

To: Honorable Members of the Pennsylvania House State Government Committee
501 North 3rd Street
Harrisburg, Pennsylvania 17120

Re: Pennsylvania House Bill 2083 – OPPOSE

Date: September 6, 2016

Members of the Pennsylvania House State Government Committee:

We, the undersigned conservation organizations representing the interests of Pennsylvania's 1.4 million sportsmen and women, are writing to express our **strong opposition to House Bill 2083 (HB 2083)**. This legislation jeopardizes approximately \$25 million in conservation funding generated by Pennsylvania's sportsmen and women and will significantly curtail the Pennsylvania Game Commission's (PGC) ability to manage the wildlife resources of the Commonwealth.

For the past 79 years, state fish and wildlife agencies have been funded to a large degree on the backs of our nation's sportsmen and women, both through the sale of sporting licenses, and through excise taxes collected on the sale of a variety of sporting equipment through the Wildlife and Sportfish Restoration Programs (created by the passage of the Pittman-Robertson and Dingell-Johnson/Wallop-Breaux Acts). The Wildlife and Sportfish Restoration Programs, combined with revenue from the sale of hunting and fishing licenses, creates the American System of Conservation Funding (ASCF), a "user-pays, public-benefits" program, that is the lifeblood of state fish and wildlife agencies. To date, sportsmen and women have generated nearly \$57 billion for state fish and wildlife management agencies through this System.

Pennsylvania's hunters and anglers pay into the ASCF each year, and in 2015 alone, Pennsylvania's fish and wildlife agencies received \$99.5 million through this System. However, the apportionment of the excise taxes on sporting equipment is managed by the U.S. Fish and Wildlife Service, and there are specific requirements that states must adhere to in order to maintain their eligibility to receive these funds. On July 14, 2016 the U.S. Fish and Wildlife Service sent a cautionary letter to the PGC, stating that were HB 2083 to be signed into law, several of the provisions therein would likely constitute a diversion of funds, which would result in the withholding of approximately \$25 million in annual conservation funding for the Game Commission.

Beyond the potentially disastrous loss of \$25 million in critical conservation dollars, this bill raises numerous other concerns. The other provisions we are opposed to are outlined below, and we invite further discussion on these issues in the future:

- Adding an unnecessary level of bureaucracy by creating the "Forest and Wildlife Advisory Council," which inappropriately limits representation for the hunting and angling community and does not require education, training, or experience in wildlife management for appointees,

- Eliminating the Game Commission’s ability to adaptively manage wildlife resources through the regulatory process and subjecting management practices to the slow-moving legislative process,
- Setting permit limits by county based on recommendations of the Council rather than through professional management standards,
- Mandating Council oversight of wildlife management on state-managed lands,
- Setting three-day antlerless deer hunting seasons,
- Creating deer hunting regulations that target senior hunting license holders,
- Eliminating Deer Management Programs on public lands, and
- Mandating the adoption of a widely controversial and currently unproven “Maximum Sustainable Yield” (MSY) management concept.

The Pennsylvania Game Commission’s mission is, “To manage Pennsylvania's wild birds, wild mammals, and their habitats for current and future generations.” HB 2083 undermines professional wildlife management and will negatively impact the ability of the PGC to properly carry out its stated mission.

It is for these many reasons we urge you to vote against HB 2083.

Sincerely,

Congressional Sportsmen’s Foundation
 Ducks Unlimited
 National Deer Alliance
 National Wild Turkey Federation
 Pennsylvania Federation of Sportsmen’s Clubs
 Pheasants Forever/Quail Forever
 Quality Deer Management Association
 Rocky Mountain Elk Foundation
 Safari Club International
 Safari Club International – Allegheny Mountains Chapter
 Safari Club International – Three State Chapter

CC: Speaker Mike Turzai
 Representative Dave Reed
 Representative Frank Dermody
 Representative Bryan Cutler
 Representative Michael Hanna
 Robb Miller, Governor’s Advisor on Hunting, Fishing and Conservation
 Executive Director Matt Hough, Pennsylvania Game Commission



OFFICE OF
EXECUTIVE DIRECTOR
717-787-3633

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Game Commission

2001 ELMERTON AVENUE
HARRISBURG, PA 17110-9797

*"To manage all wild birds, mammals and their habitats
for current and future generations."*

March 18, 2014

The Honorable Thomas Corbett
Governor

The Honorable Dominic Pileggi
Senate Majority Leader

The Honorable Martin Causer
Chairman, House Game and Fisheries

The Honorable Richard Kasunic
Democratic Chairman, Senate Game and Fisheries

The Honorable Joseph Scarnati
Senate President Pro Tempore

The Honorable Sam Smith
Speaker of the House

The Honorable Richard Alloway
Chairman, Senate Game and Fisheries

Dear Governor Corbett and Members of the General Assembly:

The Game Commission Board of Commissioners is in receipt of your correspondence dated March 18, 2014. The Board directed me to inform you that it reviewed the letter and has agreed to the course of action set forth therein. The Board will immediately take appropriate action to implement these recommendations.

I will be happy to meet with you to discuss this matter further.

Sincerely,

R. Matthew Hough
Executive Director
Pennsylvania Game Commission

ADMINISTRATIVE BUREAUS:

ADMINISTRATION..... 717-787-5670
PERSONNEL..... 717-787-7836
AUTOMOTIVE AND
PROCUREMENT DIVISION .. 717-787-6594
LICENSE DIVISION..... 717-787-2084
WILDLIFE MANAGEMENT..... 717-787-5529
INFORMATION & EDUCATION .. 717-787-6286
WILDLIFE PROTECTION..... 717-783-6526
WILDLIFE HABITAT
MANAGEMENT..... 717-787-6818
REAL ESTATE DIVISION 717-787-6568
AUTOMATED TECHNOLOGY
SERVICES..... 717-787-4076

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE GOVERNOR
HARRISBURG

March 18, 2014

Mr. Robert Schlemmer
President
Pennsylvania Game Commission
118 Deer Ridge Road
Export, PA 15632

Dear President Schlemmer:

We are writing to convey our serious concerns regarding several recent developments at the Pennsylvania Game Commission that, collectively, serve to undermine the confidence we and the sportsmen and sportswomen of Pennsylvania have placed in the Board of Commissioners.

We were each shocked and extremely disappointed to learn that the Board of Commissioners had approved what amounts to a \$220,000 severance payment for your former Executive Director. This payment was never voted on or announced publicly; appears to have no basis of justification; and also appears to be in conflict with state law. In our view, such a payment is a gross abuse of the Commission's fiduciary responsibility.

It is also clear to us that the Board of Commissioners is strongly inclined to select an existing employee, who is under active investigation by the State Ethics Commission (SEC), as the Game Commission's next Executive Director. While the SEC investigation will unfold on its own timeline, it is apparent to each of us that doing so would demonstrate a significant error in judgment with respect to the needs of the Commission, and the appropriateness of this individual's conduct to date. The citizens of Pennsylvania deserve an Executive Director who is beyond reproach and focused solely upon advancing the mission of the agency.

Therefore, in an effort to restore the trust which has been placed in each member of the Board of Commissioners, we recommend that the following course of action ensue forthwith:

- Immediately revoke the previously approved improper severance agreement offered to the Game Commission's former Executive Director, Mr. Carl Roe.
- Withdraw Mr. William Cappouillez from consideration as the Game Commission's next Executive Director.
- Revoke any supplemental employment authorization that was previously approved for Mr. Cappouillez; and ensure that any future requests for supplemental employment of Mr. Cappouillez, and all Game Commission employees, is subject to review and approval by the Office of Administration.

- Fully comply and cooperate with the ongoing SEC investigation and take all appropriate action, including termination, of any employee found to have violated the Public Official and Employee Ethics Act.

If, individually or collectively, you and your fellow Commissioners are unable to appreciate the prudence of fostering the above course of action, or you are otherwise inclined to refuse the above recommendations, alternatively, we request that you immediately resign your appointment to the Board of Commissioners.

The public's confidence in the Commissioners entrusted to carry out the vitally important work of the Pennsylvania Game Commission can be compromised no further. We urge you to act now.

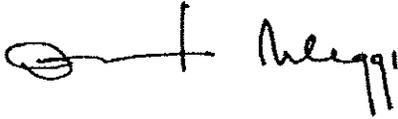
Signed,



Tom Corbett
Governor



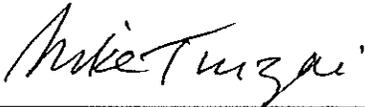
Joe Scarnati
Senate Pro Tempore



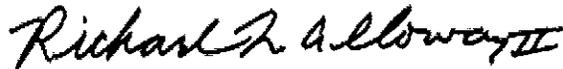
Dominic Pileggi
Senate Majority Leader



Samuel H. Smith
Speaker of the House



Mike Turzai
House Majority Leader



Richard L. Alloway II
Chairman, Senate Game & Fisheries Committee



Martin T. Causer
Chairman, House Game & Fisheries
Committee



Richard A. Kasunic
Democratic Chair, Senate Game & Fisheries
Committee



STATE ETHICS COMMISSION
309 FINANCE BUILDING
HARRISBURG, PENNSYLVANIA 17120

In Re: William Capouillez, : File Docket: 13-032
Respondent : X-ref: Order No. 1695-2
: Date Decided: 8/10/16
: Date Mailed: 8/11/16

Before: Nicholas A. Colafella, Chair
Mark R. Corrigan, Vice Chair
Roger Nick
Melanie DePalma

This is a final adjudication of the State Ethics Commission.

Procedurally, the Investigative Division of the State Ethics Commission conducted an investigation regarding possible violation(s) of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq., by the above-named Respondent. At the commencement of its investigation, the Investigative Division served upon Respondent written notice of the specific allegation(s). Upon completion of its investigation, the Investigative Division issued and served upon Respondent a Findings Report identified as an "Investigative Complaint." An Answer was filed and a hearing was requested. A Stipulation of Findings and a Consent Agreement were subsequently submitted by the parties to the Commission for consideration. The Stipulated Findings are set forth as the Findings in this Order. The Consent Agreement has been approved.

I. ALLEGATIONS:

That William A. Capouillez, a public official/public employee in his capacity as the Director of the Bureau of Wildlife Habitat Management for the Pennsylvania Game Commission, violated [Section 1103(a)] of the State Ethics Act (Act 93 of 1998) when he utilized the authority of his public employment, and/or confidential information received through his holding public employment, for the private pecuniary benefit of himself and/or a business with which he is associated, namely Geological Assessment and Leasing LLC, when he organized, negotiated, and/or arranged lease agreements with private industry representatives for Oil, Gas and Mineral ("OGM") exploration on Pennsylvania Game Commission game lands, while simultaneously performing the same actions for private landowners within the Commonwealth for a fee.

