmental Hearing Board (Board) imposed on those permits. However, the Board's adjudication, if allowed to stand, will continue to impact WCAA and others engaged in the development of natural gas in Pennsylvania.[1] As such, WCAA's appeal is not moot. Accordingly, with respect, I dissent.

In 2022, the Department issued permits to WCAA to drill two unconventional natural gas wells in Penn Township, Westmoreland County. Protect

[1] The Marcellus Shale Coalition and the Pennsylvania Chamber of Business and Industry have filed *amici curiae* briefs in support of WCAA's appeal. The Coalition emphasizes that the Board's precedent will allow well permits to be amended on an *ad hoc* basis in violation of equal protection and due process of law. The Chamber of Commerce emphasizes that the Board's precedent expands the authority of the Department of Environmental Protection (Department) and the Board in ways that will undermine efficiency and predictability in the issuance of an environmental law permit needed for any infrastructure project.

PT, a nonprofit organization formed to protect the quality of life in Penn Township, appealed the permits. After an eight-day hearing, the Board concluded that the permits satisfied all the requirements of the Oil and Gas Act[2] and that the Department had properly considered the issuance of those permits under the Pennsylvania Constitution's Environmental Rights Amendment.[3] Nevertheless, the Board "amend[ed] the permits to incorporate paragraphs 9(c), (d), (h), (i), and (j) of the Stipulation adopted by the Consent Judgment addressing air quality, noise, light and truck traffic." Board Adjudication at 103. The Consent Judgment was entered in a lawsuit filed by WCAA's predecessor, Apex Energy (PA), against Penn Township and the Penn Township Zoning Hearing Board in the United States District Court of the Western District of Pennsylvania. *Apex Energy (PA), LLC v. Penn Township*, No. 16-cv-759 (W.D. Pa.).[4] The lawsuit concerned municipal regulation, not the Oil and Gas Act, and neither the Department nor Protect PT are parties to the Consent Judgment.

In its appeal to this Court, WCAA asserts, *inter alia*, that the Board lacks the statutory authority to impose permit conditions where it holds that the Department's permits are lawful. *Pequea Township v. Herr*, 716 A.2d 678 (Pa.

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[2] 58 Pa. C.S. §§2301-3504.

[3] PA. CONST. art. I, §27. It states:

> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Id. The Environmental Rights Amendment protects against the degradation, diminution, and depletion of the public natural resources. *Robinson Township, Washington County v. Commonwealth*, 83 A.3d 901, 957 (Pa. 2013).

[4] Apex Energy sought relief against Penn Township's alleged unconstitutional interpretation and application of a pending zoning ordinance to its drilling activities.

Cmwlth. 1998), established the principle that where the Department has erred or abused its discretion in attaching conditions to permits, the Board may remove those conditions or add different ones. That precondition is absent here. In any case, the Board lacks jurisdiction over a federal court consent judgment that is subject to ongoing review and enforcement by the federal courts. Further, in amending WCAA's permits, the Board acted *sua sponte*, which was procedurally unsustainable and in violation of WCAA's due process rights. Finally, WCAA contends that the Board lacked the authority to commandeer the staff of the Department for the enforcement of municipal ordinances that relate to truck traffic and noise or to make the Department an ersatz party to federal litigation.

The Department does not defend the Board's attachment of new conditions to WCAA's permits, but has filed a motion to quash the appeal as moot. In general, courts will not decide moot questions. *Department of Environmental Protection v. Cromwell Township, Huntingdon County* (*Cromwell Township*), 32 A.3d 639, 651 (Pa. 2011). A case is moot if there exists no actual case or controversy, and the controversy must continue at every stage of a judicial proceeding. *Mistich v. Pennsylvania Board of Probation and Parole*, 863 A.2d 116, 119 (Pa. Cmwlth. 2004). This Court has described "actual case or controversy" as follows:

> (1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for a reasoned adjudication, and (3) a legal controversy with sufficiently adverse parties so as to sharpen the issues for judicial resolution.

