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Attorneys for Petitioner

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, :

Respondents. :

COMMONWEALTH COURT
OF PENNSYLVANIA

ORIGINAL JURISDICTION

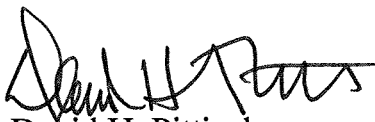
No. __ MD 2022

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Verified Application for Expedited Special and Summary Relief, within 20 days or within the

time set by Order of the Court, of service hereof or a Judgment may be entered against you.

Dated: February 3, 2022


/s/ David H. Pittinsky
Attorneys for Petitioner

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No. __ MD 2022

**PETITIONER'S VERIFIED APPLICATION FOR EXPEDITED SPECIAL
AND SUMMARY RELIEF**

Petitioner, by his counsel, hereby respectfully moves for expedited special and summary relief, pursuant to Pa.R.A.P. 123 and 1532 and Pa.R.C.P 1098, in the form

of a writ of mandamus requiring Respondents to publish the duly-promulgated final-form rulemaking CO₂ Budget Trading Program (the “Trading Program Regulation”) issued by the Environmental Quality Board (“EQB”) in the first available issue of the *Pennsylvania Bulletin*. In support of his Application, Petitioner incorporates herein by reference his Petition for Review filed on February 3, 2022, and the Declaration of Allen Landis, filed in support of this Application. In further support, Petitioner avers:

THE NEED FOR EXPEDITED RELIEF

1. This Petition arises out of the Pennsylvania Legislative Reference Bureau’s (“LRB”) unlawful refusal to publish the EQB’s duly promulgated Trading Program Regulation.

2. The Trading Program Regulation provides for Pennsylvania’s participation in the Regional Greenhouse Gas Initiative (“RGGI”) involving eleven Northeastern and Mid-Atlantic States.

3. Through RGGI, as implemented in Pennsylvania through the Trading Program Regulation, large electric power generation plants are required to buy one “allowance” for each ton of carbon dioxide (CO₂) that they emit. Each state participating in RGGI establishes a declining CO₂ “budget,” effectively capping the total CO₂ that large electric power plants are permitted to emit.

4. Every calendar quarter, RGGI allowances are auctioned, and the participating states receive auction proceeds from the sales of these allowances.

5. Proceeds from the auctions “will be used in the elimination of air pollution in accordance with the [Air Pollution and Control Act] and Chapter 143 of DEP’s regulations [(regarding disbursements from the Clean Air Fund)],” Section 145.343(b) of the Trading Program Regulation.

6. “Fees collected under [the Air Pollution and Control Act] shall be paid into . . . the Clean Air fund, . . . for use in the elimination of air pollution.” 35 P.S. § 4009.2(a).

7. Thus, the proceeds from the auctions advance the goals of improving public health and welfare, improving environmental conditions, and providing economic benefits to residents.

8. In 2021, the then-eleven participating RGGI states received \$926 Million from the auctions of allowances.

9. As a result of Respondents’ refusal to publish the Trading Program Regulation in the *Pennsylvania Bulletin*, Pennsylvania’s entry into RGGI has already been delayed until April 1, 2022.

10. As a result of this delay, Pennsylvania has been unable to participate in the first auction, and has already lost approximately \$162 million in proceeds and associated air pollution reduction. *See* Declaration of Allen Landis at ¶ 4.

11. If Pennsylvania cannot join RGGI until July 1, 2022, Petitioner estimates that it will lose approximately \$283 million in proceeds and associated air pollution reductions. *See* Declaration of Allen Landis at ¶ 5.

12. Because these auctions have occurred or will have occurred, Pennsylvania's lost auction proceeds cannot be recovered through other means.

**PETITIONER'S ENTITLEMENT TO A PEREMPTORY WRIT OF
MANDAMUS OR SPECIAL/SUMMARY RELIEF**

13. "The writ of mandamus exists to compel official performance of a ministerial act or mandatory duty." *Fagan v. Smith*, 41 A.3d 816, 818 (Pa. 2012) (citing *Delaware River Port Auth. v. Thornburgh*, 493 A.2d 1351, 1355 (Pa. 1985)).

14. A writ of mandamus may be issued "where the petitioners have a clear legal right, the responding public official has a corresponding duty, and no other adequate and appropriate remedy at law exists." *Fagan*, 41 A.3d at 818 (citing *Volunteer Firemen's Relief Ass'n of City of Reading v. Minehart*, 203 A.2d 476, 479 (Pa. 1964)). Petitioner satisfies all these requirements.