II. FINDINGS:

CAPOUILLEZ'S EDUCATION AND WORK HISTORY

1. William A. Capouillez (hereinafter "Mr. Capouillez" or "Capouillez") was employed by the Pennsylvania Game Commission (hereinafter "PGC") as the Director of the Bureau of Wildlife Habitat Management (hereinafter "BWHM") from approximately December 2, 2006, through May 18, 2015.
 - a. Mr. Capouillez was hired to provide the PGC with increased knowledge and experience regarding geology—specifically as it relates to mineral, oil, and natural gas issues. Additionally, he was hired to build a PGC staff with the capability to provide maximum protection to the conservation of state lands

and to maximize Commonwealth income derived from timber, mineral, oil, and natural gas activity.

- b. Mr. Capouillez's original title was Director of the Bureau of Land Management. (The PGC changed the name from the Bureau of Land Management to the BWHM in or about June 2006).
2. Mr. Capouillez obtained a degree from Penn State University in 1987 in the field of Earth and Mineral Science, with an emphasis on geology.
3. In January 1990, Mr. Capouillez began working for the Pennsylvania Department of Environmental Protection (hereinafter "DEP") as a Geologist Trainee, and was subsequently promoted to the position of Hydrogeologist 1, effective January 1991.
4. In April 1993, Mr. Capouillez accepted a lateral transfer to the PGC in his position of Hydrogeologist 1.
5. In April 1994, Mr. Capouillez, on his own initiative, obtained a Professional Geologist License (License Number PG000453G) from the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs. This license is currently inactive.
6. Mr. Capouillez held various positions during his tenure with the PGC, as follows:

Hydrogeologist 1:	April 17, 1993 - March 8, 1998
Hydrogeologist 2:	March 9, 1998 - January 14, 2000
Licensed Professional Geologist:	January 15, 2000 - May 24, 2002
Environmental Planning Manager:	May 25, 2002 - December 1, 2006

 - a. Mr. Capouillez's classification as a Hydrogeologist 1 was reviewed and upgraded to a Hydrogeologist 2 effective March 9, 1998.
 - b. Mr. Capouillez's position as a Hydrogeologist 2 was reclassified to Licensed Professional Geologist effective January 15, 2000.
 - c. Mr. Capouillez was promoted to Environmental Planning Manager effective May 25, 2002. As the Environmental Planning Manager, Mr. Capouillez was the Chief of the PGC Environmental Planning and Habitat Protection Division.
7. Effective December 2, 2006, Mr. Capouillez was appointed as the Director of the Bureau of Land Management (currently the BWHM).
8. As a Hydrogeologist 1, and subsequently as a Hydrogeologist 2, Mr. Capouillez had multiple duties and responsibilities, which included, among others, oil, gas, and mineral recovery/leasing.
9. As a Licensed Professional Geologist, Mr. Capouillez had no specific written job description.
10. Capouillez's job description in his position as an Environmental Planning Manager for the PGC documented multiple duties and responsibilities which included, among others, oil, gas, and mineral recovery.
 - a. Capouillez's duties and responsibilities in relation to oil, gas, and mineral recovery included, among others, the following:

1. Administering the Commission's oil, gas, and mineral resource management program as well as directing the work of the environmental planning and habitat protection unit;
 2. Advising the Bureau Director on technical matters related to oil, gas, and mineral resource management in the Pennsylvania Game Lands system;
 3. Planning, implementing, and monitoring approved oil, gas, and mineral leasing programs in accordance with agency guidelines and policies;
 4. Preparation of formal agenda items involving leasing of Commonwealth owned oil, gas, and minerals for Commission consideration and formal approval;
 5. Preparation of leases and agreements involving exploration for, and recovery of oil, natural gas, coal, and other minerals from lands owned or controlled by the Game Commission;
 6. Receiving development requests for removal of privately owned oil, gas, and minerals from under Game Lands surface which requires reviewing and analyzing legal documents and determination of environmental implications;
 7. Monitoring progress of lease development and analyzing technical aspects of mineral recovery projects for potential adverse environmental impacts;
 8. Preparing advisory memos and briefing reports for regional office and field staff on recommended courses of action to be implemented at oil, gas, and mineral recovery sites;
 9. Planning and coordination of oil, gas, and mineral recovery projects to insure compatibility with other Game Land management programs;
 10. Planning and conducting internal audit controls to insure full payment of oil, gas, and mineral production royalties due to the Commission; and
 11. Maintaining liaison with major energy company staffs and negotiating details of oil, gas, and mineral leasing programs with private company representatives.
- b. Capouillez was responsible for these duties as associated with oil, gas, and mineral recovery from at least May 25, 2002, through December 1, 2006.
11. Capouillez's most recent job description for the position of Director of the BWHM sets forth multiple duties and responsibilities regarding the position.
- a. The definition of the position as documented on the job description states:
"This is administrative and managerial work in directing the statewide game land management program."
 - b. Duties for the position as documented on the job description include, in part, the administrative direction of the statewide land acquisition and leasing program, including the oil, gas, and mineral recovery program which is

included within/is a component of the statewide land acquisition and leasing program.

- c. Capouillez has been responsible for the administrative direction of the statewide land acquisition and leasing program since December 2, 2006.
 1. No specific duties, responsibilities, actions, etc., to be completed are identified in the job description in association with "administrative direction."

ORGANIZATIONAL FRAMEWORK OF THE PGC AND THE PROCEDURES FOR LEASING OIL AND GAS RIGHTS OF STATE GAME LANDS

12. The PGC was established by the State Legislature in 1895 as an independent public wildlife protection agency. The PGC is governed by an eight Member Board of Commissioners that are selected by the Governor and confirmed by a majority vote of the Senate. The Board of Game Commissioners is responsible for the protection and preservation of state game, birds, and mammals, and enforcement of Commonwealth laws relating thereto.
13. The BWHM is responsible for multiple facets of operations for the PGC including, in part, the following:
 - a. Management of PGC lands purchased as well as those obtained through cooperative lease arrangements;
 - b. Comprehensive planning for the development of the lands for wildlife habitats, timber harvests, and removal of oil, gas, and/or minerals; and
 - c. Direct management of approximately 1.4 million acres of State Game Lands (hereinafter "SGL") and assisting with an additional approximate 3 million acres of private land enrolled in the agency's Public Access Program.
14. All oil, gas, and mineral (hereinafter "OGM") leasing of assets owned and managed by the PGC must adhere to specific PGC policy and state regulations requiring that such leasing be based on sound wildlife management principles and will not involve any long term impact on wildlife or the wildlife development program. See PGC Policy Section 6211.211-214; see also Title 34, Chapter Seven of the Game and Wildlife Code (short title).
15. The leasing of OGM rights on PGC SGL for the OGM rights contained therein may be accomplished via a "public bid" or "sole source" process.
16. The leasing of PGC SGL for the OGM rights contained therein via *public bid process* generally follows the steps identified below:
 - a. OGM section of the Environmental Planning and Habitat Protection Division prepares the lease map, lease, and bid package.
 - b. BWHM Director reviews the applicable bid package to determine if any corrections/changes are needed.
 - c. If no corrections/changes are required, the PGC Commissioners are formally notified of the potential bid and forwarded a copy of the lease map and site specific drilling or mining restrictions.

¹ However, the origination, negotiation, and completion of leases of PGC lands typically began with and was administered by PGC personnel not within the BWHM. Some lease activities were handled outside the BWHM entirely, including those relating to trespass and wrongful taking of OGM resources.

- d. If the Commissioners approve moving forward with the process, the OGM Section prepares public notice of the potential bid area to be advertised in at least two local newspapers for three consecutive weeks with all requests, comments or concerns, to be fully addressed.
 - e. The OGM Section subsequently sends personal written bid invitations and bid packages to probable bidders.
 - f. Interested bidders prepare and submit bids which are opened by representatives of OGM Section with the highest bidder recommended for award of the lease.
 - g. The OGM Section prepares the commentary regarding the potential lease as an agenda item which is then scheduled for review and approval of the Executive Office, to be placed in the final agenda for a meeting of the PGC Board of Commissioners, which entity alone has the authority to approve or reject any lease of Game Lands.
 - 1. If the lease receives Board approval, the OGM Section prepares the lease and forwards the successful bidder the finalized agreement for signature.
 - 2. If the Board does not approve the lease, the process is terminated.
 - h. Upon signature by the successful bidder, the OGM Section, which was supervised by Mr. Capouillez, forwards the lease to the Chief Counsel of the PGC for review, signature, and approval, then to the PGC Executive Director for review, signature, and approval, then to the Commonwealth's Attorney General, for review, signature, and approval.
 - i. PGC Harrisburg personnel and regional personnel must conduct a meeting with the oil/gas or mining company to review all lease terms and conditions with fully executed lease copies to be given to all appropriate parties to include: lessee, PGC regional personnel, and PGC Harrisburg personnel.
 - j. Periodic field reviews are conducted by PGC personnel and Department of Environmental Protection personnel (Bureau of Oil and Gas or Mining) to ensure compliance with all applicable state and federal regulations governing oil/gas or mining operations.
17. The leasing of OGM rights on PGC SGL pursuant to a *sole source process* generally follows the steps identified below:
- a. PGC section of the Environmental Planning and Habitat Protection Division calculates and negotiates lease language, terms, fees, and bonding.
 - b. If the applicant agrees with the terms as presented by the OGM Section, the lease is presented to the BWHM Director for review.
 - c. If the form of the lease is found appropriate by the BWHM Director, the OGM Section prepares and sends a conditioned commitment letter to the applicant for signature.
 - d. Upon receipt of the signed commitment letter from the applicant, the OGM Section prepares the lease commentary as an agenda item which is then scheduled for review and approval of the Executive Office, to be placed in the final agenda for a meeting of the PGC Board of Commissioners for fund

approval.

