

October 30, 2015

**VIA HAND DELIVERY AND
EMAIL (OPENRECORDS@PA.GOV)**

David P. Zambito

Direct Phone 717-703-5892

Direct Fax 215-989-4216

dzambito@cozen.com

Office of Open Records
Commonwealth Keystone Building
400 North St., 4th Floor
Harrisburg, PA 17120-0225

**Re: Appeal of Perdue AgriBusiness Incorporated of Partial Denial of Right to Know
Request Directed to Hellam Township**

Dear Sir or Madam:

We represent Herbert D. Frerichs, Jr., Esq. I have enclosed with this letter an appeal of the partial denial by Hellam Township of a Right to Know Request dated September 17, 2015, as supplemented by letter dated October 9, 2015, pursuant to the Pennsylvania Right to Know Law ("RTKL"). A list of documents that Hellam Township denied is attached to the appeal form at Tab "A." A list of additional reasons for the appeal is attached to the appeal form at Tab "B." The RTKL requests, Hellam Township's responses, and Hellam Township's extension requests are attached to the appeal form at Tabs "C," "D," and "E" respectively. Tab "F" includes records disclosed by Hellam Township referenced in the appeal.

Please add the undersigned on the service list for purposes of this appeal. A copy of this appeal is being hand delivered for filing. Please have the additional copy time-stamped and returned to our messenger. A copy of the appeal has been served on Hellam Township as indicated on the enclosed certificate of service.

Mr. Frerichs requests the opportunity to provide additional briefing and support for the appeal and requests that the Appeals Officer hold a hearing.

Should you have any questions, please feel free to contact me.

Sincerely,

COZEN O'CONNOR

BY: DAVID P. ZAMBITO

RECEIVED

OCT 30 2015

Enclosures

OFFICE OF OPEN RECORDS

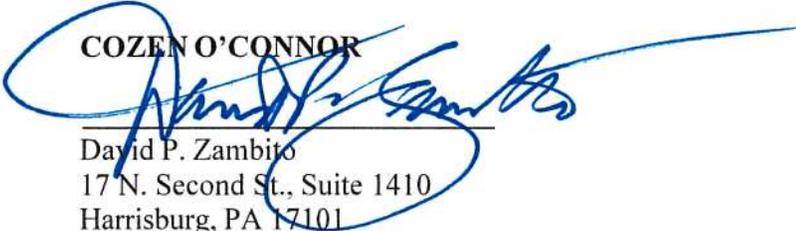
c: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2015, I caused a copy of the foregoing to be served on the following by email and U.S. Mail:

Coriana Mann
Open Records Officer
Hellam Township
44 Walnut Springs Rd.
York, PA 17406
cmann@hellamtownship.com

COZEN O'CONNOR



David P. Zambito
17 N. Second St., Suite 1410
Harrisburg, PA 17101
717-703-5982 (t)
717-703-5901 (f)
dzambito@cozen.com

Counsel for Requester



RECEIVED

OCT 30 2015

OFFICE OF OPEN RECORDS

RIGHT-TO-KNOW LAW ("RTKL")
APPEAL OF DENIAL, PARTIAL DENIAL, OR DEEMED DENIAL

Office of Open Records ("OOR")

Email: openrecords@pa.gov

Fax: (717) 425-5343

Commonwealth Keystone Building

400 North St., 4th Floor

Harrisburg, PA 17120-0225

Today's Date: 10/30/2015

Requester Name(s): Herbert D. Frerichs, Jr.

Address/City/State/Zip: P.O. Box 1537 Salisbury, MD, 21802-1537

Email: herb.frerichs@perdue.com Phone/Fax: 410-341-2109 /

Request Submitted to Agency Via: [x] Email [] Mail [] Fax [] In-Person (check only one)

Date of Request: 9/17/2015 Date of Response: 10/21/2015 [] Check if no response

Name of Agency: Hellam Township

Address/City/State/Zip: 44 Walnut Springs Rd., York PA 17406

Email: info@hellamtownship.com Phone/Fax: 717-434-1300 /

Name & Title of Person Who Denied Request (if any): Corina Mann

I was denied access to the following records (REQUIRED. Use additional pages if necessary):

See attached at Tab "A"

I requested the listed records from the Agency named above. By signing below, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

I am also appealing for the following reasons (Optional. Use additional pages if necessary):

See attached at Tab "B"

- [x] I have attached a copy of my request for records. (REQUIRED)
[x] I have attached a copy of all responses from the Agency regarding my request. (REQUIRED)
[x] I have attached any letters or notices extending the Agency's time to respond to my request.
[x] I hereby agree to permit the OOR an additional thirty (30) days to issue a final order.

[] I am interested in resolving this appeal through OOR mediation. I agree to permit the OOR thirty (30) days from the conclusion of the mediation process to issue a final determination.

Respectfully submitted, David Zambito, Counsel for Requester (SIGNATURE REQUIRED)

You should provide the Agency with a copy of this form and any documents you submit to the OOR.

TAB "A" – Access to all of the Following Records Denied

Any and all records, including reports, agreements, correspondence (including emails and text messages, regardless of whether they were transmitted on personal computers and/or personal email accounts) prepared, written, or received by Michael C. Martin, Chairman of the Hellam Township Board of Supervisors, and/or D. Michael Craley, Hellam Township Solicitor, regarding, or exchanged with, any of the following:

1. The proposed Soybean Grain Elevator and Processing Facility, located in Conoy Township, Lancaster County, adjacent to the Lancaster County Solid Waste Management Authority ("LCSWMA") resource recovery facility (hereinafter, the "Perdue AgriBusiness Soybean Plant");

2. Perdue Farms, Perdue AgriBusiness, LLC or any of its affiliates, including Perdue Grain & Oil Seed, LLC ("Perdue AgriBusiness");

3. LCSWMA or the LCSWMA resource recovery facility;

4. Air Quality Plan Approval applications submitted by Perdue AgriBusiness to the d/Pennsylvania Department of Environmental Protection ("DEP") (Plan Approval Nos. 36-03189A and 36-05158A);

5. Any and all applications or requests for government approvals or grants submitted by Perdue AgriBusiness;

6. [no request – mistake in numbering].

7. Fred Osman and/or Osman Environmental Solutions, LLC (including his lawyers, experts and other agents);

8. Dr. Warren and June Evans (including their lawyers, experts and other agents);

9. Nissley Vineyards & Winery Estate, A&R Nissley Inc., Judith W. Nissley, and/or Joyce Nissley (including their lawyers, experts and other agents, including without limitation August Mack Environmental consultants and Saul Ewing, LLP).

10. Ray Wallace (including his lawyers, experts and other agents); and

11. Any notes or minutes from, and/or other records prepared and/or shared at, any Hellam Township Supervisors Executive Session at which Dr. Warren Evans attended.

In addition to the foregoing, Tab "C" includes correspondence in which the requester identified records known to exist and previously requested that the Township did not disclose.

TAB “B” – Additional Reasons for Appeal

I. INTRODUCTION

Mr. Herbert D. Frerichs, Jr., Esq., requested numerous public records from the Township, including (among other things) records prepared, written, or received by Mr. Michael C. Martin, Chairman of the Hellam Township Board of Supervisors, and/or D. Michael Craley, Esq., Hellam Township Solicitor, regarding the Perdue AgriBusiness Soybean Plant that Mr. Martin in his official capacity has opposed for more than three years. The request calls for records exchanged by Mr. Martin and Mr. Craley with other individuals identified in the request regarding Perdue’s project. Despite several years of opposition to this high-profile project, the Township only disclosed a short stack of documents in response to the request, only a modest amount of emails, and a set of publicly available documents regarding the air quality permit application submitted by Perdue to the Pennsylvania Department of Environmental Protection (“DEP”) and related comments.

II. REASONS FOR APPEAL

In its letter denying the RTKL request in part, the Township makes only two main points but repeats them for each of the categories of documents in the request. The Township first claims that the records requested are not “public” records subject to disclosure and repeats that point as its response to all of the requests. The Township also claims that the records requested are not subject to disclosure and invokes a number of inapplicable exceptions under the RTKL, including (a) attorney-client privilege and work-product immunity; (b) deliberative-process privilege and (c) a confidentiality privilege based on a confidentiality agreement executed by Mr. Martin purportedly on behalf of the Township. Finally, although the Township disclosed certain records, those records contain references to numerous other records that fall within the request that the Township did not disclose (nor did the Township provide any explanation of whether the records exist or not and, if so, why the Township decided to withhold them).

As described in the paragraphs that follow, the Township erred and has prevented open access to public records that Mr. Frerichs and any other member of the public have a right to review under the RTKL. The Appeals Officer should grant this appeal and order the Township to disclose all records that were requested.

A. Legal Bases for Appeal

1. The Township did not make a good faith effort to determine if the records requested are public records in the possession, custody, or control of the Township as required by Section 901 of the RTKL, 65 P.S. § 67.901. It does not appear that the Township searched email servers or other electronic databases to determine whether the Township has the requested records. In addition, only several days before the extended due date for its response, the Township inquired with Mr. Martin, Chairman of the Hellam Township Board of Supervisors and a vocal opponent to the Perdue project who admitted to having approximately 1,000 emails regarding the Perdue project. *See* Tab “F” attached to this appeal. However, the Township allowed him to determine unilaterally and without any analysis (or approval) by the Township or its open-records officer that, despite his admission that he had a thousand emails regarding the subject matter of the

requests, he did not have any records that he believed should be disclosed. The Township's Open Records Officer presumably took that position at face value. Finally, there is no indication that the Township inquired with any third parties performing government functions for the Township to determine whether they had any responsive records, including without limitation any of the Township's agents or environmental consultants. 65 P.S. § 67.506(d). It appears that the Township "cherry-picked" a short stack of documents relating to Perdue's project and identified in conclusory fashion several claims of privilege to prevent the disclosure of all records requested. This selective response suggests that the Township did not act in good faith in response to the requests as required by Section 901 of the RTKL.

