

**Correspondence Between CWA Solicitor  
And  
The Department of Community and Economic Development (DCED)  
Chief Counsel**

September 25, 2017: Letter from CWA Solicitor to DCED Chief Counsel regarding fiduciary obligations under the Environmental Rights Amendment.

October 1, 2017: E-mail response from DCED Chief Counsel to CWA Solicitor's 9/25/17 letter.

November 17, 2017: Letter from CWA Solicitor to DCED Chief Counsel responding to email of 10/1/17.

**AS OF JANUARY 19, 2018, THERE HAS BEEN NO RESPONSE TO THE NOVEMBER 17, 2017 LETTER.**

**CATANIA & PARKER, L.L.P.**  
ATTORNEYS - AT - LAW

P.O. BOX 2029 ■ MEDIA, PA 19063

PHONE: (610) 565-8101 ■ FAX: (610) 565-7613

STREET ADDRESS:  
230 N. Monroe St., 2<sup>nd</sup> Fl  
Media, PA 19063

September 25, 2017

**VIA ELECTRONIC MAIL**

chhouston@pa.gov

Christopher C. Houston, Chief Counsel  
Governor's Office of General Counsel  
The Department of Community and Economic Development  
Office of Chief Counsel  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120

RE: Fiduciary Obligations under the Environmental Rights Amendment

Dear Mr. Houston:

I write on behalf of the Chester Water Authority ("the Authority") as its solicitor.

In May 2017, the Authority received and rejected an unsolicited bid from an investor-owned utility ("IOU") seeking to purchase the Authority's assets pursuant to the Fair Value Act, 66 Pa. C.S. § 1329. Although the Authority ultimately rejected the May 2017 unsolicited bid, IOUs may still be communicating with various entities, possibly including the DCED or consultants hired by or under the supervision of DCED, about the Authority and its assets. Such communications should not be taking place without the Authority's involvement.

Under the Pennsylvania Environmental Rights Amendment ("ERA") of the Pennsylvania Constitution, both the Authority and the Commonwealth act as trustees for all constitutionally protected resources, such as water. As trustees, the Authority and the Commonwealth are entrusted with conserving and maintaining those resources for the benefit of the people, including generations yet to come. See Pennsylvania

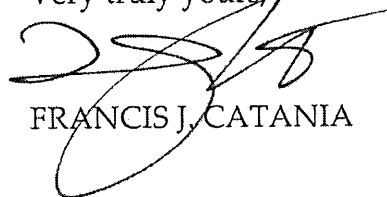
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Environmental Defense Foundation v. Commonwealth, 161 A.3d 911, 916 (Pa. 2017)  
(citing Pa. Const. art. I, § 27).

To ensure that both the Authority and the Commonwealth are fulfilling their respective roles as fiduciaries, it is critical that the Authority be made aware of and involved in any communications or discussions to which DCED is privy between a Commonwealth entity and any IOUs pertaining to the Authority or its assets. To that end, I suggest we meet or speak by phone to create a procedure to ensure an open line of communication about these issues.

I can be reached at (610) 565-8101 or fjc@fjccp.com. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'FJC', with a large, sweeping flourish underneath.

FRANCIS J. CATANIA

FJC\dml  
cc: Chester Water Authority

**From:** Houston, Christopher [mailto:chouston@pa.gov]  
**Sent:** Sunday, October 01, 2017 9:35 AM  
**To:** Francis Catania <fjc@fjccp.com>  
**Subject:** RE: Chester Water Authority  
**Importance:** High

Mr. Catania,

I apologize for the delay in responding to the attached letter. I do appreciate you reaching out to me regarding this matter; however, DCED does not have the duties and responsibilities of a trustee with regard to a sale of the assets of a municipal owned and operated public water system.

Again, thank you for bringing this matter to my attention.

**Christopher C. Houston** | Chief Counsel  
Governor's Office of General Counsel  
PA Department of Community & Economic Development  
Office of Chief Counsel  
Commonwealth Keystone Building  
400 North Street, 4th Floor | Harrisburg, PA 17120-0225  
Phone: 717-720-7328 | Cell: 717-579-1982 | Fax: 717-772-3103  
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November 17, 2017

**VIA ELECTRONIC MAIL**

Christopher C. Houston, Chief Counsel  
Governor's Office of General Counsel  
The Department of Community and Economic  
Development  
Office of Chief Counsel  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120

**Re: Fiduciary Obligations under the Environmental Rights  
Amendment**

Dear Mr. Houston:

Please accept this letter in response to your email dated October 1, 2017.

I understand the Chester Water Authority (the "Authority") and the DCED have a difference of opinion regarding the duties and responsibilities of a fiduciary. It is the Authority's position, however, that the Authority be included in any conversations the DCED or consultants hired by or under the supervision of the DCED have with third parties regarding the Authority and its assets.

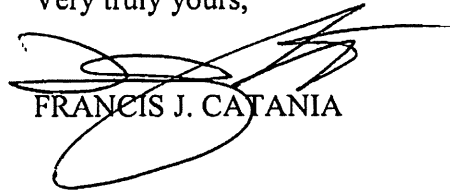
In addition, and as you may know, Nolan Finnerty, a paralegal for the law firm serving as special counsel for the Authority, filed a request with the DCED under Pennsylvania's Right-to-Know Law, 65 P.S. § 67.101, *et seq.*, seeking information regarding DCED communications related to the City of Chester and/or the Chester Water Authority. The OOR weighed in on the requests and found that all of the requested documents constitute public records and the DCED has not shown the documents are subject to any exemptions. We are aware that in addition to a number of reports from Econsult Solutions regarding the Authority and a potential monetization of its assets, there are at least three (3) emails between the DCED and Aqua America related to the Authority.

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As mentioned above, it is the Authority's position that it be included in conversations the DCED or consultants hired by or under the supervision of the DCED have with third parties regarding the Authority and its assets.

Please confirm that the DCED agrees with the Authority's position in this regard. In the meantime, I look forward to reviewing un-redacted copies of the DCED's documents responsive to the right-to-know requests submitted by Mr. Finnerty, in accordance with the OOR's determination.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Francis J. Catania', written over a printed name.

FRANCIS J. CATANIA

FJC\dml