15. "Moreover, mandamus is proper to compel the performance of official duties whose scope is defined as a result of the mandamus action." *Fagan*, 41 A.3d at 818 (citing *Thornburgh*, 493 A.2d at 1355).

16. Finally, “mandamus will lie to compel action by an official where his refusal to act in the requested way stems from his erroneous interpretation of the law.” *Fagan*, 41 A.3d at 818 (citing *Minehart*, 203 A.2d at 479-80).

17. This Court may order special relief where the relief is required in the “interest of justice and consistent with the usages and principles of law.” Pa.R.A.P. 1532(a).

18. This Court may grant summary relief where the “right of the applicant thereto is clear.” PA.R.A.P. 1532(b).

19. This Court may enter a peremptory judgment in mandamus where the right of the plaintiff is clear. Pa.R.C.P 1098.

20. Here, Petitioner has established that the LRB has refused to publish the Trading Program Regulation, that such refusal is without basis in law, and that Petitioner is entitled to relief as a matter of law.

21. Petitioner has further established that the interests of justice require that this Court act immediately to remedy the LRB’s unlawful refusal, as the LRB has no discretion to impose its view of the Trading Program Regulation’s validity on Petitioner or the Commonwealth’s residents, and each day of the LRB’s refusal manifests a financial and legal harm on Petitioner.

PRAYER FOR RELIEF

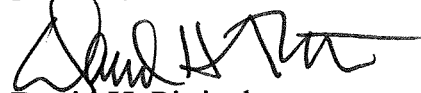
WHEREFORE, for the foregoing reasons and for the reasons set forth in the Verified Petition for Review and Declaration of Allen Landis, Petitioner respectfully requests that this Court immediately enter judgment in his favor and grant the following relief:

- (1) enter judgment declaring that, under Section 7(d) of the RRA (71 P.S. § 745.7(d)), the House of Representatives was permitted to adopt S.C.R.R.R. 1 only through October 14, 2021;
- (2) enter judgment declaring that, under Section 7(d) of the RRA (71 P.S. § 745.7(d)), the House's adoption of S.C.R.R.R. 1 on December 15, 2021, was a nullity, ineffective and contrary to Section 7(d);
- (3) enter judgment declaring that, under Section 7(d) of the RRA (71 P.S. 745.7(d)), the Trading Program Regulation was deemed approved by the General Assembly on October 15, 2021;
- (4) enter judgment declaring that the Respondents were required to publish the Trading Program Regulation in the next available issue of the *Pennsylvania Bulletin* after submission, and remain obligated to publish the Trading Program Regulation;

- (5) enter judgment declaring that Respondents did not have the discretionary authority to refuse to publish the Trading Program Regulation in the *Pennsylvania Bulletin* on their own accord;
- (6) enter judgment declaring that, having failed to timely publish the Trading Program Regulation when deposited with the LRB, Respondents must publish the regulation in the first available issue of the *Pennsylvania Bulletin*; and
- (7) grant a writ of mandamus requiring Respondents to publish the Trading Program Regulation in the first available issue of the *Pennsylvania Bulletin*.

Dated: February 3, 2022

Respectfully submitted,



/s/ David H. Pittinsky

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215.665.8500

Attorneys for Petitioner

VERIFICATION

I, Patrick J. McDonnell, hereby verify that:

- (a) I am the Petitioner in this action;
- (b) I am authorized to make this Verification; and
- (c) The facts set forth in the foregoing Verified Application for Expedited

Special and Summary Relief are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 3, 2022



Patrick J. McDonnell

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: February 3, 2022

/s/ David H. Pittinsky

David H. Pittinsky

(Pa. 04552)

CERTIFICATE OF SERVICE

I, David H. Pittinsky, hereby certify that, on February 3, 2022, I caused a true and correct copy of the foregoing Verified Application for Expedited Special and Summary Relief, to be served via hand delivery on Respondents, as follows:

Pennsylvania Legislative Reference Bureau
501 North 3rd Street
Room 647 Main Capitol Building
Harrisburg, PA 17120

Vincent C. DeLiberato, Jr.
Director, Legislative Reference Bureau
501 North 3rd Street
Room 647 Main Capitol Building
Harrisburg, PA 17120

Amy J. Mendelsohn
Director, Pennsylvania Code and Bulletin
501 North 3rd Street
Room 647 Main Capitol Building
Harrisburg, PA 17120

Pennsylvania Office of Attorney General
16th Floor
Strawberry Square
Harrisburg, PA 17120

Dated: February 3, 2022

/s/ David H. Pittinsky
David H. Pittinsky