

Annual Report July 2007 – June 2008



Commonwealth of Pennsylvania
Department of Environmental Protection



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

EDITOR'S NOTE: All references in this report - including position titles held by individuals, legislative references and time references - are current for the time period ending June 2008.

A Message from MRAB Chairman David Osikowicz

January 2009

On behalf of the Mining and Reclamation Advisory Board (MRAB), I am pleased to present for your review the Board's annual report, documenting the Board's activities from July 2007 through June 2008. The Board continues to address environmental problems related to past coal mining practices and continually assists the department in ensuring that current industry conducts itself in an environmentally responsible manner.

The Board held five meetings during the reporting period, four meetings as outlined in the by-laws as well as a special meeting called in November 2007 to discuss long term funding solutions for the Alternative Bonding System (ABS) legacy.

The October 2007 meeting was held at the Cambria District Mining Office in connection with the annual field trip. The Board toured Winner Global LLC's Acid Mine Drainage (AMD) Value Extraction Process project. The pilot project, partially funded through Growing Greener II, was designed to treat a portion of the St. Michael mineshaft discharge through liquid to liquid extraction of pollutants and materials from the water that can be used for other products.

DEP provided the Board with updates on the Mine Opening Blasting and Reclamation Fee regulatory initiatives, and consulted with the Board in reference to the methodology used to calculate the bond rate guidelines and finding a satisfactory funding solution with regard to the ABS legacy litigation. The department also gave regular updates on the status of total maximum daily loads and the current status of the Treatment Trust Fund.

The Board assisted the department with public outreach efforts with regard to the reauthorized AML Title IV monies and looks forward to offering its continued assistance to the department regarding the expenditure of these funds.

I appreciate the continued participation, dedication and support of all Board members, alternates, and of the DEP staff. As Chairman, I speak for the Board when I say that we remain committed to advising and working with the department in carrying out its mission, evaluating the rights and responsibilities of industry, and making responsible, calculated recommendations for the citizens of the Commonwealth.

Sincerely,

A handwritten signature in black ink, appearing to read "David Osikowicz". The signature is fluid and cursive, with a large, looping initial "D".

David Osikowicz,
Chairman

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Introduction

The Mining and Reclamation Advisory Board (MRAB) was created in 1984 by Act 181 of the Pennsylvania General Assembly, which amended the Surface Mining Conservation and Reclamation Act (SMCRA). The Board's purpose is to assist the secretary of the Department of Environmental Protection (DEP) in expending reclamation funds for the purposes provided by SMCRA and to advise the secretary on all matters pertaining to mining and reclamation. The advisory role of the Board also covers Title IV of the federal Surface Mining Control and Reclamation Act, which relates to abandoned mine land reclamation issues.

The Board is comprised of the following members:

- Two licensed bituminous surface mine operators;
- One licensed anthracite surface mine operator;
- Four public members of the Citizens Advisory Council, elected by the Council;
- One anthracite or one bituminous licensed professional engineer;
- One county conservation district representative, appointed by the Pennsylvania State Conservation Commission;
- One majority party state senator, appointed by the president pro tempore of the Senate;
- One minority party state senator, appointed by the president pro tempore of the Senate;
- One majority party state representative, appointed by the speaker of the House of Representatives; and
- One minority party state representative, appointed by the speaker of the House of Representatives.

The Board operates under bylaws adopted in January 1989 and amended in October 1993 and December 1996. The bylaws establish a committee structure and other operational procedures, including a minimum of four meetings per year, held in January, April, July and October, as required by SMCRA. *The bylaws current for the time period covered by this report are found in Appendix A.*

The Board's Committees

- **Annual Report Committee**

As mandated by Section 18(g)(5) of SMCRA, "The Board shall prepare an annual report on its activities and submit the report to the Senate Environmental Resources and Energy Committee and the House Conservation Committee." Throughout the reporting period, the committee compiles and summarizes information for inclusion in the Annual Report.

Members of the committee:

Richard Fox, Co-Chair
Susan Germanio, Co-Chair
Joseph Deklinski
Susan Wilson

- **Policy Committee**

The Policy Committee held its initial meeting in October 1993 (then called the Policy and General Issues Committee). Its mission is to consider mining and reclamation policies identified as integral to the timely and efficient administration and operation of DEP's mining regulatory and abandoned mine reclamation programs.