1. If the lease receives Board approval, the OGM Section forwards the successful bidder the finalized agreement for signature.
 2. If the Board does not approve, the leasing process is terminated and no OGM lease is entered.
- e. Upon signature by the successful bidder, the OGM Section, supervised by Mr. Capouillez, forwards the lease to the Chief Counsel of the PGC for review, signature, and approval, then to the PGC Executive Director for review, signature, and approval, then to the Commonwealth's Attorney General, for review, signature, and approval.
 - f. Once approved for legality by the PGC's Chief Counsel and signed by the Executive Director, the lease terms and conditions are to be approved for legality by the Office of Attorney General.
 - g. PGC Harrisburg personnel and regional personnel are to conduct a meeting with the oil/gas or mining company to review all lease terms and conditions with fully executed lease copies to be given to all appropriate parties to include: lessee, PGC regional personnel, and PGC Harrisburg personnel.
 - h. Periodic field reviews are to be conducted by PGC personnel and Department of Environmental Protection personnel (Bureau of Oil and Gas or Mining) to ensure compliance with all applicable state and federal regulations governing oil/gas or mining operations.
18. Mr. Capouillez's position as BWHM Director included responsibilities and authority in the leasing processes, specifically:
- a. In the *public bid process*, the BWHM Director is responsible for determining if OGM standard operating procedures and OGM policy have been met or if corrections to the bid package are required.
 1. If corrections are required, the package is sent to the OGM Section for changes.
 - b. In the *sole source process*, the BWHM Director is responsible for determining if OGM standard operating procedures and OGM policy have been met, if the potential lease should be considered for further processing, or if the terms of the lease should be modified through the PGC chain of command.
 1. The BWHM Director has the authority to approve, modify or terminate the lease process.
 2. Mr. Capouillez asserts that such leases represented less than 1% of all OGM leases.
 - c. Leases could also be entered without BWHM input via negotiations with the Chief Counsel and Executive Office.
 1. Such leases did not typically occur.
19. The Division of Environmental Planning and Habitat Protection, BWHM, is primarily responsible for determining the SGL tracts to be leased, when the tracts are offered for lease, the method by which the lease is awarded, and negotiation of lease terms

including payments, but the Commissioners have final sole authority to enter into OGM leases.

- a. Mr. Capouillez interacted with oil and natural gas exploration and/or production companies and their representatives through his PGC employment.
 - b. Mr. Capouillez has been involved in the leasing process of SGL to varying extents throughout his tenure with the PGC.
 - c. As Director of BWHM, Mr. Capouillez had the authority to review leasing actions within the Bureau as to their compliance with OGM standard operating procedures and OGM policy and make recommendations to the PGC chain of command regarding whether to approve, modify, or terminate the OGM lease process, although Mr. Capouillez was not the final authority.
 - d. Even if approved by PGC staff, all lease processes were subject to formal approval by PGC Chief Counsel, PGC Deputy Executive Director, PGC Executive Director, PGC Board of Commissioners, and reviewed by the Commonwealth's Office of Attorney General.
 - e. Final approval of leases made by PGC chain of command above Capouillez relied primarily on recommendations made by Capouillez and his staff.
 1. There is no record of any of Capouillez's recommendations not being approved.
20. During Capouillez's employment with the PGC, Capouillez's formal job responsibilities in his various positions held have included involvement/participation in the potential leasing of SGL to oil and natural gas entities to some extent.
- a. In his position of Director of the BWHM, Capouillez's formal leasing responsibilities included:
 1. Directing the statewide land acquisition and leasing program.
 2. Preparing, recommending, and explaining land management activities and programs to the PGC for consideration.
 3. Training subordinates in all aspects of the land management program.
 - b. From approximately January 2003 through May 2015, Capouillez was responsible for the oversight of the oil, gas, and mineral leasing program as it related to SGL.

BACKGROUND REGARDING THE MARCELLUS SHALE FORMATION

21. Marcellus Shale is a geologic formation that covers approximately sixty percent of Pennsylvania and is estimated to contain over 500 trillion cubic feet of natural gas.
- a. Geologists and petroleum engineers have known of the Marcellus Shale formation and its natural gas potential for an extended period of time. Although cost prohibitive at one time, improvements in technology such as horizontal drilling, hydraulic fracturing, and three-dimensional imaging have made natural gas production from the Marcellus and other shale formations economically feasible.

22. In order to conduct drilling activity, companies must acquire the subsurface oil and/or natural gas rights from the owner of such rights.
23. Leasing of property from landowners by oil and/or natural gas companies routinely follows the general process as outlined below:
 - a. Company identification of an area of geological interest;
 - b. Soliciting and obtaining landowner interest;
 - c. Negotiating and developing a lease;
 - d. Executing the lease;
 - e. Running title on the land; and
 1. Running title on the land consists of researching the property to confirm the identity of the property owner(s) and to ensure the oil and/or natural gas rights are still available for lease.
 - f. Issuing payment to the property owner.
24. Companies interested in oil and/or natural gas exploration routinely utilize the services of geologists to identify prospective areas in which drilling is expected to be productive.
 - a. Once an area is identified, companies may attempt to consolidate lease acreage via solicitation of property owners within the desired area regarding interest in leasing the property's subsurface oil and/or natural gas rights.
25. Negotiation of oil and/or natural gas leases primarily occurs between a representative or representatives of the potential leasing company and the property owner or an individual/company retained by the property owner to represent him/her.
 - a. Multiple terms included within an oil and/or natural gas lease may be negotiated including, but not limited to, the following:
 1. Bonus payments, shut-in payments, delay payments, and royalty payment percentage;
 2. Although royalty payment percentages are negotiable, a minimum royalty percentage of 1/8 or 12.5% is mandated by Pennsylvania law.
 3. The primary lease term (which identifies the length of time that the leasing company may hold a lease before commencing drilling operations on the leased property);
 4. Means of ingress and egress;
 5. Reclamation and environmental requirements; and
 6. Other work and operational commitments.
26. Property owners with large tracts of land and/or groups of property owners often have more leverage and negotiating power than do individual property owners with smaller acreage. Similarly, large tracts of SGL afford the PGC more leverage and negotiating power than smaller tracts of land.

**ESTABLISHMENT OF CAPOUILLEZ'S PRIVATE CONSULTING BUSINESS
GEOLOGICAL ASSESSMENT & LEASING**

27. While employed as a Hydrogeologist 1 for the PGC, Mr. Capouillez sought approval to perform geologic consulting services for private landowners as a form of supplementary employment, which approval was granted on July 23, 1996.
28. On or about July 23, 1996, Mr. Capouillez created Geological Assessment & Leasing. Mr. Capouillez is the sole proprietor and sole interest holder of Geological Assessment & Leasing/Geological Assessment & Leasing, LLC² (both entities are hereinafter referenced as "GAL").
29. GAL is an entity that provides consulting services to landowners regarding geological assessment of their property and negotiation and development of oil and/or natural gas leases.
30. Individuals employed with GAL have included Capouillez, members of Capouillez's immediate family and other individuals, some of whom served as contractors/sub-contracted/professional employees.
31. Mr. Capouillez's business model for GAL was unique in comparison to other individuals/entities that provided similar services.
 - a. Mr. Capouillez marketed his consulting services through GAL as performance-based.
 - b. Mr. Capouillez solicited oil/natural gas companies regarding interest in potential acreage available for lease through a competitive bid process.
 - c. Mr. Capouillez worked under a private landowner contract, as a part-owner of leases to be performed, in leases competitively bid.
 - d. Mr. Capouillez contractually, and as a practical matter, acted under the direction and the final authority of the landowners whom he advised.
 - e. These contracts contained a clause that indicated Mr. Capouillez would refuse any compensation he was due as a result of any private leases that were affected in any way by activity on neighboring SGL. In these circumstances, the portion of funds potentially due to Mr. Capouillez would revert back to the private landowner.
32. Mr. Capouillez utilized normal print and internet advertising to market his services, as well as word-of-mouth.
 - a. Mr. Capouillez at times provided marketing material at seminars and/or conferences in the form of a self-created document outlining his qualifications and experience, his potential fees and business model, and his leasing strategy/services. The material explained Mr. Capouillez's potential fee and business model as follows:
 1. GAL's service contract was strictly performance-based.

² GAL is registered as a Domestic Limited Liability Company with the Pennsylvania Department of State Corporation Bureau. GAL's certificate of organization was filed with the Pennsylvania Department of State on March 21, 2008. GAL's application for Registration of Fictitious Name was filed on July 9, 1997.

2. GAL received compensation only if Mr. Capouillez/GAL was able to achieve more in lease rents and/or royalty than the property owner(s) had already been offered.
- b. The material explained Mr. Capouillez's leasing strategy/services as follows:
 1. Negotiation and solicitation of all potential oil/gas developers in the area.
 2. Recommending drafting of far more protective lease provisions for the property owner.
 3. Bidding out of the parcel(s) available in an attempt to obtain a better lease and value rate for the property.
 4. Continued oversight management by GAL of the property owner's lease for the duration of the lease.
33. The landowner often directed that Mr. Capouillez's/GAL's compensation was to be issued directly from the oil and natural gas companies. This arrangement was memorialized in the terms and conditions in the contract between the landowner and Mr. Capouillez/GAL.
34. Once having secured groups of property owners as clients and bids from interested oil/natural gas companies, Mr. Capouillez organized meetings with the groups to discuss bids received and to award a lease to the successful bidder.
35. Upon selection of an oil/gas company's bid, Capouillez organized a date or dates on which the property owners could meet with the oil/gas company representative(s) to sign their individual leases.
 - a. Capouillez and/or another representative for GAL were often present at the lease signings.
36. Mr. Capouillez routinely signed the leases or addendums that were attached to the leases as an interested party in the leases. As an interested party, Capouillez retained the right to approve any proposed revisions to the lease which affected Capouillez's delay rental and/or royalty payments, as well as the obligations of Lessor/Lessee to Capouillez as contained within the lease.
37. The PGC's Policy Manual directs that employees are not permitted to hold an elective or appointed office, or to engage in secondary employment without specific approval of the Executive Director.
38. In addition to the PGC Policy Manual, the PGC adheres to Commonwealth Management Directive 515.18, Supplementary Employment, Section 5, which requires that all employees who work for compensation or remuneration in any capacity, including self-employment, outside of their Commonwealth employment are required to file supplementary employment requests with their agency head or designated official who will either approve or disapprove the requests. Employees are also required to resubmit requests when changing supplementary employment or whenever the duties of either their Commonwealth or supplementary employment position change substantially.
 - a. The PGC is an independent agency and not directly under the Governor's jurisdiction.