2. The Township violated Section 903 of the RTKL by failing to provide a description of each record requested, a statement of whether it existed or not, and (if not disclosed) a statement of the specific reasons for the denial. 65 P.S. § 67.903.

3. The Township provided a limited number of records "received" by the Township regarding Perdue's project. A "record" as defined in Section 102 of the RTKL is one that "documents a transaction or activity of an agency and that is *created, received or retained* pursuant to law or in connection with a transaction, business or activity of the agency." 65 P.S. § 67.102 (emphasis added). The Township has an obligation to disclose all records documenting the Township's transactions, business, or activities in connection with Perdue's project that were created, received, or retained by the Township.

4. The Township did not meet its burden of proving by a preponderance of the evidence that the records requested either are not public records or are exempt from disclosure under the RTKL. 65 P.S. § 67.708(a). The Township merely concluded that the records requested are not subject to disclosure without any other analysis. Mere conclusory statements like the ones the Township provided in response to the requests are insufficient to meet the Township's burden of proof. *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Cmwlth. 2013) ("[A] generic determination or conclusory statements are not sufficient to justify the exemption of public records.").

5. The Township denied all of the requests on the basis that they call for documents that are not "public records" as that term is defined under the RTKL. Specifically, the Township claims that neither Mr. Martin (Chair of the Board of Supervisors) nor Mr. Craley (the Township's solicitor) nor any of the other named individuals with whom Messrs. Martin and Craley communicated as identified in the request are "agencies." Under settled law, however, the records of individual township supervisors regarding business of the township are subject to disclosure. *Barkleyville Borough v. Stearns*, 35 A.3d 91, 97 (Pa. Cmwlth. 2012) ("Here, the emails contain in the record are between Council members, discussing Borough business, and those discussions 'document a transaction or activity' of the Borough, namely the Borough's consideration of land development plans."); *Gould v. North Strabane Township*, Docket No. AP 2014-0906 (OOR Final Determination Issued July 22, 2014) (same). The case law upon which the Township relies (*In re Silberstein*, 11 A.3d 629 (Pa. Cmwlth. 2011)) involved an individual township supervisor's personal emails, not any municipal business. By contrast, the request calls for records of Messrs. Martin and Craley specifically relating to official Township business regarding the Perdue project. The Township has actively opposed the project, using taxpayer funds to hire a consultant, engage legal services, file adverse comments with the DEP and the United States Environmental

Protection Agency, and create and maintain an active link on the Township's official webpage containing a repository of opposition documents adverse to the project. Finally, municipalities conduct their business through their elected officials, employees, and outside professionals. To argue that the records of the township's business conducted by such individuals are not "public records" because such persons, themselves, are not "governmental entities" is absurd. The Township's reliance on *Silberstein* to prevent access to the Township's public records is in error.

6. The Township denied all of the requests on the basis that they are protected by the attorney-client privilege. The attorney-client privilege requires "(1) that the asserted holder of the privilege is or sought to become a client; (2) that the person to whom the communication was made is a member of the bar of a court, or his or her subordinate; (3) that the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing an opinion of law, legal services, or assistance in a legal matter; and (4) that the claimed privilege has not been waived by the client." See *Chambersburg Area School District v. Dorsey*, 97 A.3d 1281, 1289 (Pa. Cmwlth. 2014). The Township did not establish its burden. As the OOR concluded in *Davis v. Payne Township*, Docket No. AP 2011-0754 (OOR Final Determination Issued June 27, 2011), the Township here did not describe the documents that contain such communications or the content of the communications in order to substantiate that each and every record withheld from disclosure was made for the purpose of securing or providing legal advice. Similarly, the Township did not address whether the privilege has been waived for any responsive records through disclosure to a third party. Moreover, any communications between Mr. Craley as solicitor and third parties, including the individuals identified in the RTKL request (such as Judith Nissley, Ray Wallace, Warren Evans, and June Evans), along with any documentation resulting therefrom, result in a waiver of any privilege and therefore are not subject to protection. See *Chambersburg*.

7. The Township's claim that the records requested are immune from disclosure on the work-product doctrine similarly is wrong. That doctrine generally serves to protect the mental impressions, conclusions and opinions of attorneys prepared in anticipation of litigation. See *Nat'l R.R. Passenger Corp. v. Fowler*, 788 A.2d 1053, 1065 (Pa. Cmwlth. 2001). As with the claim of attorney-client privilege, the Township did not describe the documents that contain such information or the content of the records in order to substantiate that each and every record withheld from disclosure contains mental impressions, conclusions, and opinions of Mr. Craley in anticipation of any litigation.

8. The Township denied all the requests on the basis of a "Confidential Communications Agreement" between the Township, A&R Nissley, Inc., Judith W. Nissley, and Joyce Nissley. See Tab "F." The Township cannot use the confidentiality agreement to circumvent the RTKL. Even if Mr. Martin could have executed the confidentiality agreement on the Township's behalf and thereby bind the Township, it is well settled that parties cannot contract around the open access requirements of the Pennsylvania RTKL and prevent the disclosure of otherwise public records with confidentiality provisions or agreements. See, e.g., *Tribune-Review Publishing Co. v. Westmoreland County Housing Authority*, 833 A.2d 112, 117 (2003); *Gould, supra*. Finally, it is readily apparent that any "common interest" with the other opponents who were parties to the Confidential Communications Agreement was destroyed by Mr. Martin's recent public statements that he now "supports" the Perdue project; therefore, any such communications exchanged under the agreement are not protected, even if the agreement ever was duly authorized.

9. With respect to all claims of privilege, the Township violated the RTKL by withholding the records in whole rather than disclosing them with in part with appropriate redactions. 65 P.S. § 67.706.

10. The Township denied all of the requests on the basis that they call for records relating to internal pre-decisional deliberations involving a policy or course of action in the matter regarding the Perdue project and the related air quality permit. The Township is wrong. An agency must show three elements to meet its burden under this exception: (1) the deliberations reflected must be “internal” to the agency; (2) the deliberations reflected must be predecisional, *i.e.*, before a decision on an action; and (3) the contents must be deliberative in character, *i.e.*, pertaining to proposed action and/or policy-making. *See Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Cmwlth. 2011). As a threshold matter, the Township has not met its burden. It has offered no information on how the records requested meet this test. Beyond that, the case law makes clear privilege may apply when an agency deliberates for a proposed course of official action (as in, for example, an action on a permit application or the like) but not on communications regarding a position of the agency with respect to a project over which the agency has no jurisdiction. Moreover, it is clear from several of the emails produced by the Township that person external to the Township (namely Judith Nissley, Ray Wallace, Warren Evans, and June Evans) were privy to these deliberations.

11. The Township invited Mr. Warren Evans, a citizen of the Township and not a member of the municipal government, into an “executive session” in violation of the Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701 *et seq.* The Township’s failure to abide by the Sunshine Act in connection with executive sessions destroys any privileged and/or confidential status of these meetings such that the minutes or any other records of discussions or any documents present at and discussed during the meetings are not exempt from disclosure pursuant to the RTKL.

B. Other Bases for Appeal

12. In addition to the legal bases for appeal, the Township disclosed certain records – attached at Tab “F” – that contain references to other records that, if they exist, would be responsive to the requests, yet the Township failed to meet its burden by neither confirming that such records do or do not exist nor disclosing them as required by the RTKL if they do exist. By way of illustration and not limitation:

a. As noted above, the Township produced an email dated 10/17/15 from Mr. Martin to Mr. Craley. *See* Tab “F.” In that email, Mr. Martin admits that he has approximately 1,000 emails but, in his view, the Township need not disclose any of them. In addition, some but not all of Mr. Martin’s emails were disclosed through the production of the Township Manager’s emails. Aside from Mr. Martin’s inability to make a legal determination about disclosure unilaterally, his email confirms that the Township has records that fall within the requests that the Township did not disclose.

b. The Township disclosed an email dated 7/18/13 that includes an email from Mr. Martin indicating that he intended to invite Messrs. Fred Osman and Warren Evans and other non-Township individuals into an executive session, yet the Township did not produce any records associated with that executive session.

c. The Township disclosed an email dated 2/11/15 in which Mr. Martin rhetorically asks another Township Supervisor whether he has had discussions with Mr. Scott Sechler, of Bell & Evans, a competitor of Perdue's, about a soybean meal process, suggesting that Mr. Martin has been in discussions about the Perdue project with Mr. Sechler. Yet, the Township did not produce any such emails or correspondence or confirm whether they do or do not exist consistent with the Township's burden under the RTKL.

d. The Township disclosed an email dated 2/19/15 in which Mr. Martin directed the Township Manager to work with Mr. Evans on a letter to the Governor regarding the Perdue project, yet the Township did not disclose any records regarding these communications or the letter to the Governor regarding the Perdue project.

e. The Township disclosed an email dated 8/24/15 from Mr. Martin to some (but not all) of the Township Supervisors requesting input for an article regarding the Perdue project presumably for purposes of the Township's newsletter. The Township did not produce all other related emails nor any copy of any publication that contains requested information regarding the Perdue project.

f. The Township disclosed an email dated 12/14/12 in which Mr. Martin emails Messrs. Ray Wallace and Evans regarding a public hearing held by DEP regarding the project. The Township should disclose all of its records to the extent they reflect communications about the Perdue project with all the recipients of the 12/14/12 email.

g. The Township disclosed an email dated 12/16/12 in which Mr. Martin discusses DEP's review of the Perdue project. The Township did not disclose all emails reflecting Mr. Martin's communications with other recipients of the 12/16/12 email or correspondence with DEP regarding the Perdue project.

h. The Township disclosed an email dated 8/6/2015, regarding the possible engagement of Mr. Fred Osman as an "expert" for the Township. The email refers to an attachment. The Township has claimed various privileges and immunities to prevent the disclosure of records regarding the Perdue project, yet (as here) it has not produced any engagement letter with Mr. Osman confirming a potential confidential relationship and has not justified its decision to withhold such records with more than mere conclusory statements.

