



Cryptobranchus alleganiensis, the Hellbender

Allegheny Defense Project

Protecting and Restoring the Forests of the Allegheny Bioregion

July 10, 2002

Secretary John Oliver
Department of Conservation and Natural Resources
7th Floor, Rachel Carson State Office Building
P.O. Box 8767
Harrisburg, PA 17105-8767

Dear Secretary Oliver,

This letter is intended as a formal request submitted under Pennsylvania's Right-to-Know Act, 65 P.S. §66.2 et seq. This letter is being filed on behalf of the Allegheny Defense Project, Greenwatch USA, the Pennsylvania Environmental Network, Penn Environment, Communities for Sustainable Forestry, and Heartwood. Through this communication, we are seeking access to Department records dealing with Department plans to open state forest and park lands in Fayette County to oil and gas drilling.

In an informational meeting before the Pennsylvania House Committee on Environmental Resources and Energy the DCNR spoke to the notion that an "agreement" had been entered with a private company that obligates the DCNR to open up these lands to oil and gas drilling. This is obviously startling information. Why wasn't this mentioned during the last two months of debate on this issue?

Please provide us with the following Public records:

- All public records including minutes or other documents, including "agreements", contracts, or memorandum, detailing the nature of any agreements regarding the leasing of drilling rights in Westmoreland County.

As you know, Pennsylvania's Right to Know Act requires that every "public record" must be open for "examination and inspection by any citizen of the Commonwealth of Pennsylvania." See 65 P.S. §66.2. Meeting minutes, memorandums, and correspondence are "public records" under the definition set forth in the Act at §66.1(2). The Department of Conservation and Natural Resources is an "agency" under the definition set forth in §66.1(1).

The cases construing the Act provide that citizens have the right to inspect and obtain (1) documents in the possession of public officials which (2) contain information regarding agency action which (3) has some effect on someone. See *Lewis v. Thornburg*, 68 Pa. Commw. 157, 448 A.2d 680 (1982); *Hoffman v. Com. Pennsylvania Game Comm'n*, 71 PA. Commw. 99, 455 A.2d 731 (1983); *Pastore v. Commonwealth Ins. Dept.*, 125 Pa. Commw. 611, 558 A.2d 909 (1989). The Commonwealth Court has interpreted the Act to require the inspection of all materials received or generated by an agency which is an "essential component in the agency arriving at its decision." See *Nittany Printing and Publishing Co., Inc. v. Centre County Board of Commissioners*, 627 A.2d 301 (Pa. Commw. 1993).

Through this communication, I am also requesting the right to make photocopies of the Department records at a reasonable cost. As you may know, agencies are required to allow the public to make photocopies of public records for a reasonable cost not to exceed the actual cost of reproduction. See *Baravordeh v. Borough Council of Prospect Park*, 699 A.2d 789 (Commw. 1997).

In a 1996 ruling by the Commonwealth Court of Pennsylvania, in the case of *Sierra Club v. Pennsylvania Public Utility Commission*, No. 1826 C.D. 1995 (July 22, 1996), the Court ruled that the issue under the Right to Know Act was whether a citizen has the "right to obtain or to makes copies of public records." *Id.* at 11. In addition, the Court held that a citizen is entitled to receive copies subject to "reasonable rules", which means "the actual cost of reproduction." *Id.* In addition, in a decision rendered in May of 2000, the Commonwealth Court held that collateral administrative and staff

fees could not be charged to requesters, because the transfer of such costs does not constitute “reasonable” regulations for the production of materials. See *Hessley v. Campbell*, No. 1375 C.D. 1999 (Pa. Commonw. 2000).

Your immediate attention to this matter is appreciated.

Sincerely,

James Kleissler, Forest Watch Director
Allegheny Defense Project

cc: Community Environmental Legal Defense Fund (CELDF), Thomas Alan Linzey, Esq.
Bill Smedley, Pennsylvania Environmental Network (PEN)/Greenwatch USA
Phil Coleman, Pennsylvania League of Conservation Voters (LCV)
Bill Belitskus, Communities for Sustainable Forestry
David Masur, Penn Environment
Jim Bensman, Heartwood