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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. :

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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  
Petition for Review in the nature of a Complaint for Permanent and Peremptory

Mandamus and for Declaratory Judgment, 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

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COMMONWEALTH COURT  
OF PENNSYLVANIA

ORIGINAL JURISDICTION

No. \_\_ MD 2022

**VERIFIED PETITION FOR REVIEW  
IN THE NATURE OF A COMPLAINT FOR PERMANENT AND  
PEREMPTORY MANDAMUS AND FOR DECLARATORY JUDGMENT**

## INTRODUCTION

1. Petitioner Patrick J. McDonnell, Secretary of the Department of Environmental Protection (“DEP”) and Chairperson of the Environmental Quality Board (“EQB”) brings this Petition for Review, for a declaratory judgment and mandamus relief, against Respondents Pennsylvania Legislative Reference Bureau (“LRB”); Vincent C. DeLiberato, Jr., Director of the LRB; and Amy J. Mendelsohn, Director of the Pennsylvania Code and Bulletin (“PCB”).

2. Petitioner brings this action pursuant to Pa.R.A.P. 1501, 1512, 1513 and 1532, the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §§ 7531–7541, and Pa. R. Civ. P. 1091–1100, to compel Respondents to discharge their mandatory, nondiscretionary duty to publish the EQB’s duly-promulgated final-form rulemaking CO<sub>2</sub> Budget Trading Program (the “Trading Program Regulation”), a regulation that Petitioner deposited with Respondents as required under the Commonwealth Documents Law (45 P.S. §§ 1101–1611), Title 45 of the Pennsylvania Consolidated Statutes, Subchapter B (relating to publication of documents) (45 Pa.C.S. §§ 721–732), and in accordance with the Regulatory Review Act (“RRA”) (71 P.S. §§ 745.1–745.15); and to obtain from this Court a declaration that Respondents may not continue to disregard their duties under these laws and applicable regulations based upon Respondents’ incorrect interpretation and application of law.

## **JURISDICTION**

3. This Court has original jurisdiction of this action pursuant to 42 Pa.C.S. § 761(a)(2) because it is an action commenced by an officer of the Commonwealth acting in his official capacity.

4. This Court also has original jurisdiction of this action pursuant to 42 Pa.C.S. § 761(a)(1) because it is an action against the Commonwealth government and against officers of the Commonwealth acting in their official capacities.

## **PARTIES**

5. Petitioner Patrick J. McDonnell is the duly appointed Secretary of DEP.

6. The Secretary of DEP is the ex officio Chairman of the EQB. 71 P.S. § 180-1.

7. Petitioner McDonnell brings this action in his official capacities as Secretary of DEP and Chairman of the EQB.

8. The EQB is empowered “to formulate, adopt and promulgate such ... regulations as may be determined by the board for the proper performance of the work of [DEP], and such ... regulations, when made by the board, shall become the ... regulations of [DEP].” 71 P.S. § 510-20(b).

9. The EQB’s authority includes the power “to adopt regulations for the prevention, control, reduction, and abatement of air pollution in the Commonwealth.” 35 P.S. § 4005(a)(1).

10. As Secretary of DEP and Chairman of the EQB, Petitioner McDonnell thus has a direct, immediate and substantial interest in publication of regulations that he promulgates on behalf of the EQB.

11. Respondent LRB “is a supporting agency for the General Assembly” and “publisher of the *Pennsylvania Bulletin* and *Pennsylvania Code*.” 101 Pa. Code § 1.1.

12. Respondent Vincent C. DeLiberato, Jr. (“DeLiberato”) is the duly elected Director of the LRB, and he is sued in his official capacity.

13. Respondent Amy J. Mendelsohn (“Mendelsohn”) is the duly appointed Director of the PCB, which is located within the LRB, and she is sued in her official capacity.

### **STATEMENT OF MATERIAL FACTS**

14. Executive agencies, such as the DEP, are authorized to promulgate regulations through an interwoven statutory and regulatory regime, which includes: the Commonwealth Documents Law (45 P.S. §§ 1102–1208), the Commonwealth Attorneys Act (71 P.S. §§ 732-101–732-506), Part II of Title 45 of the Pennsylvania Consolidated Statutes (45 Pa.C.S. §§ 501–907), the RRA (71 P.S. §§ 745.1–745.15) and 1 Pa. Code Part I (relating to Joint Committee on Documents).

15. The Commonwealth Attorneys Act and the Commonwealth Documents Law provide for review and approval of the form and legality of a regulation by the Office of General Counsel and the Office of Attorney General. *See* 71 P.S. § 732-301(10); 71 P.S. § 732-204(b), respectively; 45 P.S. § 1205; *see also* 1 Pa. Code § 13.16 (relating to approval as to form and legality).

16. Once the Office of Attorney General and the Office of General Counsel review and approve regulations for form and legality, their approval is indicated by separate endorsements (signatures) from the respective legal offices. 1 Pa. Code § 13.16

17. The RRA provides for review and approval by the Independent Regulatory Review Commission (IRRC) in determining whether a regulation is in the public interest. 71 P.S. § 745.5b.

18. The RRA also provides the General Assembly, including the legislative standing committees, with the opportunity to take action on a regulation that has been approved by the IRRC. 71 P.S. § 745.5a(j.2); 71 P.S. § 745.7(d).

19. The LRB has a limited role in the regulatory process related to publishing and codifying regulations in conformity with its style and format. 45 Pa.C.S. §§ 509, 722(a), and 723(a).

20. The LRB was created “for the use and information of the Members of the General Assembly, the Governor, and the heads of the departments of the State

Government, and such citizens of the Commonwealth as may desire to consult the same.” 46 P.S. § 451.

21. The LRB is obligated to “prepare, and have available for use, indices of Pennsylvania laws, digests of such public laws . . . , catalogue files of such reports of departments, boards, and commissions, and other public documents of this State, as well as general books and pamphlets, as pertain to the work and service of the bureau, files of newspaper and periodical clippings, and of such other printed matter as may be proper for the purposes of the bureau . . . .” 46 P.S. § 457.

22. As part of these duties, the LRB is charged with arranging, through the Department of General Services, the prompt publication of the *Pennsylvania Code* and *Pennsylvania Bulletin* in the manner and at the times required by law. 45 Pa.C.S. § 721.

23. The *Pennsylvania Bulletin* is required to be published at least once a week and must contain all previously unpublished documents duly filed prior to the closing date. 45 Pa.C.S. § 724(b); *see also* 1 Pa. Code §§ 13.53, 13.82 (relating to publication schedules; timing for regular schedule).