39. Capouillez completed and submitted a Supplementary Employment Request for approval on or about July 23, 1996, to the PGC in relation to his potential self-employment through GAL.
40. Capouillez provided information pertaining to his PGC job duties, as well as information related to duties associated with his potential self-employment, on his July 23, 1996, Supplemental Employment Request.
 - a. Capouillez outlined his job duties as a Hydrogeologist 1 as:

“[to] act as advisor to hydrologic impacts from mining/construction and oversee oil/gas & mineral development of PA Game Lands through leasing program.”
 - b. Capouillez identified the following as being included in his departmental job duties:
 1. Participation in the negotiation of or decision to award contracts, or otherwise take or recommend official action of a discretionary nature with regard to contracting or procurement;
 2. Participation in the settlement of claims or charges in a contract;
 3. Participation in the fixing of rates;
 4. Participation in the issuance of permits, certificates, guarantees or other things of value; and
 5. The taking or recommending [of] official action of a discretionary nature with regard to inspecting, licensing, regulating, or auditing any business, individual, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.
 - c. Capouillez documented on the Supplemental Employment Request that all of the duties were derived from his direct involvement in leasing of PGC owned oil/gas & minerals, and on occasion recommending actions on previously awarded lease compliance.
 - d. Capouillez documented the type of business as self-employment consulting as a licensed geologist in relation to his potential supplementary employment.
 1. Capouillez documented the date he expected to begin the supplementary employment, “[As] soon as possible.”
 - aa. The information supplied by Capouillez indicated that Capouillez had not yet performed any services through GAL as of July 23, 1996.
 - e. Capouillez identified his duties as a geology consultant to include acting as a consultant/advisor to private property owners as to potential liability from existing/probable hydrologic impacts from construction and development and advising potential real estate owners as to potential oil/gas and mineral development of lands.
41. Capouillez acknowledged on the July 23, 1996, Supplementary Employment Request that his self-employment would involve him in a business or an activity

which could possibly be related to his departmental duties, or which could possibly create an actual or apparent conflict with his departmental duties.

- a. Capouillez's Supplementary Employment Request required that a written explanation of this potential conflict be provided.
 1. Capouillez's explanation declared, "If I was to utilize my position within the Commonwealth and knowledge from such said position to directly influence others to buy, sell, or trade properties. Knowing such potential, I must be able to discern and consistently check on any potential conflict of interest with the Commission prior to initiating employment."
42. Capouillez's July 23, 1996, Supplementary Employment Request was reviewed and approved by PGC Chief Counsel Pouss and Harry Benion, then Chief of the PGC Personnel Services Division. The request was approved subject to the following conditions:
- a. The supplemental employment would not interfere with regular work hours or job performance or violate the provisions of the Governor's Code of Conduct or the Ethics Act.
 - b. Mr. Capouillez could not utilize Commonwealth equipment, supplies, property, information, ideas, or data derived from his Commonwealth employment in the course of his supplemental employment.
 - c. Mr. Capouillez could not participate through the supplemental employment in any matter that presented a conflict with his responsibilities as an employee of the PGC.
 - d. Mr. Capouillez could not participate through the supplemental employment in any transaction in which the Commonwealth had a direct and substantial interest.
 - e. Mr. Capouillez could not use his position as an employee of the PGC or any confidential information gained through his position as Hydrogeologist in the Bureau of Land Management in the course of his supplemental employment.
43. On or about May 14, 2001, Mr. Capouillez submitted a Supplementary Employment Request seeking a PGC legal opinion and potential approval regarding a specific potential GAL client: the Washington County Planning Commission.
- a. In the request, Mr. Capouillez identified possible and/or apparent conflicts with his departmental duties at the PGC.
 - b. Mr. Capouillez explained that he had been consulting and representing private landowners whose properties were adjacent to this particular area. The Planning Commission requested that he represent their interests, since he had indirectly influenced the solicitation of oil/gas interest in the park area. Mr. Capouillez noted that the information he would utilize and/or develop through the representation of the Planning Commission was either public or information he gathered by representing private interests near the park.
 - c. On June 13, 2001, after hearing the results of the PGC legal opinion, Mr. Capouillez withdrew this supplemental employment request because it was apparent that a potential for a conflict of interest existed. Upon request of Chief Counsel Pouss, Mr. Capouillez sent the following email to Chief Counsel Pouss and Harry Benion:

Harry:

Please be advised, I have recently received two separate contracts from Washington County, Planning Commission, regarding oil/gas potential on SGL 117. Up until this point I have never had an official contact from the Washington County Office, because I can see a potential conflict with future oil/gas development on SGL 117 and now the Allegheny Power Exchange Parcel. I wish to withdraw my supplemental employment approval (only with regard to the Planning Commission). I have offered to assist them both on an official basis and if needed without compensation on my own time as they prepare and oil/gas bid packet. If you have any questions, please feel free to contact me directly.

Thank you.

- d. Mr. Capouillez thus elected to avoid potential conflicts of interest with regard to Washington County Planning Commission.
44. In the mid to late 1990s and early 2000s, private industry interest in natural gas exploration and recovery efforts began to increase significantly within the Commonwealth.
 - a. Farmers and other property owners were routinely solicited by representatives of and/or contractors on behalf of the companies regarding oil and gas leasing.
 - b. Limited outside resources existed at that time to assist property owners in relation to deciding to lease or not, negotiation with private industry, lease terms and restrictions, etc.
 45. In or about 1999-2000 the Pennsylvania Farm Bureau (hereinafter "PFB") was working with several County Farm Bureaus and farmers within the Commonwealth regarding leasing property for natural gas exploration and recovery. In 2001, PFB requested the PGC's assistance in providing a guest speaker for PFB members at a PFB Region 5 Rally Day Program in relation to oil and natural gas leasing. Capouillez was assigned to attend the program as the PGC's expert speaker on oil and natural gas leases.
 46. Capouillez disclosed/identified his Commonwealth employment, the specific agency he was employed with, and his specific position within the agency at the top of the first page of the outline Capouillez presented at the program as shown below:

*Speaker: William A. Capouillez, PA Game Commission
Chief, Section of Oil/Gas & Mineral Development
Bureau of Land Management (717) 783-4919 EXT. 3626*

- a. During his portion of the program, Capouillez presented information regarding landowner deeds, mining leases, oil/gas leases, and existing regulations and protection standards.
- b. Capouillez did not specifically identify or market his private consulting business during his presentation.
- c. Chris Sweger, who was the Washington County Farm Bureau President at the time, was present at the presentation and approached Capouillez during the lunch portion of the event to ask if Capouillez knew of anyone who could help a group of landowners from Washington County in negotiating a lease with private industry.
- d. Capouillez informed Sweger that he did private consulting relating to oil and natural gas leasing.

47. Subsequent to that program, Mr. Capouillez solicited bids from multiple oil and natural gas companies on behalf of clients of the Washington County, Hopewell Township group. The bid for the Washington County, Hopewell Township group was ultimately awarded to Great Lakes Energy Partners, LLC (now Range Resources).
48. Publicity of the success of the Hopewell Township group spread after the leases were signed. The success of this group followed by Capouillez's work with a number of other farmers, veterans, and similar social groups in the next few years spurred additional business for Mr. Capouillez/GAL.
49. On December 15, 2010, Barbara Adams, General Counsel for the Office of the Governor, directed correspondence to Carl G. Roe, then Executive Director of the Pennsylvania Game Commission, concerning an actual and/or perceived conflict of interest regarding Capouillez and his activities regarding GAL. The December 15, 2010, correspondence further directed that Capouillez submit a new supplemental employment application on a yearly basis, and that the PGC conduct a full examination into this matter, specifically addressing Capouillez's actions pursuant to the Ethics Act, the Governor's Code of Conduct, and the State Adverse Interest Act.
50. In response to the December 15, 2010, correspondence from the Office of General Counsel, Bradley C. Bechtel, Assistant Counsel to the Pennsylvania Game Commission, drafted a multipage, interoffice memorandum to Carl Roe, then Executive Director of the PGC, outlining his (Bechtel's) opinion that no conflict of interest existed as to Mr. Capouillez's actions, including his then-current employment with the PGC and his supplemental employment with GAL.
 - a. Although Bechtel's memorandum was not addressed to him, Capouillez indicates that he was otherwise aware of its (the memorandum's) existence, and continued operating GAL in reliance on Bechtel's opinion.
51. On January 11, 2011, Attorney Bechtel forwarded an unsigned correspondence to Barbara Adams, Chief Counsel, in response to her initial correspondence dated January 15, 2010, wherein Mr. Bechtel indicated that "the Pennsylvania Game Commission (PGC) has conducted a review of the supplemental employment of William A. Capouillez in connection with his work with Geological Assessment Leasing (GAL)." Mr. Bechtel continues to indicate that "[o]ur review does not find [Mr. Capouillez] privy to confidential information that would give him an advantage or which he could use to make a profit in the private sector. ... Essentially, short of some type of specific facts, we cannot find any conflict of interest with Mr. Capouillez' Supplemental Employment." The correspondence concludes with "as with your office, we can only take action based on the information before us. If you believe we have failed to take into account some information to which you are privy, we would like to review that information before we take any further action."
52. Although Mr. Bechtel's January 11, 2011, correspondence indicates that he reviewed Mr. Capouillez's employment under the Ethics Act, at no time prior to, or after January 11, 2011, did Mr. Capouillez make contact with the Pennsylvania State Ethics Commission to specifically seek any Advice of Counsel and/or Opinion of the Commission as is provided for pursuant to the Pennsylvania Public Official and Employee Ethics Act.
53. In summary, Mr. Capouillez's/GAL's representation of landowner groups in lease negotiations with oil and natural gas entities remained consistent from 2001 through 2013 and generally included solicitation of interest from oil and natural gas companies regarding acreage available for leasing in specific areas. Following the acceptance of a bid, the landowners authorized Mr. Capouillez to provide company

representatives with information regarding property locations, ownership information, surrender documents, etc. Mr. Capouillez would notify the landowners of the scheduling of lease signings between the landowners groups and the leasing oil and natural gas entities.

THE FOLLOWING FINDINGS RELATE TO CAPOUILLEZ'S INTERACTION WITH VARIOUS OIL/GAS COMPANIES IN A PRIVATE CAPACITY THROUGH GAL WHILE AT THE SAME TIME SERVING AS THE DIRECTOR OF THE BWHM.