Members of the committee:

David Mankamyer, Chair
Mark Snyder
Walter N. Heine, P.E.

- **Reclamation Committee**

The Ad Hoc Committee on Reclamation Issues was originally formed at the July 1997 Board meeting in response to concerns regarding the Bark Camp Mine Reclamation Laboratory in Clearfield County, the Reed and Strattanville sites in Clarion County and a package of reclamation initiatives being developed under DEP's "Reclaim PA" program.

At the Oct. 22, 1999 MRAB quarterly meeting, the Board voted unanimously to change the name to the Reclamation Committee to reflect the committee's ongoing work. The committee addresses reclamation issues, initiatives and activities.

Members of the committee:

David L. Strong, Chair
Jack R. Chamberlin
Duane Feagley
Robert E. Hughes
Susan M. Wilson

- **Regulation, Legislation and Technical Committee**

The Regulation, Legislation and Technical Committee reviews all major regulatory packages coming before the Board during the reporting period and reports back to the full Board.

Members of the committee:

Jack Chamberlin, Chairperson
Sen. Raphael Musto
Sen. James J. Rhoades
Rep. Deberah Kula
Rep. Samuel H. Smith
David L. Strong
Susan M. Wilson

FULL BOARD

SMCRA mandates that the MRAB meet four times per year. Throughout the reporting period, the full Board met five times. The following sections provide a detailed summary of the activities of the full Board. For a complete list of meeting dates and locations, see **Appendix D**.

2007-2008 MAIN AGENDA TOPICS (Presented Alphabetically)

ABS Legacy Litigation / Funding

During the October, 2007, meeting, a summary was provided of discussions during a Regulation, Legislation and Technical Committee meeting concerning the Alternate Bonding System (ABS) legacy court ruling. The Committee requested additional information from the department in reference to revenue and funding alternatives. The department briefed the full Board on the litigation and the termination of the Alternate Bonding System (ABS).

The court ruled that federal regulations require Pennsylvania to submit a formal program amendment that ensures a funding stream to address the ABS legacy discharges, and that it be legally enforceable. The department provided numerous options for the Board's consideration. After lengthy discussion on the issue, a follow-up committee meeting was scheduled for November. Following the committee meeting, a special meeting of the full MRAB was convened on November 20, to discuss possible funding alternatives.

At this special meeting the department gave a presentation that included figures, estimates, and projections relating to reclamation fees requested by the committee. Following discussion, the Board made the following recommendation to the department:

- Utilize the Reclamation Fee Account to fund operation and maintenance (O & M) at ABS Legacy sites.
- Fund the O & M account using the following sources: civil penalties collected under the Surface Mining and Conservation Reclamation Act (SMCRA); reclamation fees (at the current rate for two years, then adjust the rate according to funding needs subject to appeal); a portion of the interest earned on other money in the SMCRA Fund (at the Department's discretion); and funds from other sources. (Note: It was specified that this specific recommendation would be temporary until a permanent solution is found and the reclamation fee discontinued.)
- Publish the adjusted reclamation fee, which would be subject to appeal before the Environmental Hearing Board, in the Pennsylvania Bulletin.
- Draft language to amend the Surface Mining Act relating to the use of premiums collected on Conversion Assistance Bonds.

- Continue to hold collected bonds from ABS discharge sites, placing the collected interest into a restricted account.

Due to time constraints associated with the rulemaking process, the January MRAB meeting date was moved forward to January 10, 2008.

The department distributed copies of a draft Advanced Notice of Final Rulemaking (ANFR) pertaining to ABS legacy funding for Board member review prior to the January meeting. The Board, after much discussion, voted to support the ANFR with the following amendments:

- Provide for the removal of the minimum \$50.00 reclamation fee.
- Amend the regulation to specifically include language that if, instead of the reclamation fee, an alternative source of funding to adequately fund the O&M account is established, then the \$100.00 reclamation fee will not be increased or continue to be collected.
- Authorize the department to transfer money from the Reclamation Fee O&M account into the ABS Legacy account but limit the department's authority to transfer excess funds until current obligations are met.

The department provided the following updates during the April 2008 Board meeting:

- The department incorporated the Board's recommended amendments to the ANFR.
- The ANFR was sent to and approved by the Environmental Quality Board (EQB).