24. In order to have a regulation published, an agency is merely required to submit two duplicate original copies of the document to the LRB. 45 Pa.C.S. § 722(a); 1 Pa. Code § 13.11.



25. If the LRB finds that such document has been approved as to legality, if such approval is required by 2 Pa.C.S. § 305 (relating to approval as to legality)<sup>1</sup> and is in the required form and format, the LRB must file the document, assign a serial number, and indicate the date and time of filing on such document. 45 Pa.C.S. § 722(a).

26. Prior to submission of the document to the LRB, the Office of Attorney General and counsel for the agency review and approve regulations for form and legality. 71 P.S. §§ 732-204(b), 732-301(10); 45 P.S. § 1205; *see also* 1 Pa. Code § 13.16 (relating to approval as to form and legality). Their approval is indicated by the endorsements (signatures) of both those legal offices. 1 Pa. Code § 13.16.

27. The LRB must publish all documents required or authorized by 45 Pa.C.S. § 725 in the *Pennsylvania Bulletin*, including documents from the executive, legislative, and judicial branches.<sup>2</sup> 45 Pa.C.S. § 724(a); 45 Pa.C.S. §

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<sup>1</sup> Although Act 1978-53 added Chapter 3 (relating to promulgation of regulations) to Title 2 of the Pennsylvania Consolidated Statutes, the chapter was never populated and still remains reserved. The statutory authority for approval as to legality still remains in the unconsolidated statutes under the Commonwealth Documents Law at 45 P.S. § 1205 (relating to approval as to legality) and now also appears under the Commonwealth Attorneys Act. (71 P.S. §§ 732-204(b) and 732-301(10)).

<sup>2</sup> The *Pennsylvania Bulletin* is the official gazette of the Commonwealth of Pennsylvania. 1 Pa. Code § 3.11.

725; *see also* 1 Pa. Code § 3.13 (requiring that the LRB “shall publish” agency documents, with limited exceptions not relevant here)

28. As set forth below, the LRB here has failed to carry out its non-discretionary responsibilities as required by law.

29. Specifically, the LRB has unlawfully refused to publish a regulation properly approved and subsequently deposited with it in accordance with law.

30. On July 13, 2021, the EQB adopted the Trading Program Regulation under 25 Pa. Code Chapter 145 as authorized by the Administrative Code, 71 P.S. § 510-20, and the Air Pollution Control Act, 35 P.S. § 4005.

31. On July 26, 2021, the Governor’s Office of General Counsel approved the Trading Program Regulation as to form and legality in accordance with the provisions of the Commonwealth Attorneys Act and the Joint Committee on Document’s regulations. 71 P.S. § 732-301(10); 1 Pa. Code § 13.16. *See* Exhibit A annexed hereto.

32. On September 1, 2021, IRRC approved the Trading Program Regulation in accordance with the provisions of the RRA (71 P.S. §§ 745.1 - 745.15). *See* 51 Pa. B. 6115 (September 18, 2021).

33. On October 15, 2021, by operation of law, the Trading Program Regulation was deemed approved by the General Assembly in accordance with the provisions of the RRA, 71 P.S. § 745.1.7(d).

34. On November 24, 2021, the Pennsylvania Office of Attorney General approved the Trading Program Regulation as to form and legality in accordance with the provisions of the Commonwealth Attorneys Act, 71 P.S. § 732-204(b), and Commonwealth Documents Law 45 P.S. § 1205. 745. *See* Exhibit B annexed hereto (Regulatory Face Sheet),

35. On November 29, 2021, DEP, acting on behalf of the EQB, submitted the Trading Program Regulation to the LRB for publication in the *Pennsylvania Bulletin*. A copy of the November 29, 2021 email making the submission is annexed hereto as Exhibit C.

36. On November 30, 2021, Respondent Mendelsohn, acting in her official capacity as Director of the PCB, sent a letter to Petitioner acknowledging that the Trading Program Regulation had been filed, but refusing to publish the Trading Program Regulation in the *Pennsylvania Bulletin*. Specifically, Mendelsohn asserted that, under section 7(d) of the RRA, the House of Representatives' time to adopt a resolution disapproving the regulation had not yet expired. A copy of Mendelsohn's November 30, 2021 letter is annexed hereto as Exhibit D.

37. On December 10, 2021, Petitioner, acting in his official capacity as Secretary of DEP, sent a letter to Respondent Mendelsohn again requesting that the LRB publish the Trading Program Regulation in the *Pennsylvania Bulletin*. Specifically, Petitioner asserted that the House of Representatives' time to adopt

the resolution under section 7(d) of the RRA had long since expired and, in any event, there was no basis for the LRB to refuse to publish a duly promulgated regulation. A copy of Petitioner's December 10, 2021 letter is annexed hereto as Exhibit E.

38. On December 16, 2021, Respondents Mendelsohn and DeLiberato, acting in their respective official capacities as Director of the PCB and Director of the LRB, sent another letter to Secretary McDonnell persisting in their refusal to publish the Trading Program Regulation in the *Pennsylvania Bulletin*. Specifically, Respondents asserted that, on December 15, 2021, the House had timely adopted a resolution disapproving the regulation. A copy of Respondents' December 16, 2021 letter is annexed hereto as Exhibit F.

39. None of the statutory provisions that encompass the regulatory process vest the LRB with discretion to determine the validity of regulations prior to their publication, decide whether regulations are appropriate to publish, or to substitute the LRB's judgment for the rulemaking authority and judgment expressly granted to executive agencies, the IRRC, the Office of Attorney General, and the General Assembly.

**COUNT ONE – PEREMPTORY AND PERMANENT MANDAMUS**  
**(Petitioner McDonnell against both Respondents)**

40. Petitioner incorporates paragraphs 1 through 39 as though set forth herein at length.

41. “Mandamus is an extraordinary writ that will only lie to compel official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate or adequate remedy.” *Jackson v. Vaughn*, 777 A.2d 436, 438 (Pa. 2001).

42. “A writ of mandamus is an extraordinary remedy used to compel official performance of a ministerial act when a petitioner establishes a clear legal right, the respondent has a corresponding duty, and the petitioner has no other adequate remedy at law. *Tindell v. Dep't of Corr.*, 87 A.3d 1029, 1034 (Pa. Cmwlth. 2014) (citing *Danysh v. Wetzel*, 49 A.3d 1, 2 (Pa. Cmwlth. 2012)). Petitioner satisfies all these requirements.