CAPOUILLEZ'S INTERACTION WITH EXCO RESOURCES

54. EXCO Resources, Inc. (hereinafter "EXCO") is a natural gas and oil company. EXCO Resources (PA), LLC, (hereinafter "EXCO PA") is a 50/50 joint venture between EXCO and BG Group, a liquefied natural gas company.
55. EXCO/EXCO PA has entered into six (6) contracts/agreements for the leasing of oil and natural gas rights from under SGL from at least 1994 through the present.
56. Mr. Capouillez was in contact with various EXCO and/or EXCO PA representatives regarding SGL leasing during his employment with the PGC. For example:
 - a. While employed as the Director of the BWHM, Mr. Capouillez attended various meetings with EXCO PA representatives and other PGC employees in relation to the leasing of SGL.
 - b. While employed as the Director of the BWHM, Mr. Capouillez was courtesy copied by EXCO PA representatives on various emails to PGC representatives regarding leasing of SGL.
 - c. While employed as the Director of the BWHM, Mr. Capouillez was courtesy copied on various correspondences from the PGC to EXCO PA in relation to the leasing of SGL.
57. Capouillez, in his private capacity with GAL, solicited interest from EXCO PA on multiple occasions during the relevant time period of the investigation of this matter, in relation to GAL clients and the potential lease acreage available through his clients as documented via email messages referenced below:

Date	To	From	Subject
1/19/10	J Heiser	Capouillez	Clinton Cty Grps
2/16/10	F Rotunda	Capouillez	Tioga Cty Acreage
2/16/10	F Rotunda	Capouillez	Tioga Cty Acreage
4/08/10	J Heiser	Capouillez	Bradford Cty Grp
4/08/10	F Rotunda	Capouillez	Bradford Cty Oil/Gas Lease Bid
4/12/10	F Rotunda	Capouillez	Bradford Cty Oil/Gas Lease Bid
5/17/10	J Heiser	Capouillez	Potter & McKean Cty Grps
5/17/10	F Rotunda	Capouillez	Potter & McKean Cty Acreage
12/28/10	F Rotunda	Capouillez	Lycoming Cty
12/29/10	F Rotunda	Capouillez	Lycoming Cty
4/13/11	F Rotunda	Capouillez	Lycoming Cty
4/14/11	F Rotunda	Capouillez	Lycoming Cty
4/20/11	F Rotunda	Capouillez	Lycoming Cty
6/16/11	F Rotunda	Capouillez	Lycoming Cty Potential Lease Tracts

Date	To	From	Subject
6/22/11	F Rotunda	Capouillez	Updated Schedule, Lycoming Leases
8/15/11	F Rotunda	Capouillez	Lycoming Cty Leases
8/17/11	F Rotunda	Capouillez	Lease
8/22/11	F Rotunda	Capouillez	Lycoming Lease Offer
8/23/11	E Buddenbohn	Capouillez	Lycoming Cty Revised Oil/Gas Lease
8/28/11	E Buddenbohn	Capouillez	Lycoming Cty Revised Oil/Gas Lease
8/29/11	E Buddenbohn	Capouillez	Additional Lycoming Lease Tract
8/30/11	E Buddenbohn	Capouillez	Lycoming Cty Revised Oil/Gas Lease
9/09/11	E Buddenbohn	Capouillez	Lease & Addendum Info
9/11/11	E Buddenbohn	Capouillez	EXCO Lease Signing Updates
9/21/11	E Buddenbohn	Capouillez	EXCO Lease mistakes
9/21/11	E Buddenbohn	Capouillez	Capouillez OGL Final
9/22/11	E Buddenbohn	Capouillez	Chris Metzger
10/10/11	E Buddenbohn	Capouillez	Leasing Updates
10/16/11	E Buddenbohn	Capouillez	Henne Leasing Opportunity
10/20/11	E Buddenbohn	Capouillez	Dale Henne Lease Lycoming Cty
12/30/11	E Buddenbohn	Capouillez	Lycoming Potential Lease
2/27/12	E Buddenbohn	Capouillez	Next Steps in Leasing Process
3/10/12	E Buddenbohn	Capouillez	Next Steps in Leasing Process
8/31/12	E Buddenbohn	Capouillez	Additional Lycoming Lease Tract
1/14/14	E Buddenbohn	Capouillez	Gregory Brown Lease Amend & Ratif.

58. EXCO PA representatives who received email communications from Mr. Capouillez in relation to services provided through GAL and/or property owners represented by GAL included:
- Robert Crissinger, Senior GM of Operations
 - Frank Rotunda, Director of Business Development
 - Adam Vincent, Senior Landman
 - Judith Erickson, Senior Landman
 - Joel Heiser, Vice-President of Legal
 - Eric Buddenbohn, Landman
59. Capouillez, in his private capacity through GAL, actively solicited and communicated with EXCO PA representatives in relation to EXCO PA's potential interest in acquiring private landowner leases at a time when EXCO PA was negotiating for and/or engaged in active leasing of SGL with the PGC.
60. Specifically, Mr. Capouillez contacted Frank Rotunda ("Rotunda"), the EXCO PA Director of Development, via email on or around December 28, 2010, inquiring about EXCO PA's interest in approximately 10,000 acres of GAL client property located in Lycoming County. Mr. Capouillez informed Rotunda that he/GAL was in the process of soliciting bids at that time and planned to schedule a meeting of the landowner group in January 2011. Rotunda responded to Mr. Capouillez via email that same day requesting to see the available property. Mr. Capouillez responded to Rotunda on December 29, 2010, and included an attachment of a register of available properties in Lycoming County.
61. Approximately a month later, on or about January 24, 2011, EXCO representative Troy Robertson spoke with Michael DiMatteo, of the BWHM, regarding EXCO PA's potential lease interest in SGL #114.

- a. DiMatteo also began communicating with Rotunda on or about February 4, 2011, in relation to EXCO's interest in acreage within SGL #114.
 - b. Mr. Capouillez was Mr. DiMatteo's immediate Supervisor at the PGC at that time and was ultimately responsible for Mr. DiMatteo's activities in relation to any leasing of PGC lands.
 - c. Mr. DiMatteo routinely informed Mr. Capouillez of an entity's interest in leasing SGL once negotiations had become established to a significant extent.
62. Efforts by the PGC and EXCO PA to negotiate a sole-source lease award for SGL Tract 114B-11 culminated with approval of the proposed lease by the PGC Board of Commissioners at the April 12, 2011, PGC public meeting.
63. One day after the PGC's public lease approval for SGL 114B-11, Mr. Capouillez emailed Rotunda to follow-up on EXCO PA's potential interest in the GAL client acreage identified in December 2010.
- a. Mr. Capouillez advised that he was finishing up the competitive bid process, and requested a response as soon as possible if EXCO PA had an interest in entering a competitive bid.
 - b. Mr. Capouillez provided Rotunda with an updated client register.
 - c. Rotunda responded to Mr. Capouillez via email on April 14, 2011, stating that the potential lease acreage previously forwarded by Mr. Capouillez had been lost. Rotunda asked if Mr. Capouillez could resubmit the acreage that was still available, and if it was limited to the acreage documented in Mr. Capouillez's April 13, 2011, email attachment.
 - d. Mr. Capouillez responded via email that same day (April 14, 2011) and resubmitted the available acreage as well as a copy of the Lycoming County bid prospectus supplied to interested entities. The prospectus identified that bids were to have been received by March 9, 2011, 5:00 p.m. Eastern Time.
 - e. Mr. Capouillez informed Rotunda that he was meeting with the group during the next week (April 21, 2011). Mr. Capouillez instructed Rotunda to inform him "ASAP" if EXCO PA was interested in any or all of the tracts.
 - f. Mr. Capouillez repeated his inquiry in a private email to Rotunda dated April 20, 2011. Mr. Capouillez directly questioned, in part, as follows:

Frank . . . is Exco interested. I am meeting tomorrow night with the group and will be presented all offers and requests. Do you need more time?
 - g. Rotunda replied to Mr. Capouillez via private email dated April 21, 2011, and indicated that EXCO PA needed more time. Rotunda indicated that EXCO PA "obviously" was interested in the area as EXCO PA's drilling focus at that time was Lycoming County.
 - h. In multiple private email transmissions between Rotunda and Mr. Capouillez, spanning from May 6, 2011, through June 23, 2011, Rotunda expressed interest in pursuit of the majority of the available acreage presented by Mr. Capouillez which was located in the Gamble and Lewis Township area of Lycoming County.

- i. In a private email to Rotunda dated June 16, 2011, Mr. Capouillez identified a meeting to be held with his clients on June 18, 2011, and questioned Rotunda about which specific tracts EXCO PA was interested in leasing. Rotunda specifically identified leases that EXCO PA was interested in obtaining in an email and attachment dated June 17, 2011, sent to T. Capouillez's email address. In the email, Rotunda documented EXCO PA's offer of 18% royalty and \$3,500.00 per net acre regarding royalty and bonus consideration respectively for a five year paid up term lease.
 - j. Private email communication between Mr. Capouillez and EXCO PA representatives regarding lease review, potential additional acreage available, and lease finalization continued into August 2011.
 - k. On August 17, 2011, Mr. Capouillez sent a private email to Rotunda that identified the need to get the revised lease down "asap" so that Mr. Capouillez could reconvene with the landowner group members involved and present EXCO PA's offer for consideration.
 - l. Mr. Capouillez sent the private email to Rotunda the day after receiving a private email from Karen Brown informing Mr. Capouillez that Rice Energy had offered an area property owner \$5,000.00 per acre. Brown supplied the information to Mr. Capouillez speculating that Mr. Capouillez may want to know and/or contact Rice Energy.
 - m. Eric Buddenbohn became involved in the lease negotiations between EXCO and Mr. Capouillez/GAL on or about August 19, 2011. Buddenbohn provided Mr. Capouillez with a lease form for review via private email on this date.
 - n. Mr. Capouillez responded to Buddenbohn on August 23, 2011, and presented his belief that the parties were close in regard to the actual lease form. Mr. Capouillez expressed surprise regarding adjustments made to the royalty and bonus consideration offered to private landowners.
 1. Adjustments proposed by Buddenbohn included a reduction in royalty percentages from 18% to 17% and a reduction in bonus consideration from \$3,500.00 per net acre to \$3,020.00 per net acre.
 2. Mr. Capouillez based his surprise on what he identified Seneca Resources, Rice Energy, and Big Star Energy offering in the area to private landowners (19% and \$4,000.00; \$5,000.00; and 18% and \$4,000 respectively).
 - o. Mr. Capouillez documented in the private email, in part, the following:

There are many reasons why I want Exco to be the successful bidder . . . but at the rate reduction you are proposing, I seriously doubt I will be able to persuade my group to execute the lease.
 - p. The royalty percentage and bonus consideration were subsequently changed back to the original amounts offered by Rotunda.
64. Through the competitive bid process and with the approval of his landowner clients, Mr. Capouillez's communications with EXCO PA representatives in relation to lease acreage available in Lycoming County ultimately resulted in the execution of eighteen leases between Mr. Capouillez/GAL clients and EXCO PA.