AML / Title IV Roundtables

In July, 2007, the Board was given an update on the AML Roundtables. Eight meetings were held, with 2 additional meetings scheduled. Average meeting participation consisted of between 30 and 45 individuals.

At the October, 2007, meeting the full Board was given a brief overview of the October 17th Reclamation Committee meeting during which members of the Commonwealth Treasury Department outlined available investment options regarding the increased AML funding to be received.

Bond Rate Guidelines (BRG)

Bruce Carl, DEP, attended the July, 2007, MRAB meeting to provide a report on current reclamation bidding trends. The Board briefly discussed possible ways to get more companies interested in doing reclamation work and the possibility of creating a "how to" information packet. Current revegetation trends were also reviewed.

Also, in October, 2007, the department gave a brief presentation and explanation of the 2008 BRG's.

The Regulation, Legislation and Technical Committee report at the October meeting included a summary of the recent committee meeting. Chairman Jack Chamberlin reported that the Committee discussed the methods used to calculate the 2007 bond rate guidelines (BRG's). In January 2008, the department announced the 2008 BRG's to the Board. A projection of potential 2009 BRG's was reviewed as well.

Budgetary / Funding Issues

In July 2007 the department informed the Board of concern over the active mining program's funding situation. Under federal law 50 percent of the funding for the Commonwealth's mining program is to come from OSM. OSM has not provided up to 50 percent of the necessary funding for several years, which has adversely impacted the program. DEP representatives were in the process of working with the Interstate Mining Compact Commission to encourage Congress to appropriate more money.

Bureau of Abandoned Mines Reclamation (BAMR) Projects/Status Report

Staff from the Bureau of Abandoned Mine Reclamation attends meetings to provide a brief reclamation project update.

Field Trip

The MRAB holds an annual field trip. The 2007 field trip was held in October at Winner Global LLC's facility located near the St. Micheal mineshaft in Cambria County. This project was partially funded by a Growing Greener grant to evaluate the possibility and profitability of utilizing liquid to liquid extraction of pollutants from waters that were impaired by past mining practices.

As of the close of the reporting period the MRAB continues to follow-up on receipt of the grant report from the Winner Global project.

Regulatory Updates

Mine Opening Blasting

- At the July, 2007, meeting, the Board was advised that the department would proceed with the regulations and that they will be presented to the EQB in the near future.

Reclamation Fee

- The department also reported in July that it was moving forward with the Reclamation Fee rulemaking and will be forwarding it to the EQB. *See further updates with regard to the reclamation fee under "ABS Legacy Litigation and Funding" above.*

New Interim Final Technical Guidance Document (TGD)

- DEP staff informed the Board of recent publication of the Notice of Availability for the interim final TGD "Mine Drainage Treatment

Trust Real Property Disposition Guidelines,” in the July 7, 2007 issue of the *Pennsylvania Bulletin*.

Total Maximum Daily Loads (TMDL)

At the July, 2007, meeting, DEP provided a TMDL and mine permit update. It was reported that the Department was looking into issuing a permit with in-stream water quality limits and a program similar to trading. The department was working to: develop a tracking system; identify required TMDL's; determine which TMDL's needed revision; and develop procedures.

In October, 2007, the department reported that efforts were continuing to determine the number to use when calculating aluminum effluent limits. At the January, 2008, meeting department staff informed the Board that work on developing a solid tracking system was also underway.

Treatment Trust Fund Status Report

The department continues to work to secure trusts and bonds to guarantee that sites with post-mining discharges are capable of treatment in perpetuity. The MRAB received regular updates from the Bureau of Mining and Reclamation on the status of the Treatment Trust Fund throughout the reporting period. The Department continues to move forward and make progress in regard to the perpetual treatment of these sites and the number of trusts that are fully funded. There were a total of 130 sites that needed such agreements; and, as of the July 2008 MRAB meeting, 75 of these were in place, either through a bond or through fully or partially-funded trusts.

PRESENTATIONS

Western Pennsylvania Coalition of Abandoned Mine Reclamation (WPCAMR)

Bruce Golden advised the Board about a computer program which can calculate different spending scenarios and put into perspective realities versus expectations for the reauthorized AML monies the Commonwealth should receive.

