



September 13, 2012

Glenn Cannon, Esq., Director
Pennsylvania Emergency Management Agency
2605 Interstate Drive
Harrisburg, PA 17110-9364

RE: Coordination of Emergency Response Activities with PaWARN

Dear Director Cannon:

The Pennsylvania Water/Wastewater Agency Response Network ("PaWARN") is a statewide network of "utilities helping utilities," created to support and promote statewide emergency preparedness, disaster response and mutual aid assistance for member public and private water and wastewater utilities in the Commonwealth.

PaWARN operates under a "Mutual Aid Agreement for Water/Wastewater Providers" and membership is available to all public and private water and wastewater utilities in Pennsylvania. Through PaWARN, member utilities sustaining physical damage or operational disruptions from natural or man-made events can obtain emergency and/or mutual assistance, in the form of personnel, equipment, and materials and other associated services, from other member utilities and are afforded a mechanism for reimbursement of expenses, liability waivers, recall of equipment, etc.

PaWARN also has acted on many occasions as a direct point of contact for requests from political subdivisions, County EMA Coordinators and from PEMA seeking equipment and other resources in response to emergencies in the Commonwealth that did not involve PaWARN members. For example, PaWARN received a number of requests for assistance directly from PEMA during Tropical Storm Lee in early September 2011 that originated from rural PA boroughs and townships. Since then, PEMA has reached out to PaWARN on many more occasions, including several in only the last few weeks for assistance to non-members. In most cases, PaWARN members gladly offered up assistance to protect the families, businesses and communities of the Commonwealth.

Clearly, PaWARN fully supports PEMA's mission, and its members recognize that they can make vital contributions to emergency response activities in the Commonwealth. However, the growing number of requests for assistance that have been made to PaWARN have raised serious concerns about the potential risks faced by its members each time they provide assistance in an emergency situation, particularly with respect to damage to equipment and liability for property damage or personal injuries that may occur during an emergency response on behalf of

a non-member. Unlike political subdivisions, PaWARN and its members are not entitled to immunity from civil liability and other protections that are provided under the Intrastate Mutual Aid System established by Act 93 of 2008 under Title 35, Subchapter C, of the Pennsylvania Consolidated Statutes.

To resolve these concerns, PaWARN has engaged PEMA operations personnel on several occasions to discuss issues of liability exposure and other risks. At PEMA's request, PaWARN retained outside legal counsel to discuss these issues with PEMA's attorneys and identify mechanisms that may provide PaWARN members with some level of assurance in connection with future disaster relief efforts. Despite these discussions, PaWARN remains concerned that the existing Title 35 program represents an imperfect solution for coordinating with municipal authorities and privately-owned utilities during emergency situations, particularly in light of the considerable commitments of equipment and resources that are routinely requested of PaWARN member systems.

PaWARN remains hopeful that a solution can be identified that will allow PaWARN and its member utilities to participate in emergency response activities with the Commonwealth without shouldering a disproportionate risk of liability.

However, as a relatively young organization with limited capital, PaWARN cannot afford to continue expending resources to resolve its outstanding questions regarding liability. As a result, and until a Legislative or other solution can be found that will provide adequate protections to its members, PaWARN can no longer coordinate emergency response efforts with its member systems when contacted by PEMA for assistance to non-members. Rather, PEMA County EMA Coordinators and political subdivisions seeking emergency assistance will need to contact PaWARN's member utilities directly. It will then be up to the member utilities to decide whether or not to provide assistance.

Sincerely,



Mark E. Nicely
PaWARN Chair

cc: Tanya C. Leshko, Chief Counsel, PEMA
Bud Mertz, Director, Bureau of Operations and Resources, PEMA
Robert Powelson, Chairman, Public Utility Commission
Secretary Michael Krancer, PA DEP
E. Christopher Abruzzo, Office of the Governor
Rep. Stephen E. Barrar