III. CONCLUSION

WHEREFORE, the Appeals Officer should grant this appeal and order the Township to disclose all records requested. Mr. Frerichs also requests additional briefing and hearing and hereby reserves the right to amend and offer additional support and grounds for the appeal.

Date: October 30, 2015

Respectfully submitted,


COZEN O'CONNOR

David P. Zambito (PA 80017)
Peter J. Fontaine (PA 75184)
George A. Bibikos (PA 91249)
17 N. Second St., Suite 1410
Harrisburg, PA 17101
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(717) 703-5892 (t)
(717) 703-5901 (f)

Counsel for Requester

Tab "C" – Mr. Frerich's Right to Know Requests



HELLAM TOWNSHIP

RIGHT-TO-KNOW Request Form

DATE REQUESTED: September 17, 2015

RESPONSE DUE DATE:

REQUEST SUBMITTED BY: E-MAIL U.S. MAIL FAX IN-PERSON

NAME OF REQUESTOR: Herbert D. Frerichs Jr.

STREET ADDRESS: P.O. Box 1537

CITY/STATE/COUNTY: Salisbury, MD 21802-1537

TELEPHONE/Email: 410-341-2109 Herb.Frerichs@perdue.com

RECORDS REQUESTED:

**Provide as much specific detail as possible so the agency can identify the information.*

See attached.

DO YOU WANT COPIES? YES or NO

DO YOU WANT TO INSPECT THE RECORDS? YES or NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? YES or NO

RIGHT TO KNOW OFFICER: Corina Mann

DATE RECEIVED BY THE AGENCY:

****Public bodies must fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.)*

*****Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*



Right-to-Know Request

Page 2

The following Records are requested:

Any and all records, including reports, agreements, correspondence (including emails and text messages, regardless of whether they were transmitted on personal computers and/or personal email accounts) prepared, written, or received by Michael C. Martin, Chairman of the Hellam Township Board of Supervisors, and/or D. Michael Craley, Hellam Township Solicitor, regarding, or exchanged with, any of the following:

1. The proposed Soybean Grain Elevator and Processing Facility, located in Conoy Township, Lancaster County, adjacent to the Lancaster County Solid Waste Management Authority ("LCSWMA") resource recovery facility (hereinafter, the "Perdue AgriBusiness Soybean Plant");
2. Perdue Farms, Perdue AgriBusiness, LLC or any of its affiliates, including Perdue Grain & Oil Seed, LLC ("Perdue AgriBusiness");
3. LCSWMA or the LCSWMA resource recovery facility;
4. Air Quality Plan Approval applications submitted by Perdue AgriBusiness to the d/Pennsylvania Department of Environmental Protection ("DEP") (Plan Approval Nos. 36-03189A and 36-05158A);
5. Any and all applications or requests for government approvals or grants submitted by Perdue AgriBusiness;
7. Fred Osman and/or Osman Environmental Solutions, LLC (including his lawyers, experts and other agents);
8. Dr. Warren and June Evans (including their lawyers, experts and other agents);.
9. Nissley Vineyards & Winery Estate, A&R Nissley Inc., Judith W. Nissley, and/or Joyce Nissley (including their lawyers, experts and other agents, including without limitation August Mack Environmental consultants and Saul Ewing, LLP);
10. Ray Wallace (including his lawyers, experts and other agents); and
11. Any notes or minutes from, and/or other records prepared and/or shared at, any Hellam Township Supervisors Executive Session at which Dr. Warren Evans attended.

Please specifically identify any documents that are not being produced and cite the exemption under the RTKL that you believe applies. If an extension of time is invoked under the RTKL, please provide records as they become available and do not wait until all records have been assembled. Please call Peter Fontaine at 215-665-2723 if you have any questions regarding the above request.



COPY

September 17, 2015

Ms. Corina Mann
Open Records Officer
Hellam Township
44 Walnut Springs Rd.
York, PA 17406

Re: Litigation Hold Letter and Right-to-Know Request

Dear Ms. Mann:

In connection with our defense of the anticipated legal action to be brought by Hellam Township, please find the enclosed litigation hold letter, which requires the Township to maintain and hold any and all documents and correspondence, including electronic information, relating to Perdue AgriBusiness LLC's proposed Soybean Grain Elevator and Processing Facility, located in Conoy Township, Lancaster County (the "Facility") and Hellam's opposition to the Facility, and a Right-to-Know Request Form, which requests records related to the Hellam Township Chairman's opposition to the Facility.

Hellam Township has repeatedly expressed opposition to the Facility, through hiring consultants, filing public comments opposing the plan approval application with the Pennsylvania Department of Environmental Protection ("DEP"), posting documents opposing the project on the Hellam Township website, making public statements in various venues and forums of its intent to appeal DEP approvals, and urging the U.S. Environmental Protection Agency to reject any DEP approvals. However, the recent article from LancasterOnline, "Hellam Township Supervisor Hails, Then Bashes Perdue Plant," and this weekend's op-ed letter by Michael Martin, makes it clear that certain Township supervisors, and specifically board member Mike Martin, are against the project for an evolving litany of reasons, and will take legal action versus the project, Perdue and the final air permit, if issued, regardless of the precautions and other positive actions taken by Perdue.

I also must take issue with Mr. Martin's statement that the Township has "supported the plant since day one." I personally have met with Mr. Martin and his alleged show of support is just not the case. In fact, in the above-referenced article, Mr. Martin first states that "we are for



the plant. It will benefit farmers and create jobs,” and then later in the same article he says “if I was a soybean farmer, I would oppose the plant.”

It is noteworthy that every piece of information posted on Hellam Township’s Web site about the Facility is negative and otherwise against the project and in most cases prepared by the minority, but vocal, opposition in Conoy Township. For example, the Township posts the Blasting Analysis International report commissioned by Nissley Vineyard and Nissley consultant’s response to Perdue’s expert review and evaluation of the report but does not post the Perdue evaluation itself. As you know, I requested the Township, in a letter dated June 25, 2013, to include our documents and/or a link to our project website in the interest of providing full and balanced information to the Township’s constituents, but those requests have been ignored.

Furthermore, a review of the minutes shows how the Township is taking direction from, coordinating with and now receiving funding, from others that openly oppose the project.

“Mr. Evans requested that the Board send a letter to York and Lancaster Commissioners, Lancaster County Solid Waste Authority, and the newspaper about the proposed Perdue plan in Conroy Township, letting them know that there is a way to clean the soy beans without using hexane. Solicitor Craley asked Mr. Evans to write a draft letter and send it to Ms. Mann for review. Mr. Evans agreed to do so.”

Mr. Evans and/or his wife regularly publish letters in the local newspapers opposing the Facility and have also filed Right-to-Know Law requests with DEP in respect to the project. It is clear that the Township routinely invites Mr. Evans to participate in closed-door Township Executive Sessions at which the Facility is discussed. Indeed, a Perdue legal representative witnessed Mr. Evans enter the Supervisor’s closed-door executive session on July 18, 2013, for approximately 45 minutes to participate in the Supervisors’ discussion of Perdue’s request that the Township add Perdue’s project web page link to the Township’s website. No other member of the public was permitted to attend the executive session.

Please be advised that the Township’s admission of Mr. Evans to “executive sessions” and its exclusion of other members of the public would appear to violate the Pennsylvania Sunshine Act, 65 Pa. C.S. § 701, *et seq.*, which declares that citizens have the right to attend all meetings of agencies at which agency business is discussed and acted upon. Agencies, including political subdivisions like Hellam Township, are permitted to close their meetings to the public only in limited circumstances, neither of which appears to apply to this situation. Township Supervisors can go into executive session when it is necessary to: (1) consult with an attorney or other professional advisor regarding information or strategy in connection with litigation or with

issues on which identifiable complaints are expected to be filed; (2) review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations. See 65 Pa. C.S. §§ 708(a)(4) & (5). Neither circumstance appears to exist here. Mr. Evans is neither an attorney nor to our knowledge a professional advisor to Hellam Township. There is no record of the Township having retained Mr. Evans for professional services nor is there any record of any Township payment to him. In the eyes of the law, Mr. Evans would appear to stand on the same footing as any other member of the public and thus his presence and participation in discussions with the Supervisors behind closed-door would appear to be improper.¹ The Township's apparent failure to abide by the Sunshine Act in connection with such meetings would render void the Supervisors' actions taken behind such closed-door sessions and would entitle Perdue to challenge such actions and to recover its attorneys' fees if the court finds that the Township's actions were a willful or wanton disregard for the requirements of the Act. See 65 Pa. C.S. §§ 713 & 714.1. Also, because Mr. Evans's presence at such executive sessions destroyed the privileged and/or confidential status of these meetings, the minutes or any other records of such discussions are not exempt from disclosure pursuant to Pennsylvania's Right-to-Know Law, 65 P.S. § 67.101.

Thus, as set forth in and as part of the attached request, Perdue requests any notes, minutes or other public records from Township executive sessions in which Mr. Evans participated. If the Township contends that Mr. Evans' presence at such executive sessions was necessary to carry out the purposes of such meetings, please furnish evidence that Mr. Evans has been engaged as a professional consultant to the Township. Please also specifically identify any documents that are not being produced and cite the exemption under the Right-to-Know Law that you believe applies. If an extension of time is invoked under the Right-to-Know Law, please provide records as they become available and do not wait until all records have been assembled.