Appalachian Regional Reforestation Initiative

Dave Hamilton from the federal Office of Surface Mining (OSM) offered a presentation regarding the Appalachian Regional Reforestation Initiative. A brief question and answer session followed. This initiative is a cooperative effort between states in the Appalachian region and the federal Office of Surface Mining to encourage the planting of high quality forest restoration projects on reclaimed coal mines. When planned correctly these restoration projects can generate value for their owners and provide environmental services such as watershed protection and wildlife habitat.

2007 Remining Incentive Report

The department provided a brief overview of the 2007 Remining Incentives Report and invited the Board's comments.

Appendix A

BYLAWS OF THE MINING AND RECLAMATION ADVISORY BOARD

As Amended Dec. 12, 1996

ARTICLE I

Authorization

The Mining and Reclamation Advisory Board is authorized and organized pursuant to Section 18(g) of the Pennsylvania Surface Mining Conservation and Reclamation Act (Act 181 of 1984) as amended by Act 173 of 1992.

ARTICLE II

Purpose

The advisory Board is charged to assist the secretary to expend the funds for the purposes provided by this act and to advise the secretary on all matters pertaining to surface coal mining and reclamation which shall include, but not be limited to, experimental practices, alternate methods of backfilling, selection of reclamation projects, alternate reclamation methods, obligations for pre-existing pollution liability, alteration of reclamation loans, reclamation fees and bonding rates and methods.

ARTICLE III

Membership

The Board shall be comprised of three coal operators, two of whom shall be licensed bituminous surface mine operators and one of whom shall be a licensed anthracite surface mine operator; four public members from the Citizens Advisory Council, who shall be appointed by the council; two members, one from the Anthracite and Bituminous Licensed Professional Engineers, and one from the County Conservation Districts, who shall be appointed by the State Conservation District Commission; four members of the General Assembly, two from the Senate, one member from the majority party and one member from the minority party, who shall be appointed by the president pro tempore; and two from the House of Representatives, one from the majority party and one from the minority party, who shall be appointed by the speaker of the House of Representatives.

A. Board members shall designate an alternate. The chairperson shall be notified, in writing, of such alternate.

B. The Board may recommend to the appointing authority removal of any member not attending, or not represented by a designee, at two Board meetings in a year.

ARTICLE IV

Voting

Members, or designated alternates, shall be entitled to one vote, in person, on all matters that shall come before the Board. No voting shall be done without a quorum, unless otherwise indicated in these bylaws. A majority of the membership of the Board shall constitute a quorum.

ARTICLE V

Officers

The officers of the Board shall be a chairperson and a vice-chairperson.

The chairperson and vice chairperson shall be elected from the membership of the Board, as defined in the Pennsylvania Surface Mining Conservation and Reclamation Act, as amended, and may not be the secretary of the Department of Environmental Protection, or his designee. They shall hold office for a term of one year, or until a successor is elected.

It shall be the duty of the chairperson to preside at all meetings of the Board, call special meetings, prepare and distribute the meeting agenda and perform such other duties as pertain to the office.

It shall be the duty of the vice-chairperson to perform the duties of the chairperson in his/her absence.

ARTICLE VI

Administration

Administrative and clerical duties shall be performed by the Office of Mineral Resources Management, Department of Environmental Protection. A department staff person shall function as a recording and corresponding secretary. Included among these administrative duties shall be:

- A. To give timely notice of meetings of the Board and committees.
- B. To record full Board and committee meeting minutes and keep a permanent file. Board and committee meeting minutes shall be distributed to the full membership. Minutes should be reviewed by the chairperson or vice-chairperson prior to distribution.
- C. To conduct both outgoing and incoming correspondence and maintain a permanent file of such correspondence, and
- D. To perform such other duties as may be requested by the Board, including, but not limited to, travel arrangements, conference calls, etc.

In addition, staff representatives from the Office of Mineral Resources Management shall serve as staff liaison to the Board.

ARTICLE VII

Committees

The Board may establish committees to assist in performing its advisory duties.