Id. A case is moot when a determination will not have any practical effect or provide a litigant with meaningful relief. *Butler v. Indian Lake Borough*, 14 A.3d 185, 188 (Pa. Cmwlth. 2011).

WCAA makes a strong argument that the expiration of the permits in question did not render its appeal moot. WCAA continues to engage in drilling activities at the seven well sites covered by the federal Consent Judgment.[5] WCAA Answer to Application to Dismiss at 11-12. The Department concedes that drilling at any of the well sites covered by the Consent Judgment will "require new permits from the Department[.]" Department Brief at 7 n.6. The Board itself has recognized that the expiration of a particular permit does not render an appeal moot where the permittee's activity is ongoing. In *Warren Sand & Gravel Company, Inc.*, *Oil City Sand & Gravel Company, Inc.*, *Davison Sand & Gravel Company*, 1973 EHB 148, at *17, the Board concluded that "the issues in this case [were] not mooted by the fact that the permits to which the disputed conditions were attached may technically have expired" because dredging is a continuing activity. Likewise, here, WCAA is engaged in a continuing activity, *i.e.*, well drilling.

The majority asserts that the Department's decision not to defend the Board's conditions renders the appeal moot. *WCAA Upstream, LLC v. Department of Environmental Protection and Protect PT (Environmental Hearing Board)*, __ A.3d __ (Pa. Cmwlth., No. 810 C.D. 2025, filed October 19, 2026), slip op. at 7. I disagree that the controversy is over or that there are not "sufficiently adverse parties." *Mistich*, 863 A.2d at 119. There are many opponents to unconventional gas drilling who stand ready, willing and able to challenge the issuance of an unconventional well permit. The Board's adjudication will remain viable precedent until overturned, either by this Court or by the Board. In the meantime, the Board

[5] The Consent Judgment related to seven well sites: the Beattie Central-37 Pad; the Draftina Central-31 Pad; the White Central-30 Pad; the Drakulic Pad; the Deutsch Pad; the Numis Pad; and the Backus Pad. Consent Judgment ¶1; Certified Record at 1005. The present appeal concerns permits for the Drakulic Well Pad.

"must issue consistent opinions." *Pennsylvania Trout v. Department of Environmental Protection*, 863 A.2d 93, 107 n.5 (Pa. Cmwlth. 2004). Even though the Department, at present, does not intend to insert the challenged conditions into WCAA's future permits, the Board's adjudication can be invoked by any party appealing those permits. In short, this Court can order meaningful relief and, thus, the appeal is not moot.

Lest there be any doubt, this appeal can be heard under the exception to mootness doctrine, which our Supreme Court has explained as follows:

> Exceptions to [mootness] are made where the conduct complained of is capable of repetition yet likely to evade review,[6] where the case involves issues important to the public interest[7] or where a party will suffer some detriment without the court's decision.

Public Defender's Office of Venango County v. Venango County Court of Common Pleas, 893 A.2d 1275, 1279-80 (Pa. 2006).

Cromwell Township, 32 A.3d 639, is instructive. In that case, this Court held the township in contempt for not complying with the Department's order to implement an approved sewage facilities plan and imposed criminal penalties upon the township supervisors. The Supreme Court held that the appeal of the contempt

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[6] A case is "capable of repetition, yet evading review" when the following conditions are met: "(1) the action the complaining party challenges must be so short in duration that it would have ended by the time the parties could fully litigate the issue, and (2) a reasonable expectation must exist that the offending party would subject the complaining party to the same exact action again." *Toland v. Pennsylvania Board of Probation and Parole*, 311 A.3d 649, 658 (Pa. Cmwlth. 2024).