- a. Mr. Capouillez, as a representative of GAL, signed all eighteen of the leases executed between the private landowners and EXCO PA.
 - b. Steve Area, EXCO Vice President of Land & Business Development, also signed the leases on behalf of EXCO PA.
 - c. Per the executed lease terms and conditions, Mr. Capouillez/GAL was due compensation in the amount of \$20.00 per acre in bonus consideration and 0.75% of all royalties for each lease. The portions of which were directly related to Mr. Capouillez's private landowner contracts [sic].
65. During this time frame, as described in part above, EXCO PA was negotiating and/or engaged in leasing of SGL with the PGC for the following:
- a. EXCO has had existing lease interests in effect for SGL Tracts 100A-00, 100A-01, and 100B-01 during the time period of November 2, 2004, through the present.
 - b. EXCO PA executed a lease for SGL Tract 114B-11 on July 7, 2011, and was negotiating with the PGC regarding this lease as early as January 2011.
66. Mr. Capouillez participated in and/or was responsible for direction and oversight of the statewide land acquisition and leasing program during the time frames noted above.
67. While serving as the BWHM Director for the PGC, Mr. Capouillez represented GAL clients in the competitive bid process by negotiating and executing leases with EXCO, at a time concurrent with PGC lease negotiations with EXCO PA on SGL properties, which led to a financial gain to Mr. Capouillez/GAL of \$31,358.70.

CAPOUILLEZ'S INTERACTION WITH ENDLESS MOUNTAIN ENERGY

68. Endless Mountain Energy Partners, LLC (hereinafter "EME"), is a natural gas exploration and production company focused on development of Marcellus acreage in the prolific regions of the Marcellus fairway, primarily Clinton and Tioga Counties.
69. EME has had an existing contract/agreement for the leasing of oil and natural gas rights under SGL 268A-11, located in Tioga County, from August 2011 through the present.
- a. EME had initial interest in SGL 268 as of February 2010.
70. Mr. Capouillez first interacted with representatives of EME sometime before early 2010 in his capacity as the BWHM Director.
71. In or about early 2010, EME representatives became aware of Mr. Capouillez's self-employment, through means other than Mr. Capouillez, about his consulting work after attempting to solicit leases from private landowners in Clinton County.
72. Between February 2010 and January 2011, Mr. Capouillez, through GAL, inquired and communicated with EME representatives regarding acquiring private leases with GAL clients in Clinton County at the same time that EME expressed interest in leasing SGL in Tioga County.
73. Mr. Capouillez's inquiries and negotiations with EME representatives ultimately resulted in the execution of approximately sixty-five leases between GAL clients and EME.

- a. Mr. Capouillez signed the leases executed between GAL clients and EME.
 - b. The leases were also signed by Brian Kaufman, Chief Operating Officer, or Carol Kaufman, EME Regional Land Manager, as representatives of EME.
 - c. Per the terms and conditions of the private landowner contracts with GAL, Mr. Capouillez/GAL was due compensation in the amount of \$50.00 per acre in bonus consideration and 1.75% of all royalties for each lease.
 - d. All of the leases were located in Clinton County, none were in Tioga County.
74. While serving as BWHM Director for the PGC, Mr. Capouillez represented GAL clients in negotiating and executing leases in Clinton County, at a time when EME had expressed interest in and/or was actively involved in negotiations with the PGC for the leasing of SGL in Tioga County.
- a. The respective land and leases were not sufficiently close in time or geographic proximity to enable the Investigative Division to recommend that any use of authority of office by Capouillez was in violation of Section 1103(a) of the Ethics Act. See Thuy, Order 1588, pg. 37.

THE FOLLOWING FINDINGS RELATE TO CAPOUILLEZ'S INTERACTIONS WITH VARIOUS GAS COMPANIES AS A REPRESENTATIVE OF PRIVATE INDIVIDUALS/ GAL, WHILE AT THE SAME TIME MAINTAINING RESPONSIBILITY FOR THE STATEWIDE LAND ACQUISITION AND LEASING PROGRAM IN HIS CAPACITY AS THE DIRECTOR OF THE BWHM.

75. The State Ethics Commission has held that it "must observe the five year statute of limitations at Section 1108(m) of the Ethics Act, 65 Pa.C.S. § 1108(m)" and as such the Commission "may not consider any alleged violations of the Ethics Act prior to [the five year statute of limitations.] See Thuy Order 1588 pg 37.
76. In applying the five-year statute of limitations of Section 1108(m) of the Ethics Act, 65 Pa.C.S. § 1108(m), the Commission has held that "procedurally, the investigation [is] commenced . . . when the Investigative Division mailed [Respondent] a letter via certified mail, informing him of the nature of the alleged violations of the Ethics Act and that the Investigative Division would be undertaking an investigation as to such allegations." Seropian Order 1547 pg. 42.
- a. Accordingly, for the purposes of the Consent Agreement, the review in the instant matter is limited to acts which occurred from January 10, 2009, forward. See Thuy Order 1588; Seropian Order 1547.

CAPOUILLEZ'S INTERACTION WITH TALISMAN ENERGY U.S.A.

77. Talisman Energy U.S.A., Inc. (hereinafter "Talisman") is an oil and gas production company [and a] wholly owned subsidiary of Talisman Energy, Inc., based in Calgary, Alberta.
- a. Talisman now holds approximately 217,000 Tier 1 net acres in Pennsylvania.
78. Talisman has entered into contracts/agreements for the leasing of oil and natural gas rights under SGL or has been a joint operator with an entity leasing SGL for such from at least 2007 through the present as shown in the chart below.

Execution Date	SGL Tract	Original Execution	Award Method	Capouillez Position	Lease Active w/ Talisman	Description
04/07/2004	123A-03	Columbia Nat Res	Public Bid	BWHM Director	No	Talisman had JOA^ w/Chesapeake Appalachia, LLC as of 01/01/07; however, lease expired 04/14
11/15/2011	219A-13	Talisman	Sole Source	BWHM Director	Yes	N/A
10/17/2013	140A-13	Talisman	Sole Source	BWHM Director	Yes	N/A

*Refers to Capouillez's position when Talisman received the leases or became a party to the lease
^JOA = Joint Operating Agreement

79. Talisman representatives specifically contacted the OGM Development Section of the Environmental Planning and Habitat Division of the BWHM as early as August 2009 regarding SGL 219, November 2009 regarding SGL 66, and June 2010 regarding SGL 140.
 - a. Capouillez interacted with representatives of Talisman in association with his position with the PGC as the BWHM Director responsible for oversight of the PGC statewide leasing program.
 1. Capouillez supervised PGC employees negotiating leases.
 - b. Capouillez was operating GAL at all times from January 2010 through June 2014.
80. Capouillez had knowledge of Talisman's interest in leasing SGL and/or communicated with Talisman representatives regarding such on at least six (6) occasions between January 2010 and February 10, 2012.
 - a. While employed as the Director of the BWHM, Capouillez participated in various meetings with Talisman representatives in relation to the leasing of SGL, was directly addressed or copied by Talisman representatives on email to PGC representatives regarding leasing of SGL, and was courtesy copied on email from PGC representatives to Talisman in relation to the leasing of SGL.
81. Capouillez served as a consultant through GAL for leases executed directly between GAL clients and Talisman in 2010.
 - a. The majority of the leases executed between Talisman and GAL clients were executed in June 2010.
82. Between August 29, 2009, and October 2010, multiple communications occurred between Capouillez and Talisman representatives David Whedbee and Jonathan Woods regarding leases for which Capouillez/GAL served as the private landowner consultant.
83. Capouillez actively communicated in 2009 and 2010 with Talisman representatives regarding Talisman's interest in acquiring private leases with GAL clients at a time when Talisman was negotiating for and/or engaged in active leasing of SGL with the PGC at the time when Capouillez had complete oversight of the statewide land acquisition and leasing program.
 - a. Talisman had existing lease interests in effect for SGL Tract 123A-03 during the time period of August 2009 until at least April 2014.

- b. Talisman was pursuing its interest in the potential leasing of SGL 66, 140, and/or 219 via communication with multiple PGC representatives, including Capouillez in 2010.
 1. Herrick provided Talisman's sole source request for SGL 219 to Capouillez via email on June 4, 2010, approximately one week prior to the execution of at least seventy leases between Talisman and GAL clients.
 - c. Talisman has had existing lease interests in effect for SGL Tract 219A-13 and 140A-13 from the time period of November 15, 2011, through the present and October 17, 2013, through the present respectively.
84. Capouillez's 2009 and 2010 negotiations with Talisman representatives in relation to lease acreage available from clients represented by Capouillez/GAL ultimately resulted in the execution of approximately seventy-three leases directly between Capouillez/GAL clients and Talisman.
- a. Capouillez, as a representative of GAL, signed all seventy-three of the leases executed between the private landowners and Talisman.
 - b. The leases signed directly with Talisman were signed by Darin Zanovich, Attorney in Fact, on behalf of Talisman.
 - c. Per the executed lease terms and conditions, Capouillez/GAL was due compensation in an amount range of \$50.00 per acre in bonus consideration and 1.75% of all royalties for each lease.
85. In addition to the seventy-three leases executed directly between Talisman and clients represented by GAL, an additional two hundred twenty-one leases involving Capouillez/GAL clients were assigned to Talisman from Range Resources and/or EOG Resources.
- a. Capouillez played no role in the assignment of the leases from Range Resources to Talisman or EOG Resources to Talisman.
86. Capouillez actively represented clients through GAL, his private consulting business, before Talisman representatives for the leasing of private lands and had also originally served as a consultant for GAL clients which were ultimately assigned to Talisman, while simultaneously serving in the position of the BWHM Director for the PGC resulting in payment to Capouillez/GAL of an undeterminable amount during the same time period Talisman was engaged in an existing business relationship with the PGC regarding the leasing of SGL and was actively involved in negotiations with PGC representatives supervised by Capouillez for the leasing of additional SGL.
- a. Capouillez was responsible for direction and oversight of the PGC statewide land acquisition and leasing program at all times during the negotiations between Talisman and the PGC for SGL Tract 219A-13 and 140A-13 and during the negotiations between Talisman and private landowners represented by Capouillez/GAL.