- A. Committees shall be established by a majority vote of those members attending a regular or special meeting of the Board.
- B. The Board chairperson shall appoint committee members. The committee chairperson shall be selected by its members. The committee chairperson will be responsible for calling committee meetings, requesting needed assistance from DEP, and reporting to the Board, and shall receive necessary administrative and clerical support from DEP.
- C. Each committee shall develop and adopt a statement of purpose or objective of the committee at a meeting of that committee after its creation.
- D. The chairperson of the Board shall appoint a committee to prepare the Annual Report, as mandated by Section 18(g) of the Pennsylvania Surface Mining Conservation and Reclamation Act.
- E. A listing of the committees and their statements of purpose shall be maintained as an appendix to these bylaws. Changes to the appendix shall not constitute a change to the bylaws.

ARTICLE VIII

Meetings

The Board shall meet on the first Thursday of the months of January and July and the fourth Thursday of the months of April and October, unless changed by a majority of the members. Alternate meeting dates and special meetings shall be called by the chairperson, in consultation with the vice-chairperson. Committee meetings shall be called by committee chairpersons, who shall also notify the full Board.

ARTICLE IX

Participation by Non-Board Members

- A. Formal Presentation

Any person may ask the Board for time on the formal agenda to present policy, regulatory or legislative concerns for the Board to consider. The request shall be made in writing to the chairperson and include a summary of the presentation. The chairperson shall determine the interest of the Board in the subject and decide if the presentation will be allowed during the formal

agenda. Requests shall be submitted at least one month prior to a Board meeting.

B. Informal Discussion

At the discretion of the chairperson, any person present at the meeting shall be afforded the opportunity to speak to the Board or ask questions of Board members.

ARTICLE X
Amendments

The bylaws may be amended, repealed or suspended at any meeting of the Board by a two-thirds vote of the members of the Board, provided that written notice of such amendment, repeal or suspension shall have been sent to each member at least one week prior to said meeting.

ARTICLE XI
Board Representation

The Board shall act as a body in all matters before it and only the chairperson, or his or her designee, the vice-chairperson or the Board's designee shall speak on behalf of the Board.

Appendix B

OFFICERS OF THE BOARD FOR THE REPORTING PERIOD July 2007 – June 2008

Board Chairperson	David Osikowicz
Board Vice Chairperson	Burt Waite
Annual Report Committee Co-Chairpersons	Richard Fox and Susan Germanio
Policy Committee Chairperson	Mark Snyder
Reclamation Committee Chairperson	David Strong
Regulation, Legislation and Technical Committee Chairperson	Jack Chamberlin

Appendix C

BOARD MEMBERSHIP FOR THE REPORTING PERIOD July 2007 – June 2008

Board Member	Position	Alternate
David Osikowicz	Bituminous Surface Mine Operator	George Ellis, *Stan Geary, & Susan Germanio
Mark Snyder	Bituminous Surface Mine Operator	George Ellis, *Stan Geary, Darrel Lewis
Jack Chamberlin	Bituminous Licensed Professional Engineer	George Ellis, *Stan Geary, and Susan Germanio
Edward Helfrick, Jr.	Licensed Anthracite Operator	Duane Feagley
Sen. Raphael Musto	General Assembly	Richard Fox
Sen. James Rhoades	General Assembly	Patricia Krommes
Rep. Samuel Smith	General Assembly	Joseph Deklinski
Rep. Deberah Kula	General Assembly	Joyce Martin
Burt Waite	Citizens Advisory Council	Susan Wilson, Janis Dean. & **Patricia Davenport
David Strong	Citizens Advisory Council	Susan Wilson, Janis Dean, & **Patricia Davenport
Walter Heine	Citizens Advisory Council	Susan Wilson, Janis Dean & **Patricia Davenport
Bruce Tetkoskie	Citizens Advisory Council	Susan Wilson, Janis Dean & **Patricia Davenport
David Mankamyer	State Conservation Commission	Bob Hughes

*Mr. Geary resigned from the MRAB and was replaced by Susan Germanio November 2007.

