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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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November 9, 2017

\*CHERRY HILL, NJ  
\*\*HONOLULU, HI  
PHILADELPHIA, PA  
WILLIAMSPORT, PA  
by appointment only

Via Electronic Mail  
Chairman George D. Bedwick  
Pennsylvania Independent Regulatory Review Commission  
333 Market St, 14th Floor  
Harrisburg, PA 17101  
irrc@irrc.state.pa.us

\*Partner responsible - Bruce S. Katcher  
\*\*Partner responsible - Brenda H. Gotanda

RECEIVED  
IRRC  
2017 NOV 13 A 9:03

Re: Environmental Quality Board Regulation #7-535 (IRRC #3150)  
Stream Redesignation - Swiftwater Creek

Dear Chairman Bedwick:

My firm has been retained by Pocono Manor Investors, LP ("Pocono Manor") to serve as counsel in this matter. On November 3, 2017, Pocono Manor submitted comments on Environmental Quality Board ("EQB") Regulation #7-535 (IRRC #3150), which would reclassify the Designated Use of Swiftwater Creek to Exceptional Value ("EV"). In its letter, Pocono Manor requested that the Independent Regulatory Review Commission ("IRRC") defer action on Regulation #7-535. Pocono Manor has since been advised by IRRC staff that IRRC can only approve or disapprove the regulation.

For the reasons set forth in its letter, we request that IRRC disapprove the regulation, which would require the EQB to take one of three actions: (1) adopt the Regulation #7-535 and issue a report responding to IRRC's disapproval order, (2) revise or modify Regulation #7-535 to respond to IRRC's objections, or (3) withdraw Regulation #7-535. See 71 P.S. § 745.7. IRRC's disapproval would have the effect of deferring final action on Regulation #7-535. During that time, Pocono Manor could more thoroughly review PADEP's underlying data and develop additional factual information regarding the proper classification of Swiftwater Creek, which Pocono Manor could then present to PADEP, the EQB, and IRRC, as appropriate. We believe that a disapproval and deferral is appropriate in this matter given the lack of actual notice PADEP provided to Pocono Manor.

We would like to further note that Regulation #7-535 is not in the public interest in accordance with Section 5.2 of the Regulatory Review Act, 71 P.S. § 745.5b. As Pocono Manor explained in its November 3, 2017 comments, Regulation #7-535 is not consistent with PADEP's and the EQB's statutory authority and is not supported by acceptable data. 71 P.S. §§ 745.5b(a), (b)(7). PADEP failed to conduct the necessary sampling in compliance with its

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regulations and guidance. As Pocono Manor explained in its letter, PADEP did not sample an adequate number of sample stations in accordance with its regulatory protocol, and its sampling stations did not account for the dam and impoundment along Swiftwater Creek.

Furthermore, Regulation #7-535 is not in the public interest because it will result in unreasonable economic and fiscal impacts, including costs to Pocono Manor and to the Commonwealth and its political subdivisions through lost revenue; adverse effects on the prices of Pocono Manor's services, productivity, and competition; costs to prepare required reports, forms, and other paperwork; and costs of consulting services which Pocono Manor will be expected to incur. 71 P.S. § 745.5b(b)(1).

Given the deficiencies identified by Pocono Manor, by copy of this letter we are requesting that the Pennsylvania Senate Environmental Resources and Energy Committee and the House of Representatives Environment Resource and Energy Committee submit comments to IRRC to similarly disapprove Regulation #7-535.

Pocono Manor intends to appear at the November 16, 2017 public meeting to testify in opposition to Environmental Quality Board Regulation #7-535 (IRRC #3150). Thank you for your consideration of these comments.

Respectfully submitted,



Jonathan E. Rinde

For MANKO GOLD, KATCHER & FOX, LLP

cc: Patrick McDonnell, PADEP Secretary  
The Honorable Senator Gene Yaw, Chair, PA Senate Environmental Resources and Energy Committee  
The Honorable Senator John Yudichak, Minority Chair, PA Senate Environmental Resources and Energy Committee  
The Honorable Representative John Maher, Chair, PA House of Representatives Environment Resource and Energy Committee  
The Honorable Representative Mike Carroll, Minority Chair, PA House of Representatives Environment Resource and Energy Committee  
Annie Lamberton, Supervisor, Tobyhanna Township  
George Ewald, Supervisor, Tunkhannock Township  
William Pipolo Jr., Supervisor, Barrett Township  
Steve Pine, Director of Development, Kalahari Resort and Conference Center  
David W. Moyer, President, Papillon & Moyer  
Karl M. Weiler, Chairman, Weiler Corp.  
Nick Igdalsky, CEO, Pocono Raceway