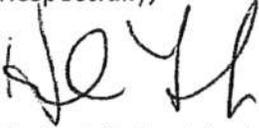
Perdue does not take this request lightly and in fact would prefer not to make it. We have no issue with the citizens of Hellam or the incoming Board of Supervisors (of which Mr. Martin will not be a member). Indeed, we respect the right of citizens and their duly-elected representatives to raise concerns relating to air quality and we always endeavor -- as we have extensively done so here -- to work through any issues with the local community. However, at this point in the proceeding, we have no choice and can no longer refrain from fully defending our legal interests. Therefore, these actions are prudent and necessary, and taken only in preparation for the defense of the apparently inevitable appeal of the permit, if issued. This

¹ While the Sunshine Act permits an agency to "admit those persons necessary to carry out the purpose of the meeting," Mr. Evans is neither an employee nor a professional consultant of the Township. Given that his status is no different from any other member of the public there is no credible basis to conclude that his participation "is necessary to carry out the purpose of [such] meeting[s]." See Section 703 (defining "Executive Session").

information will also allow us to better understand the Township's concerns and what is behind those concerns, and therefore better respond to the comments filed by the Township in respect to our draft plan approval and again prepare our potential defense. I note that we are availing ourselves of the same laws available to and used by Mr. Evans and, through Mr. Evans, Hellam Township, to obtain documents we have submitted to DEP.

Please call me at 410-341-2109, or Peter Fontaine at 215-665-4126, if you have any questions regarding the above request. We look forward to your prompt response.

Respectfully,

A handwritten signature in black ink, appearing to read 'HDF', written over a light blue horizontal line.

Herbert D. Frerichs, Jr.
General Counsel

Enclosures

Cc: D. Michael Craley, Esquire
Peter J. Fontaine, Esquire
David P. Zambito, Esquire



September 17, 2015

VIA CERTIFIED MAIL

Peter J. Fontaine

Direct Phone 215-665-2723

Direct Fax 866-850-7491

pfontaine@cozen.com

D. Michael Craley, Hellam Township Solicitor
246 W. Broadway
Red Lion, Pennsylvania 17356

Re: Document Preservation Obligation Related to Proposed Perdue AgriBusiness Facility

Dear Mr. Craley:

Your client, Hellam Township, has repeatedly expressed opposition to the proposed Perdue AgriBusiness, LLC ("Perdue") Facility to be located at 1897 River Road, Marietta, Pennsylvania 17547 (the "Facility"), through filing public comments opposing the plan approval application with the Pennsylvania Department of Environmental Protection ("DEP"), posting documents opposing the project on the Hellam Township website, and publicly stating its intent to appeal any DEP plan approval. Most recently, the Township's consultant, Fred Osman, wrote to DEP "I think we all agree it would be better to solve issues now than at the EHB to the extent we can."

Therefore, in connection with our defense of the inevitable legal action to be brought by the Township, we are hereby giving notice not to destroy, conceal or alter any paper or electronic files, other data generated by and/or stored on your client's computer systems and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voicemail, which identify or otherwise relate to the Facility and/or your client's opposition to the Facility. This document preservation obligation includes, but is not limited to: email and other electronic communications; word processing documents; spreadsheets; databases; calendars; telephone logs; contact manager information; Internet usage files; offline storage or information stored on removable media; information contained on laptops or other portable devices; and network access information. Please note that this obligation also extends to all outside consultants retained by you or your client, including, without limitation, Fred Osman.

Through discovery we expect to obtain from your client a number of documents and other data, including files stored on your client's computers and storage media. Although we may bring a motion for an order preserving documents and other data from destruction or alteration, your client's obligation to preserve documents and other data for discovery in this case arises independently from any order on such motion. In order to avoid spoliation, you will

One Liberty Place 1650 Market Street Philadelphia, PA 19103
215.665.2000 800.523.2900 215.665.2013 Fax cozen.com

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September 17, 2015

Page 2

need to provide the data requested on the original media. Do not reuse any media to provide this data.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond what may be found in printed documents. Therefore, even where a paper copy exists, we will seek all documents in their electronic form along with meta data or information about those documents contained on the media. We will seek paper printouts of only those documents that contain unique information created after they were printed (e.g., paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist.

The laws and rules prohibiting destruction of evidence apply to electronically-stored information in the same manner that they apply to other evidence. Due to its format, electronic information is easily deleted, modified or corrupted. Accordingly, your client must take every reasonable step to preserve this information until the final resolution of this matter. This may include, but would not be limited to, an obligation to discontinue all data destruction and backup tape recycling policies.

With regard to electronic data created subsequent to the date of delivery of this letter, relevant evidence should not be destroyed and your client is to take the appropriate steps required to avoid destruction of such evidence.

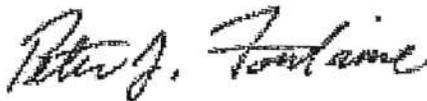
Please forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter.

Failure to abide by this request could result in extreme penalties against your client and could form the basis of legal claims for spoliation.

If this correspondence is in any way unclear, please contact me immediately.

Sincerely,

COZEN O'CONNOR



BY: PETER J. FONTAINE

PJF:kn

cc: Herb Frerichs, Jr. General Counsel
David Zambito, Esquire
Maxine M. Woelfling, Esquire



October 9, 2015

Corina Mann
Open Records Officer
Hellam Township
44 Walnut Springs Rd.
York, PA 17406

Re: Perdue Right to Know Request Dated 9/17/15

Dear Ms. Mann,

I am in receipt of your letter dated September 18, 2015, and understand that pursuant to Section 902(b) of the Right to Know Law, you can delay the Township's response by up to 30 days. However, and notwithstanding the statutory relief cited, I understand that you must provide information on a rolling basis, when available.

To that end, it is common knowledge that you have recently complied with a similar Right to Know request in respect to the Perdue project. I ask that - until you are able to comply fully with my request - you simply, and immediately, provide me with a copy of the information provided to Lancaster Farming. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Frerichs, Jr.", with a stylized flourish at the end.

Herbert D. Frerichs, Jr.
General Counsel

Cc: Mike Martin
John Eifert
Larry Busino
Steve Wolfe
Galen Weibley
Peter Fontaine, Cozen O'Connor
David Zambito, Cozen O'Connor



A Family Commitment to Quality Since 1920™



October 15, 2015

Peter J. Fontaine

Direct Phone 215-665-2723
Direct Fax 866-850-7491
pfontaine@cozen.com

VIA EMAIL AND UPS OVERNIGHT

Coriana Mann
Open Records Officer
Hellam Township
44 Walnut Springs Rd.
York, PA 17406

Re: Perdue Right-to-Know Request Dated September 17, 2015

Dear Ms. Mann:

I am writing to you regarding the Right-to-Know request submitted by our client, Perdue AgriBusiness ("Perdue"), to Hellam Township (the "Township") on September 17, 2015.

In response to Perdue's follow-up October 9, 2015, supplementary request, the Township provided Perdue with, *inter alia*, legal bills from the Township's attorney, Michael Craley, to the Township. These bills reference several documents that the Township is required to provide Perdue pursuant to the Right-to-Know Law ("RTKL"), see 65 P.S. 67.101 *et seq.*, which as of this time, the Township has failed to provide.

The Township is required by law to comply with the RTKL, 65 P.S. 67.302, which requires the Township to make a good faith effort to identify all requested public records in its possession, custody or control, and respond as soon as possible to the request by providing such records to Perdue. 65 P.S. 67.901.

The invoices from Mr. Craley to the Township indicate that there are a significant number of emails, and potentially other correspondence and documentation resulting from communications between Mr. Craley and third-parties concerning the proposed Perdue facility. Such third-parties include, but are not limited to: Warren Evans, Joel Burcat, Fred Osman, Judith Nissley, and August Mack. Any communications between Mr. Craley and these or other third parties, and documentation resulting therefrom, is not subject to attorney-client privilege. See Chambersburg Area School District v. Dorsey, 97 A.3d 1281, 1289 (Pa.Cmwlth. 2014) ("The following four elements are required to establish the attorney-client privilege [for the purpose of withholding documents under the Right-to-Know Law]: (1) that the asserted holder of the privilege is or sought to become a client; (2) that the person to whom the communication was made is a member of the bar of a court, or his or her subordinate; (3) that the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing an opinion of law, legal services, or assistance in a legal matter; and (4) that the claimed privilege has not been waived by the client.").

Nor would such communications be protected by the attorney work product privilege, which generally serves to protect the mental impressions, conclusions and opinions of attorneys

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prepared in anticipation of litigation. See Nat'l R.R. Passenger Corp. v. Fowler, 788 A.2d 1053, 1065 (Pa.Cmwith. 2001).

According to Mr. Craley's billing records, he communicated with third-parties on at least the following dates: 11/1/12; 11/3/12; 11/5/12; 11/6/12; 11/7/12; 11/8/12; 11/9/12; 11/12/12; 11/13/12; 11/16/12; 11/19/12; 11/26/12; 11/28/12; 12/2/12; 12/5/12; 12/7/12; 12/11/12; 12/12/12; 12/13/12; 12/18/12; 12/21/12; 12/27/12; 1/7/13; 1/10/13; 1/13/13; 1/15/13; 1/18/13; 1/22/13; 1/23/13; 1/28/13; 1/29/13; 2/8/13; 2/12/13; 2/13/13; 2/15/13; 2/18/13; 2/19/13; 2/20/13; 2/21/13; 3/6/13; 3/10/13; 3/11/13; 3/27/13; 3/28/13; 3/29/13; 4/2/13; 4/3/13; 4/4/13; 4/5/13; 4/9/13; 4/10/13; 4/11/13; 4/12/13; 4/13/13; 4/15/13; 4/16/13; 5/8/13; 5/18/13; 6/14/13; 6/17/13; 6/27/13; 7/18/13; 7/19/13; 7/23/13; 11/30/13; 12/1/13; 12/3/13; 12/5/13; 1/6/14; 1/7/14; 3/11/14; 3/31/14; 12/3/14; 12/7/14; 2/10/15; 2/13/15; 2/27/15; 3/1/15; 3/4/15; 3/11/15; 3/31/14; 5/5/15; 5/11/15; 5/28/15; 6/1/15; 6/3/15; 6/26/15.

The Township is required, by law, to provide any public records relating to these and other communications with third parties pursuant to Perdue's request, as such communications are not privileged.

We ask that the Township provide any public records relating to such communications with third parties, and any other public records responsive to Perdue's request as soon as possible, or explain the legal basis for failing to do so. Please contact me if you have any questions or would like to discuss this matter further.

