



*Cryptobranchus alleganiensis*, the Hellbender

# Allegheny Defense Project

*Protecting and Restoring the Forests of the Allegheny Bioregion*

July 12, 2002

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

Dear Secretary Oliver,

This letter is intended as an emergency 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, and Communities for Sustainable Forestry. Through this communication, we are seeking access to Department records dealing with Department plans to spray potentially toxic herbicides on 3,400 acres of state forest lands in Pennsylvania, including Buchanan, Forbes, Gallitzin, Moshannon, Sproul, Tiadaghton, Elk, Susquehannock, Tioga, and Delaware State Forests.

This request is urgent because herbicide spraying is scheduled to begin on Monday, July 15. There has been no request for public comment on this project and there clearly has been no environmental impact statement prepared. We requested information via phone on Monday, July 8, and Tuesday, July 9, 2002. We have been provided with a spreadsheet which is a helpful start and we appreciate that. But the spreadsheet does not provide enough information to fully identify the potential public health and environmental consequences of the proposed pesticide applications.

It is our understanding that the herbicide protocol will be based on U.S. Forest Service protocol which involves the application of Monsanto's controversial herbicide RoundUp and DuPont's Oust herbicide. Both have been cited to cause serious environmental effects. Roundup has, for example, been documented to cause declines in small mammal populations and Oust is known to break down into two known carcinogens. The application of these herbicides has been cited to cause a decrease in native vegetative diversity by the U.S. Forest Service. In addition, it is known that the application of these herbicides in Susquehannock State Forest is targeted to suppress native species such as American beech and striped maple in favor of the naturally rare, weedy black cherry. State forests where this black cherry tree farming method is applied are the primary targets for the spraying.

During the period of spraying, our volunteers and staff members have plans to be in these remote areas of the state forests for recreation and forest monitoring work. We are deeply concerned about the maintenance of sound environmental conditions within our state forests and about the possibility that our Supporters may be unknowingly exposed. Furthermore, the statements we've seen by State Forester James Grace regarding the effects of these herbicides are factually incorrect and suggest that the Department of Conservation and Natural Resources (DCNR) is not sufficiently prepared to address the negative environmental consequences of this spraying.

The failure of the DCNR to engage the public in these significant land management decisions contradicts recommendations made by the Scientific Certification Systems Audit of the agency's management of our public lands. This lack of public disclosure and transparency undermines the agency's integrity and ability to honestly manage in the public's best interest.

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 or plans regarding the applications of herbicides planned for this summer on the Buchanan, Forbes, Gallitzin, Moshannon, Sproul, Tiadaughton, Elk, Susquehannock, Tioga, and Delaware State Forests;
- All public records documenting the decision by the DCNR to proceed with the above mentioned herbicide spraying;
- All public records detailing efforts by the DCNR to inform the public of the proposed spraying, to invite public comment on the spraying program for this summer, and to warn the public of the possible negative environmental and health consequences of being exposed to the herbicides.

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 urgent 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  
Bill Belitskus, Communities for Sustainable Forestry