43. “A ministerial act is one which a public officer is ‘required to perform upon a given state of facts and in a prescribed manner in obedience to the mandate of legal authority.’” *Philadelphia Firefighters’ Union v. Philadelphia*, 632 Pa. 243, 255-256, 119 A.3d 296, 303 (2015) (quoting *County of Allegheny Deputy Sheriff’s Ass’n v. County of Allegheny*, 730 A.2d 1065, 1067–68 (Pa. Cmwlth. 1999)).

44. “A clear legal right to relief is shown where the right to require performance of the act is clear, and a corresponding duty is shown where the

governing law contains directory language, requiring that an act shall be done.” *Philadelphia Firefighters’ Union*, 632 Pa. at 256, 119 A.3d at 303 (quoting, respectively, *Shroyer v. Thomas*, 368 Pa. 70, 81 A.2d 435, 436 (1951), and *Stork v. Sommers*, 158 Pa. Cmwlt. 65, 630 A.2d 984, 986–87 (1993)).

45. “A want of any other adequate remedy is established where there is no alternative form of relief.” *Philadelphia Firefighters’ Union* (quoting *Styers v. Wade*, 30 Pa. Cmwlt. 38, 372 A.2d 1236, 1238 (1977)).

46. “Moreover, mandamus is proper to compel the performance of official duties whose scope is defined as a result of the mandamus action.” *Fagan v. Smith*, 41 A.3d 816, 818 (citing *Delaware River Port Auth. v. Thornburgh*, 493 A.2d 1351, 1355 (Pa. 1985)).

47. 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 *Volunteer Firemen’s Relief Ass’n of City of Reading v. Minehart*, 203 A.2d 476, 479-80 (Pa. 1964)).

48. Mandamus will lie to compel an agency to act, whether its inaction is formally pronounced, or the agency instead “sits on its hands.” See *Chanceford Aviation Props, LLP v. Chanceford Twp. Bd. of Supervisors*, 923 A.2d 1099 (Pa. 2007).

49. Here, the LRB is subject to a mandatory duty to publish duly promulgated regulations, such as the Trading Program Regulation.

50. The LRB is commanded “to arrange . . . for the prompt publication of . . . the [Pennsylvania] bulletin . . . in accordance with [45 Pa.C.S. Chapter 7] and regulations promulgated hereunder.” 45 Pa.C.S. § 721.

51. The LRB maintains no discretion to determine the legality of a document. Instead “[i]f the [LRB] finds that [a] document has been approved as to legality, . . . it shall file such document . . . .” 45 Pa.C.S. § 722(a); 1 Pa.Code §§ 13.14, 13.16, and 13.52.

52. The LRB must publish “(a)ll agency documents which are required by law to be published,” and “any other document . . . which the Governor . . . may require or authorize to be published in the [Pennsylvania] bulletin.” 45 Pa.C.S. § 725(a).

53. The LRB must publish material filed with it in the “first available issue of . . . the ‘Pennsylvania Bulletin,’ printed after the filing.” 45 Pa.C.S. § 724(a).

54. As a creation of statute, the LRB’s authority is limited to those powers expressly conferred or necessarily implied by legislation. *See Gnagey Gas & Oil Co. v. Pa. Underground Storage Tank Indemnification Fund*, 82 A.3d 485, 499 (Pa. Cmwlth. 2013).

55. No provision of law expressly confers or implies that the LRB has authority to pass upon the legality of regulations filed with it.

56. The Office of Attorney General and agency counsel – not the LRB – are vested with authority to initially determine the lawfulness of regulations promulgated by executive agencies. *See* 45 P.S. § 1205;<sup>3</sup> 71 P.S. §§ 732-204(b) and 732-301 ([a]ll administrative regulations and changes therein shall be approved as to form and legality before they are deposited with the LRB); *see also* 1 Pa. Code § 13.16.

57. Even where the Office of Attorney General declines to certify the form or legality of a regulation, the LRB is obligated to publish the regulation along with the Office of Attorney General’s objections. 71 P.S. § 732-204(b); 1 Pa. Code § 13.16(f).

58. When a regulation has been duly promulgated and submitted with the appropriate signatures, the LRB does not possess discretion to determine *which* regulations should be published or *when* they should appear in the *Bulletin*.

59. Instead, the General Assembly has provided the LRB with only limited discretion in specifically identified areas not relevant here. *See* 45 Pa.C.S. §§ 721

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<sup>3</sup> The Department of Justice was the predecessor of the Office of Attorney General.



and 723 (relating to form and format of filed documents); *see also* 1 Pa. Code § 13.12.

60. Even in those instances, LRB may only format the text “in active cooperation” with the agency, and may not “effect any change in the substance of the deposited text of such regulations.” 45 Pa.C.S. § 723.

61. The General Assembly has set forth an exhaustive list of items that may not be published in the *Bulletin*, and the present regulations are not among these items. 45 Pa.C.S. § 728. The *expressio unius est exclusio alterius* doctrine thus applies here.

62. Peremptory mandamus may issue where the Petitioner’s right to relief is clear. *Council 13, AFSCME v. Casey*, 595 A.2d 670, 671 (Pa. Cmwlth. 1991) (citing *Equitable Gas Co. v. Pittsburgh*, 488 A.2d 270 (Pa. 1985)).

63. Here, Petitioner’s right to relief is clear because no provision of law permits the LRB to ignore its legal non-discretionary obligation, usurp the regulatory process and disregard the authority granted to the three branches of government to promulgate laws, regulations, and rules.

64. The LRB is neither a lawmaker nor a court.

65. Any person who is adversely affected by a regulation and who questions its validity, has legal recourse.

66. For example, if a promulgation is invalid but the regulation is published, appropriate parties may challenge the regulation in court or an administrative forum, or the General Assembly could pass a law abrogating the regulation.

67. Petitioner is without any other recourse because only the LRB has the authority to publish the *Pennsylvania Code* and *Bulletin*. 45 Pa.C.S. § 721.

68. By failing to publish the Trading Program Regulation as required by law, the LRB has deprived interested persons of the opportunity to litigate the promulgation of the regulation, and has substituted the LRB's discretion (which is lacks under the law) for that of the Judicial Branch.

69. Because Petitioner has demonstrated that the LRB has failed to adhere to its mandatory, non-discretionary duty to publish the Trading Program Regulation, that his right to relief is clear, and that there exists no administrative alternative to mandamus, Secretary McDonnell is entitled to an immediate peremptory and permanent writ of mandamus as a matter of law.