[7] An issue of great public importance is one that can affect many citizens, which is the case with fundamental rights protected by the United States and Pennsylvania Constitutions. *See, e.g.*, *Coady v. Pennsylvania Board of Probation & Parole*, 804 A.2d 121 (Pa. Cmwlth. 2002) (constitutionality of a statutory amendment and its effect on parole); *Mifflin County School District v. Stewart*, 503 A.2d 1012 (Pa. Cmwlth. 1986) (expelled student's property right to attend his high school graduation).

order was not rendered moot by the resignation of two township supervisors and the release from prison of another. Rather, the appeal met the exception to the mootness doctrine because successor supervisors faced incarceration by this Court.

Warrington Township v. Powell, 796 A.2d 1061 (Pa. Cmwlth. 2002), is also instructive. In that case, two property owners challenged a township's annual, warrantless fire safety inspections of their business premises. The trial court ordered the inspection, which took place while owners' appeal was pending. Although the single inspection order was moot, "the issue of access to [the business owners'] premises is one likely to be repeated, yet evade appellate review, and *the question . . . is one concerning important public interests*." *Id.* at 1065 (emphasis added). Accordingly, we reviewed the constitutionality of an ordinance requiring annual inspection under the exception to the mootness doctrine.

As in *Cromwell Township* and *Warrington Township*, the Board's decision to impose permit conditions, which no party requested, is capable of repetition and evading review. The lifespan of a natural gas well permit is at most three years. The Board lists "'two years' as the aspirational timeframe in which it 'strive[s]' (but often does not) complete its review[.]" WCAA Reply Brief at 12. The realities of gas well permit litigation is that it takes time and, as here, often involves multiple parties. Indeed, here, the Department "issued two sets of permits while this case was before the [Board] – one in 2018 and another in 2022 – and ***both*** expired before this appeal could reach this Court despite WCAA exhausting the maximum extensions for permits under codified law." *Id*. at 12-13 (emphasis in original).[8] Future objectors can, and likely will, rely on this Board adjudication in

[8] *Protect PT v. Penn Township Zoning Hearing Board* (Pa. Cmwlth., No. 575 C.D. 2019, filed July 6, 2020) (unreported), is an example of how permit disputes can recur and multiply across related proceedings. There, our Court noted it had recently addressed a similar case involving the same

their permit challenges. In short, the issues raised by WCAA are capable of repetition and evading review.

WCAA's appeal concerns matters of public importance. This appeal raises important questions about the limits to an administrative agency's statutory authority, the meaning of the Oil and Gas Act, the Board's jurisdiction, and how the Environmental Rights Amendment is to be used in crafting drilling permits. Guidance on these matters is required for this highly regulated industry. As the *amici curiae* underscore, these issues are of concern "to thousands of permit applicants throughout the Commonwealth" and in any number of infrastructure projects. WCAA Reply Brief at 15.[9]

WCAA's appeal is not moot or, at a minimum, meets the standards for application of the exception to mootness doctrine. I would deny the Department's motion to dismiss. Accordingly, I dissent from the majority decision to dismiss WCAA's appeal.

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MARY HANNAH LEAVITT, President Judge Emerita

objector appealing the same zoning board's grant of special exception applications for unconventional gas well sites in the same township. *Id*., slip op. at 14.

[9] WCAA directs the Court's attention to the Pennsylvania Supreme Court's recent decision in *Punxsutawney Hunting Club, Inc. v. Pennsylvania Game Commission*, 360 A.3d 828 (Pa. 2026). There, the Supreme Court recognized that there must be "a balance" between an agency's obligations to the citizens of Pennsylvania under the Environmental Rights Amendment and a citizen's privacy rights under Article I, Section 8 of the Pennsylvania Constitution, holding that no constitutional protection right is to be treated as inferior to another. *Id.*, slip op. at 876. The majority notes that *Punxsutawney Hunting Club, Inc.* did not involve the issue of mootness. Nevertheless, *Punxsutawney Hunting Club, Inc.* underscores the public importance of WCAA's appeal issues.