Sincerely,

COZEN O'CONNOR



By: Peter J. Fontaine

PJF

cc: Herbert D. Frerichs, Jr.
John Eifert
Larry Busino
Steve Wolfe
Galen Weibley
David P. Zambito

Tab "D" – Responses of Hellam Township



HELLAM TOWNSHIP

44 WALNUT SPRINGS ROAD
YORK, PENNSYLVANIA 17406
(717) 434-1300 FAX: (717) 434-1301
E-mail: info@hellamtownship.com
Website: www.hellamtownship.com

BOARD OF SUPERVISORS

MIKE MARTIN
CHAIR

STEVE WOLF
VICE CHAIR

LARRY BUSINO

GALEN WEIBLEY

JOHN EIFERT

October 21, 2015

Herbert D. Frerichs, Jr.
P.O. Box 1537
Salisbury, MD 21802-1537

Re: Perdue Right to Know Request dated 9/17/15

Dear Mr. Frerichs, Jr.

Thank you for writing to Hellam Township with your request for information pursuant to the Pennsylvania Right-To-Know law.

Your request is granted in part and denied in part as follows.

1. Any records, reports, agreements or correspondence received by or sent directly to either Michael C. Martin or D. Michael Craley relative to the proposed Soybean Grain Elevator and Processing Facility located in Conoy Township Lancaster County, adjacent to the Lancaster County Solid Waste Management Authority ("LCSWMA") resource recovery facility (hereinafter, the "Perdue Agribusiness Soybean Plant") is not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent to or received by or between them and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). To the extent that any reports, agreements or correspondence received by or sent to Michael C. Martin or D. Michael Craley on this subject involve any of the parties set forth in Items 7, 8, 9 and 10 below, they are exempt from disclosure for the reasons provided under those sections. Any information received by the Hellam Township Municipal Office in any form relative to the proposed Soybean Grain Elevator and Processing Facility located in Conoy Township Lancaster County, adjacent to the Lancaster County Solid Waste Management Authority ("LCSWMA") resource recovery facility (hereinafter, the "Perdue Agribusiness Soybean Plant") is provided. In addition, since this matter involves an ongoing administrative law matter with potential for pending litigation before an administrative law tribunal (which is asserted and admitted by Perdue in its correspondence), any e-mail or other correspondence between D. Michael Craley and any party sent or received relative to this matter is attorney work product exempt from disclosure and such communications are also confidential under attorney client privilege and exempt from disclosure under Section 506(c)(2)

of the RTKL. Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3rd 1069 (Pa. Cmwlth., 2013); Schenck v. Township of Center, Butler County, 893 A.2d. 849 (Pa. Cmwlth., 2006). In addition, such information received or sent by Mr. Martin and/or Solicitor Craley is exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL as internal pre-decisional deliberations involving a policy or course of action in the administrative agency matter involving the air quality permit. Barkeyville Borough v. Stearns 35 A.3rd 91 (Pa. Cmwlth., 2012).

2. Any records, reports, agreements or correspondence received by or sent directly to either Michael C. Martin or D. Michael Craley relative to Perdue Farms, Perdue Agribusiness, LLC or any of its affiliates, including Perdue Grain & Oil Seed, LLC ("Perdue Agribusiness") is not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent or received by or between them and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). In addition, since this matter involves an ongoing administrative law matter with potential for pending litigation before an administrative law tribunal, (which is asserted and admitted by Perdue in its correspondence) any e-mail or other correspondence between D. Michael Craley and any party sent or received relative to this matter is attorney work product exempt from disclosure and such communications are also confidential under attorney client privilege and exempt from disclosure under Section 506(c)(2) of the RTKL. Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3rd 1069 (Pa. Cmwlth., 2013); Schenck v. Township of Center, Butler County, 893 A.2d. 849 (Pa. Cmwlth., 2006). In addition, such information received or sent by Mr. Martin and/or Solicitor Craley is exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL as internal pre-decisional deliberations involving a policy or course of action in the administrative agency matter involving the air quality permit. Barkeyville Borough v. Stearns 35 A.3rd 91 (Pa. Cmwlth., 2012). To the extent that any reports, agreements or correspondence received by or sent to Michael C. Martin or D. Michael Craley on this subject involve any of the parties set forth in Items 7,8., 9. and 10., below, they are exempt from disclosure for the reasons provided under those sections. Any information received by the Hellam Township Municipal Office in any form relative to Perdue Farms, Perdue Agribusiness, LLC or any of its affiliates, including Perdue Grain & Oil Seed, LLC ("Perdue Agribusiness") is provided.

3. Any records, reports, agreements or correspondence received by or sent directly to either Michael C. Martin or D. Michael Craley relative to LCSWMA or the LCSWMA resource recovery facility is not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent or received by or between them and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). In addition, since this matter involves an ongoing administrative law matter with potential for pending litigation before an administrative law tribunal, (which is asserted and admitted by Perdue in its correspondence) any e-mail or other correspondence between D. Michael Craley and any party sent or received relative to this matter is attorney work product exempt from disclosure and such communications are also confidential under attorney client privilege and exempt from disclosure under Section 506(c)(2) of the RTKL.

Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3rd 1069 (Pa. Cmwlth., 2013); Schenck v. Township of Center, Butler County, 893 A.2d. 849 (Pa. Cmwlth., 2006). In addition, such information received or sent by Mr. Martin and/or Solicitor Craley is exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL as internal pre-decisional deliberations involving a policy or course of action in the administrative agency matter involving the air quality permit. Barkeyville Borough v. Stearns 35 A.3rd 91 (Pa. Cmwlth., 2012). To the extent that any reports, agreements or correspondence received by or sent to Michael C. Martin or D. Michael Craley on this subject involve any of the parties set forth in Items 7,8., 9. and 10., below, they are exempt from disclosure for the reasons provided under those sections. Any information received by the Hellam Township Municipal Office in any form relative to LCSWMA or the LCSWMA resource recovery facility is provided.

4. Any records, reports, agreements or correspondence received by or sent directly to either Michael C. Martin or D. Michael Craley relative to Air Quality Plan Approval applications submitted by Perdue Agribusiness to the Pennsylvania Department of Environmental Protection ("DEP") (Plan Approval Nos. 36-03189A and 36-05158A) is not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent or received by or between them and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). In addition, since this matter involves an ongoing administrative law matter with potential for pending litigation before an administrative law tribunal(which is asserted and admitted by Perdue it its correspondence), any e-mail or other correspondence between D. Michael Craley and any party sent or received relative to this matter is attorney work product exempt from disclosure and such communications are also confidential under attorney client privilege and exempt from disclosure under Section 506(c)(2) of the RTKL. Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3rd 1069 (Pa. Cmwlth., 2013); Schenck v. Township of Center, Butler County, 893 A.2d. 849 (Pa. Cmwlth., 2006). In addition, such information received or sent by Mr. Martin and/or Solicitor Craley is exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL as internal pre-decisional deliberations involving a policy or course of action in the administrative agency matter involving the air quality permit. Barkeyville Borough v. Stearns 35 A.3rd 91 (Pa. Cmwlth., 2012). To the extent that any reports, agreements or correspondence received by or sent to Michael C. Martin or D. Michael Craley on this subject involve any of the parties set forth in Items 7,8., 9. and 10., below, they are exempt from disclosure for the reasons provided under those sections. Any information received by the Hellam Township Municipal Office in any form relative to Air Quality Plan Approval applications submitted by Perdue Agribusiness to the Pennsylvania Department of Environmental Protection ("DEP") (Plan Approval Nos. 36-03189A and 36-05158A) is provided.

5. Any records, reports, agreements or correspondence received by or sent to Perdue Agribusiness by either Michael C. Martin or D. Michael Craley is not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent or received by or between them and Perdue Agribusiness and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). In addition,

since this matter involves an ongoing administrative law matter with potential for pending litigation before an administrative law tribunal(which is asserted and admitted by Perdue it its correspondence), any e-mail or other correspondence between D. Michael Craley and any party sent or received relative to this matter is attorney work product exempt from disclosure and such communications are also confidential under attorney client privilege and exempt from disclosure under Section 506(c)(2) of the RTKL. Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3rd 1069 (Pa. Cmwlt., 2013); Schenck v. Township of Center, Butler County, 893 A.2d. 849 (Pa. Cmwlt., 2006). In addition, such information received or sent by Mr. Martin and/or Solicitor Craley is exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL as internal pre-decisional deliberations involving a policy or course of action in the administrative agency matter involving the air quality permit. Barkeyville Borough v. Stearns 35 A.3rd 91 (Pa. Cmwlt., 2012). To the extent that any reports, agreements or correspondence received by or sent to Michael C. Martin or D. Michael Craley involve any of the parties set forth in Items 7,8., 9. and 10., below, they are exempt from disclosure for the reasons provided under those sections. Any information received by the Hellam Township Municipal Office in any form from Perdue Agribusiness is provided.

6. (None in request-apparent typo).

7. Any records, reports, agreements or correspondence received by or sent to Fred Osman and/or Osman Environmental Solutions, including his lawyers, experts and other agents by either Michael C. Martin or D. Michael Craley are not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent or received by or between them and Mr. Osman and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlt., 2011). In addition, since this matter involves an ongoing administrative law matter with potential for pending litigation before an administrative law tribunal(which is asserted and admitted by Perdue it its correspondence), any e-mail or other correspondence between D. Michael Craley and any party sent or received relative to this matter is attorney work product exempt from disclosure and such communications are also confidential under attorney client privilege and exempt from disclosure under Section 506(c)(2) of the RTKL. Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3rd 1069 (Pa. Cmwlt., 2013); Schenck v. Township of Center, Butler County, 893 A.2d. 849 (Pa. Cmwlt., 2006). In addition, such information received or sent by Mr. Martin and/or Solicitor Craley is exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL as internal pre-decisional deliberations involving a policy or course of action in the administrative agency matter involving the air quality permit. Barkeyville Borough v. Stearns 35 A.3rd 91 (Pa. Cmwlt., 2012). In addition, such records are exempt from disclosure under Section 305(a)(2) as they are protected by attorney-client privilege under a Confidential Communications Agreement between A&R Nissley, Inc., Judith W. Nissley, Joyce Nissley and Hellam Township , dated November 15, 2012. A copy of this Confidential Communications Agreement is being provided as it has been approved by Hellam Township and is a public record.