WHEREFORE, Petitioner respectfully requests that the Court issue a writ of mandamus compelling the LRB to publish the Trading Program Regulation, as is required by law, in the first available issue of the *Pennsylvania Bulletin*.

## COUNT TWO DECLARATORY JUDGMENT

### (Petitioner McDonnell against both Respondents)

70. Petitioner incorporates paragraphs 1 through 69 as though set forth herein at length.

71. Secretary McDonnell seeks a declaratory judgment that (1) the LRB's refusal to publish the Trading Program Regulation is contrary to law; (2) the Trading Program Regulation must be published in the Pennsylvania Code and Bulletin; and (3) the Trading Program Regulation has been deemed approved by the General Assembly.

72. The LRB appears to base its refusal to publish the Trading Program Regulation upon their patently incorrect interpretation of section 7(d) of the RRA, which provides in pertinent part:

(d) Upon receipt of the [IRRC's] order pursuant to subsection (c.1) or at the expiration of the [IRRC's] review period if the commission does not act on the regulation or does not deliver its order pursuant to subsection (c.1), ***one or both of the [legislative standing] committees may, within 14 calendar days, report*** to the House of Representatives or Senate ***a concurrent resolution....*** If either [the House or Senate] committee reports a concurrent resolution before the expiration of the 14-day period, the Senate and the House of Representatives ***shall each have*** 30 calendar days or ten legislative days, whichever is longer, ***from the date on which the concurrent resolution has been reported,*** to adopt the concurrent resolution.

71 P.S. § 745.7(d) (emphasis added).

73. Even if the LRB were empowered to determine the validity of the regulation, its interpretation is erroneous as a matter of law.

74. After IRRC approves a regulation, the RRA affords the General Assembly with the opportunity to reject a properly promulgated regulation by adopting a concurrent resolution disapproving the regulation within the prescribed time period. 71 P.S. § 745.7(d).

75. The House and Senate only have “30 calendar days or ten legislative days, whichever is longer, *from the date on which the concurrent resolution has been reported*, to adopt the concurrent resolution.” 71 P.S. § 745.7(d) (emphasis added).

76. Under the House and Senate Rules, “Resolutions are *reported* from committee; whereas resolutions are *adopted* by an entire chamber. *See* Pennsylvania House Rule 35 (relating to House and concurrent resolutions); Pennsylvania Senate Rule 14 (relating to committees) and Pennsylvania Senate Rule 29 (relating to Resolutions).

77. On September 14, 2021, the Senate Environmental Resources and Energy Committee *reported* Senate Concurrent Regulatory Review Resolution 1 (“S.C.R.R.R. 1”), disapproving the Trading Program Regulation.<sup>4</sup>

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<sup>4</sup> The House of Representatives Environmental Resources and Energy Committee reported a House Concurrent Regulatory Review Resolution 1 (“H.C.R.R.R. 1”) on September 2, 2021, disapproving the Trading Program Regulation. The House, however, failed to adopt H.C.R.R.R. 1 within its statutorily-prescribed

78. Under the plain language of section 7(d) of the RRA, the House and Senate thus each had 30 calendar days or 10 legislative days from September 14, 2021 (the date on which the Senate concurrent resolution was *reported*), whichever is longer, to adopt S.C.R.R.R. 1.

79. Thirty calendar days from September 14, 2021 is October 14, 2021.

80. The Senate held legislative days on September 21, 22, 27, 28, and 29, October 18, 19, 25, 26 and 27. *See* <https://www.legis.state.pa.us/SessionDays.cfm?SessionYear=2021&SessionInd=0&Chamber=S>. *See* Exhibit G annexed hereto.

81. The Senate's 10<sup>th</sup> legislative day was therefore October 27, 2021.

82. Thus, the Senate had until October 27, 2021 (the longer of 10 legislative days) to adopt S.C.R.R.R. 1.

83. The Senate adopted S.C.R.R.R. 1 on October 27, 2021.

84. The House held legislative days on September 15, 20, 21, 22, 27, 28, and 29, October 4, 5, and 6. *See*

<https://www.legis.state.pa.us/SessionDays.cfm?SessionYear=2021&SessionInd=0&Chamber=H>. *See* Exhibit H annexed hereto.

85. The House's 10th legislative day was therefore October 6, 2021.

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timeline of 30 days or ten legislative days, whichever is longer, and the H.C.R.R.R.1 is thus not at issue in this case.

86. Thus, under section 7(d) of the RRA, the House had only until October 14, 2021 (the longer of 30 calendar days) to adopt S.C.R.R.R. 1.

87. The House did not adopt S.C.R.R.R. 1 by October 14, 2021.

88. By operation of law, the Trading Program Regulation was thus deemed approved by the General Assembly in accordance with the provisions of the RRA on October 15, 2020. 71 P.S. § 745.1.7(d).

89. The House of Representatives did not act to approve S.C.R.R.R. 1 until December 15, 2021— two months after the Trading Program Regulation was deemed approved by virtue of section 7(d) of the RRA.

90. The LRB, in its November 30, 2021 letter to Secretary McDonnell, indicated that it supported the House of Representative's position that the House's time to adopt the concurrent resolution did not begin until after the entire Senate *adopted* the concurrent resolution, instead of when the Senate *reported* the concurrent resolution from committee. A copy of Mendelsohn's November 30, 2021 letter is annexed hereto as Exhibit D.

91. The LRB thus contends that the House was not required to act on S.C.R.R.R.1 until after the Senate adopted S.C.R.R.R.1 on October 27, 2021.

92. Under section 7(d) of the RRA, the House of Representatives' purported approval of S.C.R.R.R. 1 on December 15, 2021 was a nullity because the House had only until October 14, 2021 to adopt the Senate's resolution.<sup>5</sup>

93. The plain, unambiguous language of section 7(d) of the RRA thus directly contradicts the LRB's stated position.

94. Even if the language of section 7(d) of the RRA were ambiguous, the Rules of Statutory Construction support Secretary McDonnell's interpretation. 1 Pa.C.S. § 1921.

95. Under the Rules of Statutory Construction, "[e]very statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921(a); *see also Allegheny Cty. Sportsmen's League v. Rendell*, 860 A.2d 10, 19 (Pa. 2004) (stating that, where possible, we must interpret a statute to give effect to every provision because we presume that the legislature intends to avoid mere surplusage).