CAPOUILLEZ'S INTERACTION WITH EQT CORPORATION

87. EQT Corporation is an integrated energy company involved in natural gas production, gathering, and transmission.

- a. In or about December 2009, EQT entered into a joint venture with EME for the purpose of securing oil and gas leases in northeastern Pennsylvania, including private as well as SGL leases.
88. In 2010, as the BWHM Director, Capouillez had interactions and communications with various EQT representatives regarding potential SGL leasing.
- a. Specifically, as the Director of the BWHM, Capouillez attended meetings with EQT representatives in relation to the potential leasing of SGL during the week of April 26, 2010.
 - b. As the Director of the BWHM, Capouillez authored correspondence dated May 26, 2010, to Timothy Matthews, Senior Vice President of American Exploration Company, regarding the assignment of SGL Lease 014A-01 to EQT and the PGC's intent to approve the assignment to EQT was pre-conditioned on American Exploration Company fully complying with the terms and conditions set forth in Capouillez's and Matthews's most recent telephone conversation.
 - c. Capouillez, as the Director of the BWHM, was the specific addressee relating to correspondence authored by Hodges dated June 4, 2010, regarding potential lease amendments upon assignment of the lease for SGL014A-01 from American Exploration Company to EQT, which referenced discussion that had occurred the morning of June 4, 2010, between Capouillez and Hodges, including the potential lease amendments.
 - d. In 2010, as the Director of the BWHM, Capouillez was also copied on all correspondence from the PGC to EQT in relation to the leasing of SGL.
89. Capouillez's employment as Director of the BWHM Bureau for the PGC, and his private consulting business GAL, was the subject of emailed discussions among EQT representatives in February 2011.
- a. The email conversation was initiated as a result of a 2008 newspaper article which outlined Capouillez's simultaneous service as Director of the BWHM and his outside business interests with GAL.
 - b. EQT officials had concerns of a potential conflict of interest for Capouillez at the Commonwealth, if Capouillez would get cited for "moonlighting" and that although Capouillez had been helpful to EQT, he may not be able to do so in the future.
90. Capouillez's involvement with the assignment of SGL leases with American Exploration Company to EQT occurred during the same time that he was representing GAL clients whose leases with EME were assigned to EQT.
- a. All of the leases initially executed between private landowners represented by Capouillez/GAL and EME were assigned to EQT in June 2010.
 - b. Capouillez did not, either as an individual and/or as a representative of GAL, play any role in the assignment of EME leases to EQT.
 - c. Capouillez received payment totaling \$56,301.34 from EQT as a result of the assignment of those leases from EME, at a time when he was also serving as Director of the BWHM.

RANGE RESOURCES (PREVIOUSLY KNOWN AS GREAT LAKES ENERGY PARTNERS)

91. Range Resources Corporation was created as a result of the merger of Lomak Petroleum Inc. and Domain Energy in 1998.
 - a. In 2007, Range Resources Corporation opened an office in Pittsburgh, Pennsylvania, to focus on the Marcellus Shale drilling.
92. Since at least 1994, Mr. Capouillez interacted with representatives of Range Resources ("Range") in relation to Range's leasing of SGL, situated in various municipalities of Venango County.
 - a. Range entered into at least eight (8) contracts for the leasing of oil and gas rights from SGL beginning in 1994 with the most recent lease effective on April 29, 2008.
93. Between 2001 and 2008, Mr. Capouillez, in his private capacity through GAL, inquired of and communicated with Range representatives in relation to Range's potential interest in securing private landowner leases at a time or times when Range was engaged in existing leases with the PGC and/or had expressed an interest in additional SGL leases.
94. Mr. Capouillez's inquiries, negotiations, and communications with Range representatives ultimately resulted in the execution of a number of leases between Range and GAL clients, none of which leases were located in Venango, Crawford, or Fayette County where Range subsequently entered into leases with the PGC, or were finalized within the applicable limitation period.
95. Capouillez did not, either as an individual and/or as a representative of GAL, execute any contracts on behalf of private clients with Range and/or its affiliates after calendar [year] 2008.
 - a. Any actions of Capouillez resulting in a private pecuniary benefit occurred prior to January 10, 2009, and per prior consistent rulings of the State Ethics Commission, are outside of the applicable Statute of Limitations as delineated within 65 Pa.C.S. § 1108(m). See Thuy Order 1588; Seropian Order 1547.
 - b. In light of prior rulings of the State Ethics Commission, and for purposes of this Consent Agreement, the receipt of contractually pre-fixed payments, negotiated outside of the applicable statute of limitations of the Ethics Act, does not give rise to a violation of same.

EOG RESOURCES

96. EOG Resources (hereafter "EOG"), an independent (non-integrated) crude oil and natural gas company, has maintained a business contract/agreement for the leasing of oil and natural gas rights under SGL from at least 2008 through the present.
 - a. EOG was formerly known as Enron Oil & Gas Company.
97. Capouillez developed a business relationship with EOG beginning in or about July 2009 through GAL as a result of the assignment of forty-two leases from Range (31) and Talisman (11) to EOG from 2009 into 2013.
 - a. Of the forty-one leases originally executed with Range, one was executed in 2002, two were executed in 2003, and thirty-eight were executed in April/June 2008.

- b. Ten of the leases originally executed with Range were later assigned to Talisman.
98. Mr. Capouillez had no specific negotiation with EOG representatives in relation to the assignment of these leases, but Mr. Capouillez was in contact with EOG representatives in 2007 and 2008 at a time when EOG was engaged in active leasing of SGL with the PGC.
 99. Mr. Capouillez did not, either as an individual and/or as a representative of GAL, play any role in the assignment to EOG of previously executed contracts between clients of GAL and Range/Talisman. Because Range lost a number of original leases, its records regarding these assignments and related leases lack details of time and specific lease identification.
 100. Mr. Capouillez's simultaneous contact with EOG and/or its representatives/affiliates as a representative of GAL and as Director of the BWHM did not result in additional pecuniary benefit beyond that contained within the original/assigned contracts negotiated between 2003 and 2008.
 - a. Any actions of Capouillez resulting in a private pecuniary benefit occurred prior to January 10, 2009, and per prior consistent rulings of the State Ethics Commission, are outside of the applicable Statute of Limitations as delineated within 65 Pa.C.S. § 1108(m). See Thuy Order 1588; Seropian Order 1547.

CONSOL ENERGY, INC.

101. Consol Energy, Inc./CNX Gas (hereinafter "Consol") is a publicly owned producer of natural gas and coal that has entered into no less than three (3) contracts/agreements for the leasing of oil and natural gas rights from under SGL from at least 2010 through the present.
102. In April and May 2010, Mr. Capouillez inquired of Consol regarding Consol's interest in leasing property from GAL clients. However, Consol did not execute any leases as a result of this inquiry.
103. Mr. Capouillez also had exposure to Consol through GAL as a result of a partial assignment of one lease from Range Resources to Consol in December 2011, but was not specifically involved in the negotiations of this partial assignment.
 - a. Consol did make payments to Capouillez totaling \$643.88 during the relevant time period as a result of a lease assignment from Range to Consol.
104. At the time Capouillez sought interest from Consol regarding the potential leasing of property from GAL clients, he was involved as Director of BWHM with actions relating to the assignment of the lease for SGL 195B from Dominion Transmission to Consol.
 - a. The assignment of the lease for SGL 195B from Dominion Transmission to Consol was granted by the PGC effective May 18, 2010.
 1. Capouillez signed the PGC Consent to Assignment of Oil and Gas Lease on behalf of the PGC in his position of BWHM Director.
105. In light of prior rulings of the State Ethics Commission, for the purposes of this Consent Agreement, \$643.88 is *de minimis*, as well as the result of a contractually pre-fixed payment, negotiated outside of the applicable statute of limitations of the Ethics Act, and does not otherwise give rise to a violation of same.

XTO ENERGY

106. XTO Energy, Inc. (hereinafter "XTO") is a natural gas and oil entity that has entered into no less than three (3) contracts/agreements for the leasing of oil, natural gas, and mineral rights under SGL from May 2008 through the present.
107. Mr. Capouillez was aware of and/or gained knowledge of XTO's interest in SGL leasing around May 2008 as a result of the assignment of existing SGL leases from Linn Energy to XTO.
108. In August 2010, while the XTO leases for SGL were still in place, one of the leases previously executed between a GAL client and Range Resources was assigned to XTO.
 - a. Capouillez did not play any role in the assignment of GAL leases from Range to XTO.
109. Mr. Capouillez's simultaneous contact with XTO and/or its representatives/affiliates as a representative of GAL and as Director of the BWHM did not result in additional pecuniary benefit beyond that contained within the original/assigned contracts.
 - a. Any actions of Capouillez resulting in a private pecuniary benefit occurred prior to January 10, 2009, and per prior consistent rulings of the State Ethics Commission, for the purposes of this Consent Agreement, are outside of the applicable Statute of Limitations as delineated within 65 Pa.C.S. § 1108(m). See Thuy Order 1588; Seropian Order 1547.

ANADARKO PETROLEUM

110. Anadarko Petroleum Corporation (hereinafter "Anadarko") is the largest independent oil and gas exploration and production company within the United States.
111. Anadarko has entered into no less than nine (9) contracts/agreements for the leasing of oil and natural gas rights from SGL or has held a joint interest with an entity/entities leasing SGL since approximately 2008.
112. Mr. Capouillez's interaction with representatives from Anadarko while representing GAL clients resulted in the execution of at least ten leases between calendar years 2006 and 2008.
113. During 2006-2008 Anadarko was involved in negotiating a sole source lease with the PGC for SGL 114A-10.
114. Capouillez did not, either as an individual and/or as a representative of GAL, execute any contracts on behalf of private clients with Anadarko and/or its affiliates after calendar [year] 2008.
 - a. Any actions of Capouillez resulting in a private pecuniary benefit occurred prior to January 10, 2009, and per prior consistent rulings of the State Ethics Commission, for the purposes of this Consent Agreement, are outside of the applicable Statute of Limitations as delineated within 65 Pa.C.S. § 1108(m). See Thuy Order 1588; Seropian Order 1547.