8. Any records, reports, agreements or correspondence received by or sent to Dr. Warren Evans and/or June Evans by either Michael C. Martin or D. Michael Craley is not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent or received by or between them and Dr. or Mrs. Evans and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). The Township has no knowledge of any lawyers, experts or agents of Dr. or Mrs. Evans, and in any event, for the same reasons noted above, such correspondence is not a "record" documentation of a transaction or activity of Hellam Township.

9. Any records, reports, agreements or correspondence received by or sent to Nissley Vineyards & Winery Estate, A&R Nissley, Inc., Judith W. Nissley, and/or Joyce Nissley, including their lawyers, experts and other agents, including August Mack Environmental consultants and Saul Ewing, LLP by either Michael C. Martin or D. Michael Craley are not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent or received by or between them and Nissley Vineyards & Winery Estate, A&R Nissley, Inc., Judith W. Nissley, and/or Joyce Nissley, including their lawyers, experts and other agents, including August Mack Environmental consultants and Saul Ewing, LLP and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). In addition, since this matter involves an ongoing administrative law matter with potential for pending litigation before an administrative law tribunal (which is asserted and admitted by Perdue in its correspondence), any e-mail or other correspondence between D. Michael Craley and any party sent or received relative to this matter is attorney work product exempt from disclosure and such communications are also confidential under attorney-client privilege and exempt from disclosure under Section 506(c)(2) of the RTKL. Heavens v. Pennsylvania Department of Environmental Protection, 65 A.3rd 1069 (Pa. Cmwlth., 2013); Schenck v. Township of Center, Butler County, 893 A.2d 849 (Pa. Cmwlth., 2006). In addition, such information is exempt from disclosure under Section 708(b)(10)(i)(A) of the RTKL as internal pre-decisional deliberations. Barkeyville Borough v. Stearns 35 A.3rd 91 (Pa. Cmwlth., 2012). In addition, such records are exempt from disclosure under Section 305(a)(2) as they are protected by attorney-client privilege under a Confidential Communications Agreement between A&R Nissley, Inc., Judith W. Nissley, Joyce Nissley and Hellam Township, dated November 15, 2012. A copy of this Confidential Communications Agreement is being provided as it has been approved by Hellam Township and is a public record.

10. Any records, reports, agreements or correspondence received by or sent to Ray Wallace by either Michael C. Martin or D. Michael Craley is not a "record" as defined under Section 102 of the Right to Know Law. A single supervisor (Mr. Martin) and the Solicitor are not governmental entities and correspondence sent to or received by or between them and Mr. Wallace and not forwarded to Hellam Township is not a documentation of a transaction or activity of Hellam Township. In re: Silberstein, 11 A.3rd 629 (Pa. Cmwlth., 2011). The Township has no knowledge of any lawyers, experts or agents of Ray Wallace, and in any event, for the

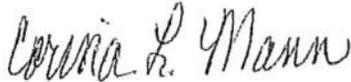
same reasons noted above, such correspondence is not a "record" documentation of a transaction or activity of Hellam Township.

11. No notes, minutes or records exist of any executive session at which Dr. Warren Evans attended.

You have a right to appeal this denial of information in writing to the Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response, as outlined in Section 1101. If you have further questions, please call Corina Mann, Hellam Township Right-To-Know officer. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,



Corina L. Mann
Township Manager
44 Walnut Springs Road, York PA. 17406
(717) 434-1300

Tab "E" – Letters/Notices of Hellam Township's Extension Requests

rec'd 9-23-15 kmw



HELLAM TOWNSHIP

44 WALNUT SPRINGS ROAD
YORK, PENNSYLVANIA 17406
(717) 434-1300 FAX: (717) 434-1301
E-mail: info@hellamtownship.com
Website: www.hellamtownship.com

BOARD OF SUPERVISORS

MIKE MARTIN
CHAIR
JOHN EIFERT
VICE CHAIR
LARRY BUSINO
STEVE WOLF
GALEN WEIBLEY

September 18, 2015

Herbert D. Frerichs Jr.
P.O. Box 1537
Salisbury, MD 21802-1537

Dear Mr. Frerichs,

Your Right to Know Request, dated September 17th, 2015 was received on September 17, 2015.

Pursuant to Section 902(a)(3) & 902(a)(4) of the Right to Know Law, due to staffing limitations, the voluminous nature of your request and the need for legal review, we will be unable to answer your request within the five (5) day period.

As provided for in Section 902(b) of the Act, further response to your request will be provided no later than 30 days following the five business days allowed for a response.

Sincerely,

Corina Mann
Open Records Officer

TAB "F" – Documents Referenced in Section on Additional Reasons for Appeal

D. Michael Craley

From: Caretaker [Caretaker@TwinBrookFarm.com]
Sent: Saturday, October 17, 2015 5:46 AM
To: Mike Craley
Cc: Corina Mann
Subject: Perdue RTK Request

Mike,

With quite a bit effort I've isolated close to 1,000 emails that I sent that contain either "Perdue" or "Purdue" in a separate folder. While I haven't been able to review all of them I have reviewed more than half of them and from what I have reviewed and based on what you have said needs to be turned over and what does not, I am convinced that 1) I have no emails that need to be turned over, and 2) if I did those emails would already be in the possession of Corina or you because you would have been included either as a direct addressee or on the cc list.

I will be out of town most of today, tomorrow, and Monday. If you need to contact me you can use my cell phone.

Thanks,
Mike

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6172 / Virus Database: 4447/10837 - Release Date: 10/17/15

10/17/2015

Corina Mann

From: Mike Martin
Sent: Saturday, October 10, 2015 6:28 PM
To: Corina Mann; mcraleylaw@comcast.net
Subject: FW: Perdue

11 of 12

From: Mike Martin
Sent: Thursday, July 18, 2013 7:49 AM
To: Steve Wolf; Martin Reed; Larry Busino; James Sipe; mcraleylaw@comcast.net
Cc: Corina Mann; jevans@cyberia.com
Subject: Perdue

I'm recommending we invite Fred Osman and Warren and/or June Evans to participate in the executive session this evening to discuss developments regarding the proposed Perdue plant. If anyone has any objections to that recommendation please reply ASAP. Otherwise, Corina please find an appropriate place on the agenda for that executive session and notify Fred Osman and June and Warren of our request for them to participate and the approximate time. It's up to them whether they would like to be there in person or be conferenced in. Don't know if Judy Nissley would like to participate also, but she's welcome if she does from my perspective.

Thanks,
Mike Martin

Corina Mann

From: Mike Martin
Sent: Saturday, October 10, 2015 6:27 PM
To: Corina Mann; mcraley@comcast.net
Subject: FW: Followup Letter to Governor Wolf

9 of 12

From: Mike Martin
Sent: Monday, February 9, 2015 8:20 PM
To: Corina Mann
Cc: mcraley@comcast.net; Galen Welbley; Steve Wolf; Larry Busino; Martin Reed; jevans@cyberia.com
Subject: FW: Followup Letter to Governor Wolf

A majority of the supervisors have approved the letter. Please work with Mike Craley and Warren and June Evans to draft it and send it from the Hellam Township BOS.

Thanks,
Mike

From: Mike Martin
Sent: Fri 2/6/2015 4:17 PM
To: Galen Welbley; Steve Wolf; Larry Busino; Martin Reed
Cc: Corina Mann; mcraley@comcast.net; jevans@cyberia.com
Subject: Followup Letter to Governor Wolf

All,

It has been suggested that we send a follow-up letter to governor Wolf regarding our concern about Perdue's proposed use of hexane in the proposed plant near Bainbridge, Lancaster County, now that he has taken office.

The follow-up letter will renew our request for a meeting and include a copy of our original letter.

Since we would like to get this letter out as soon as possible, please indicate by email as soon as possible whether you are in support of the sending of this letter.

Thanks,
Mike Martin

Corina Mann

From: Mike Martin
Sent: Saturday, October 10, 2015 6:27 PM
To: Corina Mann; mcraleylaw@comcast.net
Subject: FW: Followup Letter to Governor Wolf

8 of 12

From: Mike Martin
Sent: Wednesday, February 11, 2015 5:25 AM
To: Galen Weibley
Cc: Steve Wolf; Larry Busino; Martin Reed; jevans@cyberia.com
Subject: RE: Followup Letter to Governor Wolf

Galen,

Who is not "keeping an open mind"? Let's not be coy, please. Be man enough to speak your mind or zip your lip.

Your assumptions about people and the status of things is extremely sophmoric. I would have hoped that this might have become apparent to you by now, and especially after your posturing at the last meeting about emergency management when we subsequently made you aware of emergency management courses that we have taken and you have not, and that we have participated in emergency management drills that you have not. Certainly you are a great man in your own mind. Whether you like it or not there are indeed others who have some knowledge of people, events, and what is beneficial and what is not. You would be well advised to climb down out of your ivory tower and do some listening and learning.

Where were you when Perdue presented at the public hearing at the Hellam Fire Hall?

Where were you when Perdue presented at the Ephrata High School?

Have you spoken with Bell and Evans' Scott Sechler about why he doesn't use soy bean meal that is a byproduct of the hexane extraction process?

Have you spoken with Judy Nissley who has been through the Perdue dog and pony show?

Have you had multiple face to face meetings with Perdue representatives to hear their pitch?

You have a lot to learn, Galen. The difference between us seems to be that I'm willing to admit it while you don't seem to be able to get to that point. You assume you have a lock on virtue and the truth and the rest of us are either idiots, misguided, or corrupt.

None of us has a lock on the truth. We all need the input of others. All of us lose our way and need to be pulled back on track.

