

IN THE COMMONWEALTH COURT OF PENNSYLVANIA No. 45 MAP 2022

PATRICK J. McDONNELL, SECRETARY :
OF THE DEPARTMENT OF :
ENVIRONMENTAL PROTECTION :
and CHAIRPERSON OF THE :
ENVIRONMENTAL QUALITY :
BOARD, :

Petitioner, :

v. :

PENNSYLVANIA LEGISLATIVE :
REFERENCE BUREAU, VINCENT C. :
DeLIBERATO, JR., DIRECTOR OF THE :
LEGISLATIVE REFERENCE BUREAU, :
and AMY J. MENDELSON, DIRECTOR :
OF THE PENNSYLVANIA CODE and :
BULLETIN, :

No. 41 MD 2022

Respondents, :

SENATE PRESIDENT PRO TEMPORE :
JAKE CORMAN, et al., :

Senate Intervenor :
Respondents, :

HOUSE SPEAKER BRYAN CUTLER, :
et al., :

House Intervenor :
Respondents. :

NOTICE OF APPEAL

Notice is hereby given that Patrick McDonnell, in his official capacity as Secretary of the Pennsylvania Department of Environmental Protection (“DEP”) and

Chairperson of the Environmental Quality Board (“EQB”), Petitioner in the above-captioned action, hereby appeals to the Supreme Court of Pennsylvania from the Order entered in this matter on the 5th day of April, 2022, which enjoined publication of the Regional Greenhouse Gas Initiative Regulation in the *Pennsylvania Bulletin* by the Legislative Reference Bureau. This Order has been entered in the docket as evidenced by the attached copy of the docket entry (“Exhibit A”).

This Notice of Appeal is accompanied by a Jurisdictional Statement, as required by Pa.R.A.P. 909 and 910.

Dated: April 7, 2022

Respectfully submitted,

/s/ Matthew A. White
Matthew A. White (Pa. 55812)
Brian N. Kearney (Pa. 326227)
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
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215.665.8500

Attorneys for Petitioner

EXHIBIT A
to Notice of Appeal
(41 MD 2022 Docket Entry)

Miscellaneous Docket Sheet

Docket Number: 41 MD 2022

Page 1 of 21

April 7, 2022



CAPTION

Patrick J. McDonnell, Secretary of the Department of Environmental Protection and Chairperson of the Environmental Quality Board, Petitioner

v.

Pennsylvania Legislative Reference Bureau, Vincent C. DeLiberato, Jr., Director of the Legislative Reference Bureau, and Amy J. Mendelsohn, Director of the Pennsylvania Code and Bulletin, Respondents

CASE INFORMATION

Initiating Document: Petition for Review
Case Status: Active
Case Processing Status: April 5, 2022 Awaiting Petitioner Paperbooks
Journal Number:
Case Category: Miscellaneous Case Type(s): Equity

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Petitioner McDonnell, Patrick J.

Pro Se: No

IFP Status:

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Law Firm: Ballard Spahr, LLP
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Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 41 MD 2022

Page 19 of 21

April 7, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
March 31, 2022	Application to Amend Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Praecipe to Amend Pet's Answer to Senate Intervenor Respondents' App. for Special Relief			
March 31, 2022	Answer Filed Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Response in Partial Opposition to App for Leave to Withdraw Original Brief and to File Amended Brief			
April 1, 2022	Application for Relief Klein, Peter William	Pennsylvania Legislative Reference	Respondent	
	Klein, Peter William	DeLiberato, Jr., Vincent C.	Respondent	
	Klein, Peter William	Mendelsohn, Amy J.	Respondent	
	Document Name: App for Leave to Amend New Matter in Respondent's Answer to Senate Intervenor Respondent's App for Comment: Special Relief in the Nature of a Preliminary Injunction			
April 1, 2022	Answer Filed Hull, Kandice Kerwin	Corman, Jake	Intervenor	
	Hull, Kandice Kerwin	Ward, Kim	Intervenor	
	Hull, Kandice Kerwin	Yaw, Gene	Intervenor	
	Hull, Kandice Kerwin	Browne, Pat	Intervenor	
	Document Name: Senate Intervenor's Response to Petitioner's Request for an Extension of Time to File Comment: Brief in Opposition to Senate Intervenors' App for Relief			
April 1, 2022	Memorandum of Law Filed Cutler, Bryan D.		Intervenor	
	Benninghoff, Kerry A.		Intervenor	
	Metcalfe, Daryl D.		Intervenor	
	Document Name: Memo of Law in Opposition to Application for Expedited Special and Summary Relief			