96. The Rules of Statutory Construction further provide "that the General Assembly intends the entire statute to be effective and certain" and the General

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<sup>5</sup> Even though S.C.R.R.R.1 1 is a nullity, the Governor vetoed S.C.R.R.R.1 the same day it was delivered to the Department of State. In his veto message, the Governor states that the Trading Program Regulation was deemed approved by the General Assembly due to the House of Representatives' failure to timely adopt S.C.R.R.R. 1. *See* Exhibit I annexed hereto.

Assembly “does not intend a result that is absurd, impossible of execution or unreasonable.” 1 Pa.C.S. §§ 1921(a), 1922(a).

97. When words of a statute are unclear, the intention of the General Assembly may be ascertained by considering, in part, the consequences of a particular interpretation. 1 Pa.C.S. § 1921(b).

98. Under section 7(d) of the RRA, the Senate and House each have “30 calendar days or ten legislative days, whichever is longer, *from the date on which the concurrent resolution has been reported*, to adopt the concurrent resolution.” 71 P.S. § 745.1.7(d) (emphasis added).

99. Under the LRB’s interpretation of section 7(d) of the RRA, the phrase “from the date on which the concurrent resolution has been reported” is given absolutely no meaning and rendered surplusage.

100. The LRB’s interpretation would also lead to an absurd result by allowing the General Assembly to significantly delay the promulgation and publication of a regulation.

101. The consequence of LRB’s interpretation would be to allow the General Assembly to unjustifiably encroach upon the executive’s rulemaking authority inherent in its duty to administer the laws.

102. The authority to promulgate regulations is vested in the executive branch, and while Pennsylvania is unique in that it provides the General Assembly



with a role in the regulatory process, it does not empower the General Assembly to bring the promulgation of regulations to a grinding halt. PA. CONST. Art. IV, § 2 (supreme executive power vested in the Governor); PA. CONST. Art. II, § 1 (legislative power vested in the General Assembly); *see also Dep't of Env'tl. Res. v. Jubelirer*, 567 A.2d 741, 748-750 (Pa. Commw. 1989), *vacated by, appeal dismissed by* 614 A.2d 204 (Pa. 1992) (statutory provision permitting bar on publication by administrative official is impediment to the executive's rulemaking authority inherent in its duty to administer the laws).

103. The plain language of section 7(d) of the RRA and legislative intent thus establish that the concurrent resolution process to disapprove a regulation requires each chamber to adopt a concurrent resolution within 30 days or 10 legislative days, whichever is longer, *from the date that the concurrent resolution was reported from committee*.

104. The General Assembly's time to adopt a concurrent resolution disapproving the Trading Program Regulation has long since expired and the regulation has been deemed approved.

WHEREFORE, Petitioner is entitled to a declaration that the LRB's refusal to publish the Trading Program Regulations was unlawful and that the Trading Program Regulation has been deemed approved by the General Assembly as a matter of law.

**OMNIBUS PRAYER FOR RELIEF**

WHEREFORE, Petitioner requests that the Court 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;

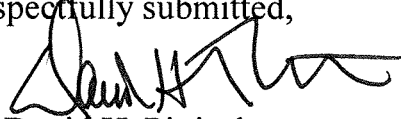
(5) enter judgment declaring that Respondents did not have the discretionary authority to refuse to publish the Trading Program Regulation in the *Pennsylvania Bulletin* on their own accord;

(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

David H. Pittinsky (Pa. 04552)  
Matthew A. White (Pa. 55812)  
Brian N. Kearney (Pa. 326227)  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
Philadelphia, PA 19103  
215.665.8500

Attorneys for Petitioner

# **EXHIBIT A**

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

November 24, 2021

**RE:** Department of Environmental Protection  
Environmental Quality Board Regulation #7-559

**TO:** Addie A. Abelson  
Deputy General Counsel  
Office of Attorney General

**FROM:** Amy M. Elliott  
Chief Deputy Attorney General  
Legal Review Section

Amy M.  
Elliott

Digitally signed by Amy M. Elliott  
DN: cn=Amy M. Elliott,  
o=Pennsylvania Office of Attorney  
General, ou=Chief Deputy Attorney  
General,  
email=aelliott@attorneygeneral.gov,  
c=US  
Date: 2021.11.24 07:58:15 -0500

The following regulation is hereby approved for form and legality pursuant to the Commonwealth Attorneys Act.

In doing so, the Office of Attorney General acknowledges that if the General Assembly invokes the concurrent resolution process established by the Regulatory Review Act, 71 P.S. §§745.5a(j); 745.7(d), the Act bars the agency from promulgating the final-form or final-omitted regulation until the regulation has been approved, or deemed approved, in accordance with the procedures in subsection 745.7(d).

Department of Environmental Protection  
Environmental Quality Board  
25 Pa. Code Chapter 145  
CO<sub>2</sub> Budget Trading Program  
FINAL FORM

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: **Amy M. Elliott**  
(Deputy Attorney General)

Digitaly signed by Amy M. Elliott  
DN: cn=Amy M. Elliott, o=Pennsylvania  
Office of Attorney General, ou=Chief  
Deputy Attorney General,  
email=Amy.M.Elliott@attorneygeneral.gov,  
c=US  
Date: 2021.11.24 08:02:23 -0500

**11/24/2021**  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

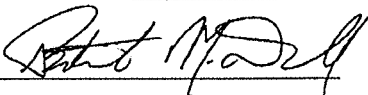
Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-559

DATE OF ADOPTION July 13, 2021

BY 

TITLE **PATRICK MCDONNELL**  
**CHAIRPERSON**

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY 

July 26, 2021  
DATE OF APPROVAL

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

CO<sub>2</sub> Budget Trading Program

25 Pa. Code Chapter 145

# **EXHIBIT B**

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
November 24, 2021

**RE:** Department of Environmental Protection  
Environmental Quality Board Regulation #7-559

**TO:** Addie A. Abelson  
Deputy General Counsel  
Office of Attorney General

**FROM:** Amy M. Elliott  
Chief Deputy Attorney General  
Legal Review Section

Amy M.  
Elliott

Digitally signed by Amy M. Elliott  
DN: cn=Amy M. Elliott,  
o=Pennsylvania Office of Attorney  
General, ou=Chief Deputy Attorney  
General,  
email=ae Elliott@attorneygeneral.gov,  
c=US  
Date: 2021.11.24 07:58:15 -0500

The following regulation is hereby approved for form and legality pursuant to the Commonwealth Attorneys Act.