Your approach is not conducive to the team work necessary to govern wisely and effectively.

Please consider this another attempt on my part to pull you back on track.

Mike

From: Galen Weibley
Sent: Tue 2/10/2015 9:17 PM
To: Mike Martin; Corina Mann
Cc: mcraleylaw@comcast.net; Steve Wolf; Larry Busino; Martin Reed; jevans@cyberia.com
Subject: RE: Followup Letter to Governor Wolf

Without my name please since some on the Board are not keeping an open mind or responding to emails regarding this issue. I am willing to set up tours with Bell Evans and Perdue to see their facilities before sending a letter but apparently this isn't a priority.

kindly,

Galen Lowell Weibley
Hellam Township Supervisor
1250 Tower Rd
York, PA 17406
717-755-3071

-----Original Message-----

From: Mike Martin
Sent: Mon 2/9/2015 8:20 PM
To: Corina Mann
Cc: mcraleylaw@comcast.net; Galen Weibley; Steve Wolf; Larry Busino; Martin Reed; jevans@cyberia.com
Subject: FW: Followup Letter to Governor Wolf

A majority of the supervisors have approved the letter. Please work with Mike Craley and Warren and June Evans to draft it and send it from the Hellam Township BOS.

Thanks,
Mike

From: Mike Martin
Sent: Fri 2/6/2015 4:17 PM
To: Galen Weibley; Steve Wolf; Larry Busino; Martin Reed
Cc: Corina Mann; mcraleylaw@comcast.net; jevans@cyberia.com
Subject: Followup Letter to Governor Wolf

All,

It has been suggested that we send a follow-up letter to governor Wolf regarding our concern about Perdue's proposed use of hexane in the proposed plant near Bainbridge, Lancaster County, now that he has taken office.

The follow-up letter will renew our request for a meeting and include a copy of our original letter.

Since we would like to get this letter out as soon as possible, please indicate by email as soon as possible whether you are in support of the sending of this letter.

Thanks,
Mike Martin

Corina Mann

From: Mike Martin
Sent: Saturday, October 10, 2015 6:26 PM
To: Corina Mann; mcraleylaw@comcast.net
Subject: FW: Osman Proposal
Attachments: Proposal for Additional Consulting Work for Hellam Township re.docx

5 of 12

From: Mike Martin
Sent: Thursday, August 6, 2015 10:55 AM
To: Corina Mann; ibusino@yahoo.com; swolf@yorkcoymca.org; Martin Reed; Galen Weibley
Subject: Osman Proposal

Please see the attached proposal from Fred Osman. We will discuss this at this evening's meeting.

Corina, please add the discussion of this item to this evening's agenda.

Thanks,
Mike

Corina Mann

From: Caretaker <Caretaker@TwinBrookFarm.com>
Sent: Friday, December 14, 2012 7:58 AM
To: Ray Wallace; Judy Nissley; June and Warren Evans; Carol Bromer; David Dietz; Barbara Rooney; ConoyFactoryConcerns@gmail.com; Larry Busino; Martin Reed; Jim Sipe; Fredsloft@aol.com; Mike Craley; Carol Kushner; Rich Kushner; Corina Mann; blastinganalysis@rcn.com
Cc: Steve Wolf
Subject: Re: York Dispatch on Perdue hearing

All,

Ray, thanks for forwarding! And thanks for all your outstanding assistance in researching and publicizing the issues and the meeting!!

The turnout last evening was OUTSTANDING! Please relay my heart felt "THANK YOU!!" to all who participated!! My hat is off to all of you!

And once again, special thanks to June and Warren Evans for all their hard work, coordination, research, and their outstanding presentations last evening!

ALL the speakers were GREAT!!

My main concern at this point is that the sentiments expressed by Steve Izzo were dead on: our elected officials have sold their souls to their corporate masters. Several people noted that there were no state level elected officials present at last night's meeting.

The most glaring absentees were our local state representative, Keith Gillespie, and our local state senator, Lloyd Smucker.

But for those of us who have come to know these two men by attempting to work on environmental concerns with them their absence last evening was no surprise. Keith Gillespie told me directly, in reference to fracking, that he does not share our environmental concerns.

And Lloyd Smucker, by his votes in Harrisburg, has made it obvious that neither does he.

I spoke with several people last evening after the meeting who expressed similar concerns. The time may be right for some direct and organized political action. It seems many of us recognize that we cannot continue down this path toward certain destruction and are ready to join together to take concerted action.

Thanks again to all!

Mike Martin

P.S. Please forward to other supporters not copied

----- Original Message -----

From: Ray Wallace

To: [Judy Nissley](#) ; [Caretaker](#) ; [June and Warren Evans](#) ; [Carol Bromer](#) ; [David Dietz](#) ; [Barbara Rooney](#) ; [ConoyFactoryConcerns@gmail.com](#) ; [Larry Busino](#) ; [Martin Reed](#) ; [Jim Sipe](#) ; [Fredslott@aol.com](#) ; [Mike Craley](#) ; [Carol Kushner](#) ; [Rich Kushner](#) ; [Corina Mann](#) ; [blastinganalysis@rcn.com](#)
Sent: Friday, December 14, 2012 5:05 AM
Subject: York Dispatch on Perdue hearing

Public gives Perdue an earful over soybean plant

EYANA ADAH MCMILLAN / The York Dispatch
505-5438 / @ydfeatures

Updated: 12/14/2012 02:39:55 AM EST

Annette Logan did not mince her words while giving comments Thursday about a proposed Perdue plant planned in Lancaster County and the possible hexane emission issues it could bring to York County.

"We don't need any more crap in the air (than) we already have," said Logan of Hellam Township. "Mr. (Wayne) Black, take your plant somewhere else. We don't want it."

Black is Perdue Farms Inc.'s environmental director, who attended a public hearing held by the Pennsylvania Department of Environmental Protection concerning the company's plan to build a soybean crushing plant in Conoy Township across the Susquehanna River.

Logan was among 20 people who gave comments during the hearing at the Hellam Fire Co. hall, where more than 100 people gathered.

None of the commenters expressed outright support for Perdue. Logan also said she was impressed with the amount of research and devotion her fellow residents had in presenting their disagreements with Perdue's plans.

Comments were received on three separate DEP applications from Perdue:

** DEP's draft approval of Perdue's application to install grain elevator operations and their air emissions.

** Perdue's application for a soybean oil extraction facility and air emission.

** Perdue's plans to install two 20,000-gallon holding tanks containing hexane.

The proposed \$59 million Perdue soybean-crushing plant would send nearly 246,000 pounds of hexane into the atmosphere every year, according to an application the company submitted to the DEP.

Hexane is federally classified as a hazardous air pollutant.

Short-term exposure to high levels of hexane can cause dizziness, nausea and headaches, while long-term exposure can cause problems throughout the central nervous system, according to the Environmental Protection Agency.

Those health concerns were mentioned numerous times during the hearing, where several Hellam Township residents, including retired cancer researcher Warren Evans, said they expect the DEP to require Perdue to install equipment designed to reduce hexane emissions.

"We can have both clean air and farm-related jobs," Evans said.

Evans and other commenters, including township supervisor Michael Martin, also expressed concerns that Perdue's plant would be built immediately adjacent to a mass-burn incinerator and downriver from the Brunner Island Power Plant. Both of those facilities emit nitrous oxide and hexane would make air quality worst, Martin said.

"Ozone will be produced," Martin said. "There's a high threat to health, and temperature inversion would trap emissions close to the ground."

Several Lancaster County residents gave similar comments, including Carol Bromer of Marietta, who also questioned why a company worth \$4.8 billion - according to Forbes business magazine's website at www.forbes.com - would need an \$8.75 million Redevelopment Assistance Capital Program grant from the state.

"They got \$9 million grant, but won't spend money to get scrubbers," Bromer said.

She was referring to Perdue's decision not to purchase a second scrubber - costing between \$200,000 and \$400,000 - to eliminate some of the hexane.

Prior to the hearing, Black said that a scrubber will be installed on the front end of production while soybeans are crushed. Adding a second one would be outside of production and wouldn't have an effect, he said.

In her comments, Springettsbury Township resident Jane Heller said residents also need to register their complaints to their state legislators and get Harrisburg's attention on the issue.

"Or (the plant) will happen and we'll all be sitting here gasping for air," she said. "Corporations are corporations. They are in business to make money, not to be concerned with our health."

Prior to hearing residents' comments, Black told the attendees that Perdue has more than 50 years' experience in the work it does and its grain elevators and other storage facilities handle more than 250 million bushels of grain each year, Black said.

Southcentral Pennsylvania is a suitable area to build a plant, as the region is among the largest soybean production areas in the state, he said.

"Farmers must have an efficient and economical means to get their products to market, and by providing that means Perdue will be a partner in the state's agricultural preservation efforts," Black said.

He said hexane is used at Perdue's four soy processing plants in Maryland, Virginia and North Carolina, with no problem with emissions or safety procedures.

Perdue will recycle and reuse the hexane, and any residue released into the atmosphere will be well below state-regulated limit and the plant will meet all local, state and federal emission and safety requirements, Black said. He said that hexane is used in more than 90 percent of soybean processing plants today.

The public has until Monday, Dec. 17, to send in written comments regarding Perdue's applications in connection with its proposed soybean crushing plant.

Comments for the company's storage tank application should be mailed to Eric Lingle, DEP Bureau of Environmental Cleanup and Brownfields, Division of Storage Tanks, P.O. Box 8762, Harrisburg, PA 17105.

Comments may also be emailed to tanks@pa.gov.

Written comments regarding the company's air quality application should be mailed to Thomas Hanlon, DEP Air Quality, South-central Regional Office, 909 Elmerton Ave., Harrisburg, PA 17110.

The DEP will develop a comment response document for public review in the early part of next year.

-Reach Eyana Adah McMillan at emcmillan@yorkdispatch.com.