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 41 MD 2022

Page 20 of 21

April 7, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
April 1, 2022	Order Filed Per Curiam			04/04/2022
	Document Name: Respondent's to file Amended Brief within the timeframe of March 29, 2022 order			
	Comment: NOW, April 1, 2022, upon review of Respondents' "Application for Leave to Withdraw Original Brief and to File an Amended Brief," which Petitioner does not generally oppose, ¹ the Application is GRANTED. Respondents shall file and serve their amended brief (4 copies) in support of their preliminary objections within the time prescribed by the Court's March 29, 2022, Order.			
	<p>¹ While Petitioner does not generally oppose Respondents' Application, he argues Respondents should not be permitted to amend their brief to address preliminary objections to Count I of the petition for review. Respondents provide no reason why they seek to amend their brief; they recognize that their brief was filed before this Court issued its briefing schedule on the preliminary objections. Petitioner may seek to amend his brief in opposition to Respondents' preliminary objections after Respondents' amended brief is filed and served. This is the normal course of briefing; however, Petitioner also filed his brief in opposition to the preliminary objections before this Court issued its briefing schedule.</p> <p>²</p> <p>To the extent that Petitioner's Answer to Senate Intervenor Respondents' Application for Special Relief in the Nature of a Preliminary Injunction can be considered an application for extension of time to file a brief in reply to Senate Intervenors' Application and brief, the request is GRANTED. No later than Monday, April 25, 2022, 12:00 p.m., Petitioner shall file and serve his brief (3 copies) in reply to Senate Intervenor Respondents' brief in support of their Application for Special Relief.</p> <p>A hearing on Senate Intervenor Respondents' Application for Special Relief in the Nature of a Preliminary Injunction shall commence on Wednesday, May 4, 2022, at 10:00 a.m., in Courtroom 3001, Pennsylvania Judicial Center, Third Floor, 601 Commonwealth Avenue, Harrisburg, Pa.</p> <p>Senate Intervenor Respondents shall file a list of all witnesses to be called at the hearing with a short offer of proof for each witness, the curriculum vitae and expert report for any expert witness, and a list of exhibits, no later than Wednesday, April 20, 2022.</p> <p>Petitioner, Respondents, and House Intervenor Respondents shall file a list of all witnesses to be called at the hearing with a short offer of proof for each witness, the curriculum vitae and expert report for any expert witness, and a list of exhibits, no later than Wednesday, April 20, 2022.</p> <p>The parties are directed to provide their witnesses with copies of the exhibits in advance of the hearing to which the witnesses can refer during their testimony.</p> <p>The parties are strongly encouraged to consult prior to the filing of their list of witnesses and exhibits and, if possible, enter evidentiary and/or factual</p> <p>³</p> <p>stipulations and/or agreed-upon protocols in order to streamline the proceedings. The parties may PAC-file any joint stipulations or protocols prior to the hearing.</p> <p>To reduce the risk of transmission of the COVID-19 virus, all persons participating in or observing the hearing shall adhere to all Pennsylvania Judicial Center and Commonwealth Court COVID-19 precautions and protocols while in the Pennsylvania Judicial Center, that may include, but not be limited to, the wearing of facemasks and social distancing.</p>			
April 4, 2022	Answer to Preliminary Objections Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Petitioner's Answer to House Intervenors' POs			
April 4, 2022	Answer Filed Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Petitioner's Answer in Opp. to the Senate Intervenors' Extraordinary Request that this Court Enter			
	Comment: an Interim Order (Without Hearing or Argument) Prohibiting Publication of the RGGI Rulemaking in the Pennsylvania Bulletin			

Miscellaneous Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 41 MD 2022

Page 21 of 21

April 7, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
April 5, 2022	Praeipice Pittinsky, David	McDonnell, Patrick J.	Petitioner	
	Document Name: Praeipice to Provide Relevant Information to the Court			
April 5, 2022	Application for Relief Kutz, James John	Cutler, Bryan D.	Intervenor	
	Kutz, James John	Benninghoff, Kerry A.	Intervenor	
	Kutz, James John	Metcalfe, Daryl D.	Intervenor	
	Kawa, Erin Renee	Metcalfe, Daryl D.	Intervenor	
	Kawa, Erin Renee	Benninghoff, Kerry A.	Intervenor	
	Document Name: App to Join Senate Intervenors' Request for Interim Order			
April 5, 2022	Order Filed Per Curiam			04/05/2022
	Document Name: Processing of the Regional Greenhouse Gas Initiative Regulation for Publication is Stayed			
	Comment: NOW, April 5, 2022, processing of the Regional Greenhouse Gas Initiative Regulation for publication in the Pennsylvania Bulletin is stayed pending further order of the Court.			
April 6, 2022	Status Conference Scheduled Per Curiam			04/06/2022
	Document Name: Tuesday, April 12, 2022, at 1:00 p.m. in Courtroom 5001, 5th Floor, PJC, Hbg., PA			
	Comment: NOW, April 6, 2022, a status conference in the above matter is scheduled for Tuesday, April 12, 2022, at 1:00 p.m. in Courtroom 5001, 5th Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pa.			
	To reduce the risk of transmission of the COVID-19 virus, all persons participating in the status conference shall adhere to all Pennsylvania Judicial Center and Commonwealth Court COVID-19 precautions and protocols while in the Pennsylvania Judicial Center, that may include, but not be limited to, the wearing of facemasks and social distancing.			

CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: April 7, 2022

/s/ Matthew A. White

Matthew A. White
(Pa. 55812)

CERTIFICATE OF SERVICE

Pursuant to Pa.R.A.P. 906(a), I, Matthew A. White, hereby state that I have caused to be served a true and correct copy of the foregoing Notice of Appeal via the Court's PACFile.

Pursuant to Pa.R.A.P. 906(b), I also hereby state that I have caused to be served upon all parties to the matter a true and correct copy of the accompanying Jurisdictional Statement required by Pa.R.A.P. 909 via the Court's PACFile.

Dated: April 7, 2022

/s/ Matthew A. White
Matthew A. White