In doing so, the Office of Attorney General acknowledges that if the General Assembly invokes the concurrent resolution process established by the Regulatory Review Act, 71 P.S. §§745.5a(j); 745.7(d), the Act bars the agency from promulgating the final-form or final-omitted regulation until the regulation has been approved, or deemed approved, in accordance with the procedures in subsection 745.7(d).

Department of Environmental Protection  
Environmental Quality Board  
25 Pa. Code Chapter 145  
CO<sub>2</sub> Budget Trading Program  
FINAL FORM



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: **Amy M. Elliott**  
(Deputy Attorney General)

Digitally signed by Amy M. Elliott  
DN: cn=Amy M. Elliott, o=Pennsylvania  
Office of Attorney General, ou=Chief  
Deputy Attorney General,  
email=ae101@attorneygeneral.gov,  
c=US  
Date: 2021.11.24 08:02:33 -0500

**11/24/2021**  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

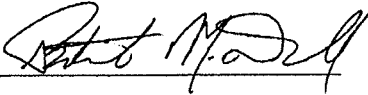
Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-559

DATE OF ADOPTION July 13, 2021

BY 

TITLE **PATRICK MCDONNELL**  
**CHAIRPERSON**

EXECUTIVE OFFICER CHAIRPERSON OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY 

July 26, 2021  
DATE OF APPROVAL

(Deputy General Counsel)  
~~(Chief Counsel - Independent Agency)~~  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

CO<sub>2</sub> Budget Trading Program

25 Pa. Code Chapter 145

# **EXHIBIT C**

## **Pittinsky, David (Phila)**

---

**From:** Griffin, Laura <laurgriffi@pa.gov>  
**Sent:** Monday, November 29, 2021 10:43 AM  
**To:** Bulletin  
**Cc:** Adeline E. Gaydosh; Leah Brown; A.J. Mendelsohn  
**Subject:** Final Rulemaking #7-559 to Publish on December 25, 2021(?)  
**Attachments:** 7-559\_CO2 Budget Trading\_Final\_LRB.pdf; 01\_7-559\_CO2 Budget Trading\_Final\_Preamble.docx; 02\_7-559\_CO2 Budget Trading\_Final\_Annex A.docx

Good morning!

Please see the attached PDF (all rulemaking documents), and the Word documents for the Preamble and Annex A for Final Rulemaking – CO<sub>2</sub> Budget Trading Program, *tentatively* scheduled for publication in the **December 25, 2021** issue of the PA Bulletin.

While the Department has requested publication in the December 25<sup>th</sup> issue, I understand that the ability for the LRB and Fry Communications to publish on this date has not been confirmed yet and I will hear back tomorrow, November 30.

Please confirm that you received the rulemaking documents for publication and let me know if you have any questions.

Thank you for your help!  
Laura

**Laura Griffin** | Regulatory Coordinator  
*she/her/hers*  
Department of Environmental Protection | Policy Office  
Rachel Carson State Office Building  
400 Market Street | Harrisburg, PA  
Phone: 717.772.3277 | Fax: 717.783.8926  
Email: [laurgriffi@pa.gov](mailto:laurgriffi@pa.gov)  
[www.dep.pa.gov](http://www.dep.pa.gov)

Connect with DEP on: [Twitter](#) | [Facebook](#) | [LinkedIn](#) | [YouTube](#) | [Instagram](#)

# **EXHIBIT D**

VINCENT C. DELIBERATO, JR  
DIRECTOR

AMY J. MENDELSON  
CODE AND BULLETIN DIRECTOR



PENNSYLVANIA CODE AND BULLETIN  
LEGISLATIVE REFERENCE BUREAU  
501 NORTH 3RD STREET  
ROOM 647 MAIN CAPITOL BUILDING  
HARRISBURG, PA 17120-0033

November 30, 2021

The Honorable Patrick McDonnell, Chairperson  
Environmental Quality Board  
16<sup>th</sup> Floor  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101

**RE: Environmental Quality Board Final Rulemaking 7-559: CO<sub>2</sub> Budget Trading Program**

We are writing to inform you that our office is not authorized at this time to publish the Environmental Quality Board Final Rulemaking #7-559: CO<sub>2</sub> Budget Trading Program, submitted November 29, 2021. Currently, Senate Concurrent Regulatory Review Resolution 1 (S.C.R.R.R. 1) disapproving Final Rulemaking #7-559 is still pending before the House of Representatives.

Section 7(d) of the Regulatory Review Act provides, in pertinent part:

“If either committee reports a concurrent resolution before the expiration of the 14-day period, the Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, from the date on which the concurrent resolution has been reported, to adopt the concurrent resolution.... The bar on promulgation of the final-form or final-omitted regulation shall continue until that regulation has been approved or deemed approved in accordance with this subsection....”

S.C.R.R.R. 1 was reported by the Senate Environmental Resources and Energy Committee on September 14, 2021, and adopted by the Senate on October 27, 2021. Under section 7(d), the House now has 30 calendar or 10 legislative days, whichever is longer, to adopt the resolution. This period has not yet expired.

As a result of the remaining time for House consideration of S.C.R.R.R. 1, the

requirements of the Regulatory Review Act have not yet been met, and the Legislative Reference Bureau is not authorized to publish Final Rulemaking #7-559. We will hold the rulemaking for publication in the *Pennsylvania Bulletin* until the House review period expires. While we are awaiting the expiration of the review period, we will begin our editorial and pre-publication work on Final Rulemaking #7-559 in the hopes of publication as soon as legally permissible.

Very truly yours,



Amy J. Mendelsohn  
Director, Pennsylvania Code and Bulletin

cc: Addie Abelson, Office of General Counsel  
George Bedwick, Chairperson, Independent Regulatory Review Commission  
Honorable Carolyn Comitta, Minority Chairperson, Senate Environmental Resources and Energy Committee  
Amy Elliott, Chief Deputy Attorney General  
Honorable Daryl Metcalf, Majority Chairperson, House Environmental Resources and Energy Committee  
Honorable Greg Vitali, Minority Chairperson, House Environmental Resources and Energy Committee  
Honorable Gene Yaw, Majority Chairperson, Senate Environmental Resources and Energy Committee

# **EXHIBIT E**



December 10, 2021

Amy J. Mendelsohn  
Pennsylvania Code and Bulletin Director  
Legislative Reference Bureau  
501 North 3rd Street  
Room 647, Main Capitol Building  
Harrisburg, PA 17120-0033

Dear Director Mendelsohn:

The Department of Environmental Protection (DEP) received your letter dated November 30, 2021, in which you assert that the Legislative Reference Bureau (LRB) is not authorized at this time to publish the Environmental Quality Board Final Rulemaking #7-559: CO<sub>2</sub> Budget Trading Program. You further state that the LRB is not authorized because the concurrent resolution process provided under section 7(d) of the Regulatory Review Act (71 P.S. § 745.7(d)) is still ongoing. While we consider our legal options, I wanted to first write to you to see if we can resolve this without time-consuming litigation.