-- From:

http://www.yorkdispatch.com/ci_22186042/public-gives-perdue-an-earful-over-soybean-plant

###

Corina Mann

From: Mike Martin
Sent: Saturday, October 10, 2015 6:25 PM
To: mcraleylaw@comcast.net; Corina Mann
Subject: FW: Send data from e3540 08/24/2015 10:38
Attachments: DOC082415-08242015103830.pdf

3 of 12

From: Mike Martin
Sent: Monday, August 24, 2015 2:33 PM
To: jbeifert@comcast.net; lbusino@yahoo.com; swolf@yorkcoymca.org
Subject: FW: Send data from e3540 08/24/2015 10:38

Here's another option with a vertical, two column format on the back that would leave room for an additional article, or an expansion of the article dealing with Perdue.

-----Original Message-----

From: Corina Mann
Sent: Mon 8/24/2015 10:45 AM
To: Mike Martin
Subject: FW: Send data from e3540 08/24/2015 10:38

Here is the other example.

-----Original Message-----

From: main copier [<mailto:41copier01@york-county.org>]
Sent: Monday, August 24, 2015 10:39 AM
To: Corina Mann
Subject: Send data from e3540 08/24/2015 10:38

Scanned from e3540

Date: 08/24/2015 10:38
Pages: 2
Resolution: 200x200 DPI

Corina Mann

From: Mike Martin
Sent: Saturday, October 10, 2015 6:24 PM
To: mcraleylaw@comcast.net; Corina Mann
Subject: FW: August Newsletter

I searched my "Sent" folder for emails with the word Perdue. I included ones that I sent to other supervisors and/or Corina. I did NOT include any that I sent just to Mike Craley or to outside people like LNP.

Below is the first of 12.

From: Mike Martin
Sent: Wednesday, August 26, 2015 8:18 AM
To: Corina Mann
Subject: August Newsletter

Corina,

Can you send me an image of the back of the newsletter like you did before with the abbreviated article on Perdue I sent this morning? Show it both side by side and also with the Perdue article over the other article and let me know which you and Crystal feel works better.

Thanks!

Mike

CONFIDENTIAL COMMUNICATIONS AGREEMENT

THIS CONFIDENTIAL COMMUNICATIONS AGREEMENT ("Agreement") is made this 15th day of November, 2012, by and between A&R Nissley, Inc., Judith W. Nissley, Joyce Nissley (the "Nissleys") and Hellam Township, York County, Pennsylvania ("Hellam Township"). The foregoing parties are collectively identified herein as the "Parties".

WHEREAS, Purdue Agribusiness ("Purdue") is considering siting a soybean processing plant (the "Plant") in Conoy Township, Lancaster County, Pennsylvania; and

WHEREAS, The Plant would use hexane to process soybeans; hexane is recognized as a hazardous air pollutant by the EPA; the Nissleys are the owners of land located in Conoy Township, and Hellam Township is situated across the Susquehanna River from the Plant; the Parties oppose development of the Plant and therefore mutually seek to prevent development of the Plant; and

WHEREAS, the Parties believe there is a mutuality of interests in: (1) a common approach to the investigation of the facts concerning the development of the Plant, and (2) a common interest in the protection of communications pertaining to the Parties' mutual goal of enjoining development of the Plant; and

WHEREAS, the Parties have previously engaged in communications that were, and are intended to remain, confidential and privileged, and the Parties have shared and intend to continue to share, use, and rely upon privileged communications and work product as part of a common effort to enjoin development of the Plant; and

WHEREAS, the Parties intend to preserve all protections afforded by the attorney-client privilege and the attorney work product privilege; the Parties desire that confidential information, attorney-client privilege, and attorney work product materials shall be afforded the maximum possible protection to which such information is entitled under law, and the Parties believe the communication of matters of common concern in regard to this Agreement have been and remain essential to the effective representation of each Party's interest in preventing development of the Plant.

NOW, THEREFORE, the Parties, in furtherance of their information sharing effort, and intending to be legally bound, specifically agree that:

1. **Purpose.** The Parties understand that sole purpose of this Agreement is to facilitate and enhance each Party's independent effort to prevent development of the Plant by maximizing the information flow among counsel and clients who are Parties to the Agreement.

2. **Confidential Materials.** The Parties agree that a common legal interest in preventing development of the Plant is shared among the Parties, and pursuant to the common interest doctrine, as recognized by the Court in *In re Teleglobe Communications Corp.*, 493 F.3d 345, 364 (3d Cir. 2007), all attorney-client communications and attorney work product, together with any client and witness statements, interview notes and transcripts, legal memoranda, notes, documents reflecting any Party or Party representative mental impressions, conclusions and opinions that have been or are protected from discovery pursuant to Pa. R.C.P. 4003.3, factual summaries, digests, investigations and analyses, whether maintained and/or transmitted in printed or electronic format, shall constitute confidential materials ("Confidential Materials") under this Agreement. Additionally, all verbal communications regarding Perdue, the Plant, or any aspect of the permitting of the Plant, including Statements said among the Parties to this agreement, Statements made by or to a Party to this agreement, or to an attorney for any other Party to this agreement, Statements made by an attorney for one Party to another Party or to that Party's attorney ("Confidential Communications"), shall be considered confidential and privileged. As used herein, "Statements" shall include oral communications, written communications, telephonic communications, and e-mails. To the extent any Confidential Materials or Confidential Communications are exchanged between and among the Parties, the Parties agree to protect such materials and communications from disclosure to any person or entity not a party to this Agreement without the express written consent and permission from the other Party. All material provided pursuant to this agreement shall be used solely in connection with the Parties' mutual effort to enjoin development of the Plant and for no other purpose.

3. **Disclosure to Third Parties.** None of the Confidential Materials or Confidential Communications, and other communications, information, or documents that have been or will be disclosed by the Parties to each other as set forth in this Agreement, shall be disclosed to third parties, except pursuant to court order, without the express written consent of the Party who, in the first instance, disclosed the privileged information or documents as set forth in this Agreement. If any person requests or demands Confidential Materials or Confidential Communications, or other privileged communications, information or documents disclosed by one Party to the other, by subpoena or otherwise, counsel will immediately give written notification to counsel who supplied those materials. Counsel agree that each of them, in a cooperative manner, shall take all steps necessary or appropriate to permit the assertion of all rights and privileges with regard to said materials. Disclosure will occur only on court order or similar compulsion, unless written permission to waive the applicable requirements of this Agreement is first obtained.

4. **Permitted Disclosures.** The Parties agree that notwithstanding the provisions of paragraphs 2 and 3 herein, any Party may disclose Confidential Materials or Confidential Communications to the following: (1) the attorneys of record for each of the Parties, as well as to their respective partners, associates, paralegals and office staff as may be necessary to further the purposes of this Agreement, as well as to any specially appointed or designated counsel of either Party; (2) any experts or consultants retained by the Parties; and (3) officers, managers, employees and representatives of the Parties, as necessary to further the purposes and objectives of this Agreement.

5. **Rights of Each Party.** Nothing in this Agreement shall be construed to affect the separate and independent representation of each client by his or her respective counsel according to what his or her counsel and the client believe to be in the client's best interests. The Parties recognize the respective rights of each member to undertake separate and independent efforts in this regard and are free to disclose or use the results of the separate and independent efforts and documents that are not Confidential Materials or Confidential Communications, in any manner that a Party desires, without the consent of the other Party.
6. **Prior Communications.** The Parties expressly agree that the nature and terms of this Agreement, and all of the discussions leading up to this Agreement, shall be considered Confidential Materials and Confidential Communications, and shall remain strictly confidential and shall not be communicated, directly or indirectly, under any circumstances, unless required by court order.
7. **Inadvertent Disclosures.** In the event that an inadvertent or unauthorized disclosure is made, such disclosure, sharing or providing of information shall not be deemed a waiver of the attorney-client privilege, the work product immunity, or any other privilege.
8. **Duration of the Agreement.** The confidentiality obligations of this Agreement shall survive the termination of the Agreement. The confidentiality obligations shall not apply to information that is now or hereafter in the public domain or generally available to the public, except that it shall continue to apply to any information disclosed by any wrongful act or violation of this Agreement.
9. **Attorney-Client Relationship.** Nothing in this Agreement shall be construed to create an attorney-client relationship between counsel for the Nissleys and any other Party, between counsel for Hellam Township and any other Party, or between counsel for the Nissleys and Hellam Township. Each counsel shall owe each Party a duty of confidentiality as set forth herein, but shall not owe a duty of loyalty except as to each counsel's respective client(s).
10. **Authorization to Enter the Agreement.** The person executing this Agreement on behalf of each Party represents that he/she is authorized to do so.
11. **Modification of the Agreement.** This Agreement shall not be modified, amended, altered or supplemented except by a written agreement signed by both Parties.
12. **Terminating the Agreement.** The Parties understand that either Party may terminate this Agreement by providing written notice to Counsel and the other Party at least five (5) days prior to the effective date of such termination.

IN WITNESS WHEREOF, the Nissleys and Hellam Township, state they have read this Agreement, that they understand its contents and intending to be legally bound, and they execute this Agreement on the date first above written.

HELLAM TOWNSHIP, YORK
COUNTY, PENNSYLVANIA

Michael C. Martin
Name (print)

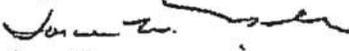
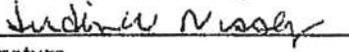

Signature

Chairman, Board of Supervisors
Title/Position

Dated: November 15, 2012

A&R NISSLEY, INC.
JUDITH W. NISSLEY
JOYCE NISSLEY

Joyce W. Nissley
Judith W. Nissley
Name (print)

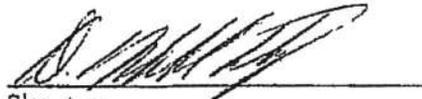


Signature

Treasurer
President
Title/Position

Dated: November 5, 2012

Legal Counsel

D. Michael Corley
Name (print)


Signature

Dated: November 15, 2012

Legal Counsel

Joel R. Burrat
Name (print)


Signature

Dated: November 8, 2012