**Patricia Davenport was appointed as an alternate October 2007.

Appendix D

MEETING DATES DURING THE REPORTING PERIOD July 2007 – June 2008

Date	Location	Meeting
July 12, 2007	Harrisburg	Full Board
October 17, 2007	Harrisburg	Reclamation Committee with the Treasury Department
October 25, 2007	Cambria DMO	Full Board (Annual Field Trip Meeting)
November 29, 2007	Harrisburg	Special Meeting convened to discuss ABS legacy funding
January 10, 2008	Harrisburg	Full Board
April 24, 2008	Harrisburg	Full Board

Appendix E

MRAB COMMITTEES FOR THE REPORTING PERIOD July 2007 – June 2008

Annual Report Committee

<p>Mr. Richard Fox (Alternate), Co-Chair PA State Senate Rm. 17, E. Wing, Main Capitol Building Harrisburg, PA 17120-3014 Phone: 717-787-7105 Fax: 717-783-4141</p>	<p>Joseph Deklinski (Alternate) PA House of Representatives 240 Ryan House Office Building House Box 202020 Harrisburg, PA 17120-2020 Phone: 717-783-4707 Fax: 717-705-2095</p>
<p>Susan Germanio (Alternate), Co-Chair PA Coal Association 212 N. Third Street, Suite 102 Harrisburg, PA 17101 (717) 236-5901 FAX: (717) 231-7610</p>	<p>Susan M. Wilson (Alternate) Citizens Advisory Council P.O. Box 8459 13th FL RCSOB Harrisburg, PA 17105-8459 Tel: 717-787-4527 Fax: 717-772-5748</p>

Reclamation Committee

<p>David L. Strong, Chairman P.O. Box 162 Brockway, PA 15824 Tel: 814-371-6142</p>	<p>Susan Germanio (Alternate) PA Coal Association 212 N. Third Street, Suite 102 Harrisburg, PA 17101 (717) 236-5901 FAX: (717) 231-7610</p>
<p>Duane Feagley (Alternate) PA Anthracite Council 3400 Trindle Road Camp Hill, PA 17011 Tel: 717-737-9825 (O) Fax: 717-730-0409</p>	<p>Jack R. Chamberlain 702 Chamberlin Road Brookville, PA 15825 Tel: 814-849-4181 FAX: 814-849-7166</p>
<p>Robert E. Hughes (Alternate) EPCAMR 485 Smith Pond Road Shavertown, PA 18704 Tel: 570-674-3411 Fax: 570-674-7989</p>	<p>Susan M. Wilson (Alternate) Citizens Advisory Council P.O. Box 8459 13th FL RCSOB Harrisburg, PA 17105-8459 Tel: 717-787-4527 Fax: 717-772-5748</p>

Regulation, Legislation and Technical Committee

<p>Jack R. Chamberlin, Chairman 702 Chamberlin Road Brookville, PA 15825 Tel: 814-849-4181 Fax: 814-849-7166</p>	<p>David L. Strong P.O. Box 162 Brockway, PA 15824 Tel: 814-371-6142</p>
<p>The Honorable Raphael Musto Senate of Pennsylvania Senate Post Office Box 203014 Harrisburg, PA 17120-3014 Tel: 717-787-7105 Fax: 717-783-4141</p>	<p>The Honorable James J. Rhoades Senate of Pennsylvania Senate Post Office Box 203029 Harrisburg, PA 17120-3029 Tel: 717-787-2637 Fax: 717-783-9149</p>
<p>The Honorable Samuel H. Smith Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020 Tel: 717-787-3845 Fax: 717-787-6564</p>	<p>The Honorable Deberah Kula Pennsylvania House of Representatives House Post Office Box 202020 Harrisburg, PA 17120-2020 Tel: 717-772-5771 Fax: 717-787-0861</p>
<p>David D. Osikowicz Original Fuels, Inc. O.O. ox 343 Punxsutawney, PA 15767 Tel: 814-938-5171 Fax: 814-938-5008</p>	<p>Susan M. Wilson (Alternate) Citizens Advisory Council P.O. Box 8459 13th FL RCSOB Harrisburg, PA 17105-8459 Tel: 717-787-4527 Fax: 717-772-5748</p>

Policy Committee

<p>Mark A. Snyder, Chairman State Industries, Inc. P.O. Box 1022 Kittanning, PA 16201 Tel: 724-548-8101 Fax: 724-545-2989</p>	<p>David Mankamyer, 152 Aviator Lane Friedens, PA 15541 Tel: 814-445-8618 Fax: 814-444-9666</p>
<p>Walter N. Heine, P.E. Walter N. Heine Associates, Inc. 67 Graham Road Newville, PA 17241 Tel: 717-776-5696</p>	