First, I want to address the concurrent resolution process itself. The concurrent resolution process outlined in section 7(d) has been construed by the General Assembly—and the Legislative Reference Bureau—as if it were the same as the process for a bill. It is not. A *consecutive* resolution process is used for bills—not a concurrent resolution process.

Given the clear and specific process laid out in the Regulatory Review Act, there is no legal authority for the LRB to substitute its own interpretation of the statute as a rationale for failing to perform its administrative role in the regulatory process. Here, the section at issue provides:

(d) Upon receipt of the commission's order pursuant to subsection (c.1) or at the expiration of the commission's review period if the commission does not act on the regulation or does not deliver its order pursuant to subsection (c.1), one or both of the committees may, within 14 calendar days, report to the House of Representatives or Senate a concurrent resolution and notify the agency. During the 14-calendar-day period, the agency may not promulgate the final-form or final-omitted regulation. If, by the expiration of the 14-calendar-day period, neither committee reports a concurrent resolution, the committees shall be deemed to have approved the final-form or final-omitted regulation, and the agency may promulgate that regulation. If either committee reports a concurrent resolution before the expiration of the 14-day period, the Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, *from the date on which the concurrent resolution has been reported*, to adopt the concurrent resolution. If the General Assembly adopts the concurrent resolution by majority vote in both the Senate and the House of Representatives, the concurrent resolution shall be presented to the Governor in accordance with section 9 of Article III of the Constitution of Pennsylvania. ...

71 Pa. Stat. Ann. § 745.7 (emphasis added). Here, on September 14, 2021, the Senate Environmental Resources and Energy (ERE) committee reported its concurrent resolution. The House ERE



committee reported its concurrent resolution on September 2, 2021. *Those are the dates "on which the concurrent resolution[s have] been reported."* The 30 calendar days or 10 legislative days from both September 2, 2021 and September 14, 2021, have long since expired, and thus the regulation has been deemed approved by the General Assembly.

I understand, given the nature of this particular rulemaking, that the LRB does not want to make a misstep. However, the General Assembly's interpretation, if followed, could lead to the absurd result that the rulemaking would go from one chamber to the other chamber's committee, and *never leave committee*. Note above that there is no time limit upon the second committee's report of the concurrent resolution. Thus, the General Assembly's interpretation does not make sense given the plain language above and is contrary to the statute. It is a violation of the separation of powers doctrine, unnecessarily impeding the executive branch's ability to execute its rulemaking authority.

In addition to being incorrect in its interpretation of section 7(d), the LRB lacks the authority to refuse to publish the final rulemaking. Section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)) provides that "[t]he Attorney General shall review for form and legality, all proposed rules and regulations of Commonwealth agencies before they are deposited with the Legislative Reference Bureau...." Section 205 of the Commonwealth Documents Law (45 P.S. § 1205) provides that "[a]ll administrative regulations and changes therein shall be approved as to legality by the Department of Justice [predecessor of the Office of Attorney General] before they are deposited with the Legislative Reference Bureau" and that, except where the Department of Justice rules the regulations or any part of them illegal, "*the decision of the Department of Justice is final.*" (Emphasis added.) Additionally, under section 301(10) of the Commonwealth Attorneys Act (71 P.S. § 732-301(10)), the General Counsel is also responsible for reviewing a regulation for form and legality before the regulation is deposited with your office. Importantly, there is no statutory authority anywhere in either the Commonwealth Attorneys Act or the Commonwealth Documents Law that would allow the LRB to refuse to publish a duly-promulgated regulation that has received these approvals.

On November 29, 2021, DEP submitted the CO<sub>2</sub> Budget Trading Program final rulemaking along with a face sheet demonstrating that the final rulemaking had been approved for form and legality by both the Attorney General and the General Counsel.

Since both the Attorney General and the General Counsel approved the CO<sub>2</sub> Budget Trading Program final rulemaking for form and legality, your office is required to publish the Environmental Quality Board Final Rulemaking #7-559: CO<sub>2</sub> Budget Trading Program, submitted November 29, 2021, in accordance with the Commonwealth Documents Law.

I look forward to your reconsideration and timely publication of this final regulation.

Sincerely,



Patrick McDonnell  
Secretary

# **EXHIBIT F**

VINCENT C. DELIBERATO, JR  
DIRECTOR



STEPHANIE F. LATIMORE  
ASSISTANT DIRECTOR

MICHAEL PAVLICK  
ASSISTANT DIRECTOR

**LEGISLATIVE REFERENCE BUREAU**  
501 NORTH 3RD STREET  
ROOM 641 MAIN CAPITOL BUILDING  
HARRISBURG, PA 17120-0033

December 16, 2021

Patrick McDonnell  
Secretary, Department of Environmental Protection  
Rachel Carson State Office Building  
400 Market Street  
Harrisburg, PA 17101


Dear Secretary McDonnell:

The Legislative Reference Bureau is in receipt of your letter dated December 10, 2021, regarding publication of the Environmental Quality Board Final Rulemaking #7-559. We understand the Department of Environmental Protection's position and appreciate your willingness to reach out to us.

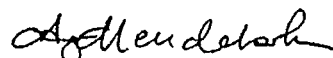
Statutes are often subject to opposing interpretations and we respect your interpretation that the time period for legislative action under section 7(d) of the Regulatory Review Act, has expired. While we too would like to avoid litigation, our interpretation that the time period for legislative action remains open has not changed.

As you surely know, the House of Representatives voted on December 15, 2021, to adopt the Concurrent Resolution SCRRR1, disapproving the EQB's Final Rulemaking #7-559. We will continue to process the EQB's final rulemaking in preparation for publication upon a legislative failure to override a gubernatorial veto of the concurrent resolution.

Respectfully,

  
Vincent C. DeLiberato, Jr.  
Director

Respectfully,

  
A.J. Mendelsohn  
Director, Pennsylvania Code and Bulletin

cc: Addie Abelson, Office of General Counsel  
George Bedwick, Chairperson, Independent Regulatory Review Commission  
Honorable Carolyn Comitta, Minority Chairperson, Senate Environmental Resources and Energy Committee  
Amy Elliott, Chief Deputy Attorney General  
Honorable Daryl Metcalf, Majority Chairperson, House Environmental Resources and Energy Committee  
Honorable Greg Vitali, Minority Chairperson, House Environmental Resources and Energy Committee  
Honorable Gene Yaw, Majority Chairperson, Senate Environmental Resources and Energy Committee

# **EXHIBIT G**

[Home](#) / [Senate Session Days](#)

## Senate Session Days



The Senate will reconvene on Monday, February 07, 2022 at 1:00PM unless sooner recalled by the Pres. Pro Temp.

View Session Days for: 2021 Regular Session



### Session Days

#### 2021

<b>January</b>	5 , 13 , 22 , 25 , 26 , 27
<b>February</b>	3 , 5 , 22 , 23 , 24
<b>March</b>	15 , 16 , 17 , 22 , 23 , 24
<b>April</b>	19 , 20 , 21 , 27 , 28
<b>May</b>	10 , 11 , 12 , 24 , 25 , 26
<b>June</b>	7 , 8 , 9 , 10 , 14 , 15 , 16 , 21 , 22 , 23 , 24 , 25
<b>August</b>	23
<b>September</b>	14 , 21 , 22 , 27 , 28 , 29
<b>October</b>	18 , 19 , 25 , 26 , 27
<b>November</b>	8 , 9 , 10 , 22
<b>December</b>	13 , 14 , 15

# **EXHIBIT H**

[Home](#) / [House Session Days](#)

## House Session Days



The House will reconvene on Monday, February 07, 2022 at 12:00PM

View Session Days for: 2021 Regular Session



### Session Days

#### 2021

<b>January</b>	5 , 11 , 12 , 13 , 25 , 26 , 27 , 28 (NV)
<b>February</b>	3 , 4 , 5 , 26 (NV)
<b>March</b>	11 (NV) , 15 , 16 , 17 , 22 , 23 , 24
<b>April</b>	5 , 6 , 7 , 19 , 20 , 21
<b>May</b>	3 , 4 , 5 , 24 , 25 , 26
<b>June</b>	7 , 8 , 9 , 10 , 14 , 15 , 16 , 21 , 22 , 23 , 24 , 25
<b>September</b>	15 (NV) , 20 , 21 , 22 , 27 , 28 , 29
<b>October</b>	4 , 5 , 6 , 25 , 26 , 27
<b>November</b>	8 , 9 , 10 , 15 , 16 , 17
<b>December</b>	13 , 14 , 15

# **EXHIBIT I**





COMMONWEALTH OF PENNSYLVANIA  
 OFFICE OF THE GOVERNOR  
 HARRISBURG

RECEIVED

2022 JAN 10 PM 2:31

DEPT OF STATE  
 BUREAU OF OFFICIALS

THE GOVERNOR

January 10, 2022

TO THE HONORABLE SENATE OF THE  
 COMMONWEALTH OF PENNSYLVANIA  
 AND THE HONORABLE HOUSE OF  
 REPRESENTATIVES OF THE  
 COMMONWEALTH OF PENNSYLVANIA

Pursuant to Article III, Section 9 of the Pennsylvania Constitution and Section 7(d) of the Regulatory Review Act, I veto and disapprove, and return herewith, Senate Concurrent Regulatory Review Resolution Number 1, which disapproves the Department of Environmental Protection's Final-Form Regulation 7-559.

I am vetoing, disapproving, and returning this concurrent resolution for two reasons. First, the Concurrent Resolution is procedurally defective. In adopting the Concurrent Resolution, the General Assembly failed to comply with the Regulatory Review Act (RRA), which creates the concurrent resolution process as applied to regulations. The RRA provides:

Upon receipt of the commission's order . . . one or both of the committees may, within 14 calendar days, report to the House of Representatives or Senate a concurrent resolution and notify the agency. . . If either committee reports a concurrent resolution before the expiration of the 14-day period, the Senate and the House of Representatives shall each have 30 calendar days or ten legislative days, whichever is longer, from the date on which the concurrent resolution has been reported, to adopt the concurrent resolution.

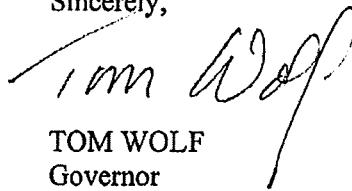
71 P.S. § 745.7(d). Although the Senate adopted the Concurrent Resolution within the statutory timeframe, the House of Representatives failed to adopt it within the 30 calendar days or ten legislative days from the date that the Senate committee reported the Concurrent Resolution. Given the House's failure to adopt the Concurrent Resolution in a timely and effective manner, the General Assembly has failed to comply with the RRA. Likewise, the General Assembly also failed to adopt the House's version of the concurrent resolution within the statutory timeframe. As such, the RRA directs that the General Assembly is deemed to have approved Final Form Regulation 7-559.

Second, I am vetoing, disapproving, and returning the Concurrent Resolution because Final Form Regulation 7-559 is a vital step for Pennsylvania to reduce carbon emissions and achieve our climate goals. Addressing the global climate crisis is one of the most important and critical challenges we face. Final Form Regulation 7-559 authorizes Pennsylvania's participation in the Regional Greenhouse Gas Initiative (RGGI) under the authority of the Air Pollution Control Act.

While the Republican-controlled General Assembly has failed to take any measures to address climate change, by joining RGGI, my Administration will take a historic, proactive, and progressive approach that will have significant positive environmental, public health, and economic impacts. In addition to the environmental benefits, participating in this initiative will allow Pennsylvania to make targeted investments that will support workers and communities affected by energy transition.

For the reasons set forth above, I must veto, disapprove, and withhold my signature from Senate Concurrent Regulatory Review Resolution Number 1.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wolf", written in a cursive style.

TOM WOLF  
Governor

**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 Petition for Review 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 Petition for Review in the Nature of a Complaint for Permanent and Peremptory Mandamus and for Declaratory Judgment, to be served via hand delivery on Respondents, as follows:

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

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

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

Pennsylvania Office of Attorney General  
16<sup>th</sup> Floor  
Strawberry Square  
Harrisburg, PA 17120

Dated: February 3, 2022

*/s/ David H. Pittinsky*  
\_\_\_\_\_  
David H. Pittinsky