CHESAPEAKE ENERGY

115. Chesapeake Energy Corporation (hereinafter "Chesapeake") is a company engaged in the exploration, development, and acquisition of properties for the production of natural gas and oil.
116. Chesapeake has entered into no less than eleven (11) contracts/agreements for the leasing of oil and natural gas rights from under SGL, and has held joint interest(s) with an entity/entities leasing SGL from May 2008 through the present.
117. Mr. Capouillez had knowledge of Chesapeake's potential interest in leasing SGL as early as August 2007, as a result of an email received from Chesapeake's landman on or about August 13, 2007.
118. Between May 2007 and July 2010, Mr. Capouillez, in his private capacity through GAL, inquired of Chesapeake representatives in relation to Chesapeake's potential interest in acquiring GAL client leases contemporaneous to times when Chesapeake was negotiating for and/or actively involved in leasing of SGL with the PGC.
119. Mr. Capouillez's inquiries and negotiations with Chesapeake representatives ultimately resulted in the execution of thirty leases between GAL clients and Chesapeake, between 2007 and 2008.
 - a. Any actions of Capouillez resulting in a private pecuniary benefit occurred prior to January 10, 2009, and per prior consistent rulings of the State Ethics Commission, for the purposes of this Consent Agreement, are outside of the applicable Statute of Limitations as delineated within 65 Pa.C.S. § 1108(m). See Thuy Order 1588; Seropian Order 1547.

PENNSYLVANIA GENERAL ENERGY COMPANY, LLC

120. Pennsylvania General Energy Company, LLC (hereinafter "PGE") is a privately owned, independent oil and natural gas exploration and production company that has entered into no less than two (2) contracts/agreements for the leasing of oil and natural gas rights under SGL or has become a party to such a lease through assignment from another entity from May 2002 to March 2007, and from February 5, 2013, through the present.
121. Mr. Capouillez was aware of PGE's interest in leasing through an operating agreement with another entity since approximately April 5, 2002.
122. In October 2009, ten GAL client leases were assigned from Range and Anadarko to PGE.
 - a. Capouillez served as a consultant through GAL for nine leases initially executed between GAL clients and Range in 2006-2007, which were ultimately assigned to PGE on October 13, 2009.
 - b. Capouillez/GAL served as a consultant for one lease initially executed between private landowners and Anadarko in 2007, which was ultimately assigned to PGE on July 9, 2013.
123. Between November 2002 and May 2011, Mr. Capouillez inquired of PGE in relation to PGE's potential interest in obtaining GAL client acreage during the time frame that PGE had an active lease relationship with the PGC for SGL 049A-01. These inquiries did not lead to any contracts between PGE and GAL clients.
124. Mr. Capouillez did not, either as an individual and/or as a representative of GAL, play any role in the assignment to PGE of previously executed contracts between clients of GAL and Range/Anadarko.

125. Mr. Capouillez's simultaneous contact with PGE and/or its representatives/affiliates as a representative of GAL and as Director of the BWHM did not result in private leases for GAL clients nor in additional pecuniary benefit to them or Mr. Capouillez beyond that contained within the original/assigned contracts.
- a. Any actions of Capouillez resulting in a private pecuniary benefit occurred prior to January 10, 2009, and per prior consistent rulings of the State Ethics Commission, for the purposes of this Consent Agreement, are outside of the applicable Statute of Limitations as delineated within 65 Pa.C.S. § 1108(m). See Thuy Order 1588; Seropian Order 1547.

THE FOLLOWING FINDINGS RELATE TO ACTIONS TAKEN BY THE PGC TO REVOKE WILLIAM CAPOUILLEZ'S SUPPLEMENTAL EMPLOYMENT AUTHORIZATION.

126. Capouillez operated GAL at all times from July 23, 1996, through March 17, 2014, with the approval of the PGC as provided in Capouillez's July 23, 1996, Supplementary Employment Request.
- a. Commonwealth employees wishing to engage in supplemental employment must receive approval prior to engaging in such.
127. Capouillez's July 23, 1996, supplementary employment request never disclosed to the PGC that he would be simultaneously representing private landowners in oil and gas lease negotiations with the same companies that were negotiating oil and gas leases with the PGC.
- a. Capouillez identified his duties as a Geology Consultant, which would include acting as a consultant/advisor to property owners as to potential liability from existing/probable hydrologic impacts from construction and development and advising potential real estate owners as to potential oil/gas and mineral development of lands.
128. Although Capouillez had sought supplemental employment authorization, his continued role as the Director of the BWHM and his representation of GAL clients was the subject of speculation amongst some members of the OGM community, and was discussed privately in email transmission between Jake Stransky (representative of Ultra Resources) and Marc Dunn (representative of Edgewood Energy, Inc.)
1. In an email to Dunn dated April 12, 2010, regarding an SGL update, Stransky authored the following:
- "Thank you for the update. I am curious to see if the folks at State Games have any helpful information. The word is Ultra has asked them several times to provide us with information on what they own and have never been able to do so."
2. Dunn responded to Stransky via email on April 12, 2010, stating that:
- "I hear you on the Game Lands issue. One of the problems with the Game Lands stuff is that a key player in the admin., Bill Capouillez, the agency's director of Wildlife Habitat Management, also deals on the side with OGM and frequently puts landowner groups together and then sells the pkg. of ac. to operators. So I think the agency is a little 'slow' in coming up with any info."

129. In or about March 2014, recommendations were made by Governor Corbett and legislative leaders to the PGC regarding Mr. Capouillez's employment, including revocation of any supplemental employment [authorization].
130. Capouillez was informed via correspondence dated April 1, 2014, from R. Matthew Hough, Executive Director at that time, that his approval for supplementary employment with/through GAL had been rescinded effective March 18, 2014.
 - a. Hough documented that the March 18, 2014, rescinding of Capouillez's supplementary employment with GAL was in accordance with "our discussion of that date."
131. Capouillez is known to have continued to participate in actions associated with GAL and the private client he represented, particularly EXCO, through at least June 17, 2014.
132. Capouillez's actions in contacting Buddenbohn/EXCO PA in relation to clients represented by Capouillez/GAL were in direct violation of Management Directive 515.18.
 - a. Capouillez's supplementary employment with/through GAL had been revoked effective March 18, 2014.
 1. Capouillez was issued documentation dated April 1, 2014, confirming such revocation and its effective date as March 18, 2014.
 - b. Management Directive 515.18 is specifically documented as being applicable to not only supplementary employment but volunteer activities as well.
 - c. Capouillez realized no financial gain in this activity, as it was an accommodation to a GAL client with a pre-existing lease.

CAPOUILLEZ'S DECEMBER 2014 INTERVIEW WITH INVESTIGATIVE DIVISION STAFF

133. On December 12, 2014, Mr. Capouillez participated in an interview with representatives of the Investigative Division.
134. The interview was conducted at the office of and in the presence of Attorney Robert Davis, Jr., Mr. Capouillez's attorney.
135. During the interview Mr. Capouillez asserted, in part, the following:
 - a. Mr. Capouillez worked in the private sector prior to his Commonwealth employment. Mr. Capouillez performed consulting services for property owners related to oil and natural gas prior to his employment with the Commonwealth, although not under an actual fictitious name until the mid-1990s. Mr. Capouillez obtained his clients primarily through word of mouth, his exposure to other consultants while employed with MineTech, his military contacts, and his Free Mason contacts.
 - b. Mr. Capouillez was initially solicited by PGC representatives to work for the PGC in a newly created Hydrogeologist position.
 - c. Mr. Capouillez became involved in the leasing aspect of oil, gas, and mineral rights under SGL shortly after being hired by the PGC.

- d. Mr. Capouillez developed the concept of publicly bidding the SGL OGM leases through a competitive bid process. No formal leasing program existed prior to his involvement.
- e. Prior to 2002, while employed as the Section Chief of OGM Development, Mr. Capouillez was responsible for the facilitation of bids for the leasing of SGL, processing of said bids, obtaining required approvals through the chain of command, and coordination efforts between the Harrisburg office and regional offices.
- f. Between 2002 and 2006, while employed as the Division Chief of the EPHPD, Mr. Capouillez was cognizant of leasing SGL for OGM development; however, he was not involved to the same degree as when he was the Section Chief of OGM Development.
- g. From 2006 to 2014, Mr. Capouillez had no responsibility in his position as Director of the BWHM regarding the leasing of SGL for oil and natural gas; rather, his involvement was limited to that of a management perspective.
- h. Mr. Capouillez submitted his GAL supplementary employment request in order to obtain supervisory experience to qualify for potential promotion to Division Chief.
- i. Mr. Capouillez's/GAL's client base from mid-1996 until early 2001 was dwindling/limited. In 2001 Mr. Capouillez's client base through GAL grew and significantly increased over the next several years.
- j. Mr. Capouillez had not represented any large landowner groups (more than two to three people) prior to working with the Hopewell Township group.
- k. Mr. Capouillez made no specific reference to his position with the PGC during any presentations before private landowners until the landowners were ready to sign the landowner contract with Mr. Capouillez/GAL. Prior to entering into the contract with the landowners, Mr. Capouillez disclosed his employment with the Commonwealth, avoiding identification of his specific position, and informed the landowners that he could not take or make private business calls during the day, that he could not travel to meetings in a Commonwealth vehicle, *etc.*
- l. Mr. Capouillez's landowner contract identified constraints he had to follow, and contained a clause that indicated that he would refuse any compensation he was due as a result of private leases that were affected in any way by activity on neighboring SGL. The portion of funds potentially due to Mr. Capouillez would revert back to the private landowner.
- m. Mr. Capouillez had no specific knowledge or recollection of soliciting any private entity/entities at the same time that the entity/entities were also attempting to lease SGL.
- n. Mr. Capouillez understood the concerns raised and could see the appearance of a problem with his dual positions.

III. DISCUSSION:

As the Director of the Bureau of Wildlife Habitat Management ("BWHM") for the Pennsylvania Game Commission ("PGC") from approximately December 2, 2006, through May 18, 2015, Respondent William Capouillez, also referred to herein as "Respondent," "Respondent Capouillez," and "Capouillez," was a public official/public employee subject to

the provisions of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq.

The allegations are that Capouillez violated Section 1103(a) of the Ethics Act when he utilized the authority of his public employment, and/or confidential information received through his holding public employment, for the private pecuniary benefit of himself and/or a business with which he is associated, namely Geological Assessment and Leasing LLC, when he organized, negotiated and/or arranged lease agreements with private industry representatives for oil, gas and mineral ("OGM") exploration on PGC game lands, while simultaneously performing the same actions for private landowners within the Commonwealth for a fee.

Pursuant to Section 1103(a) of the Ethics Act, a public official/public employee is prohibited from engaging in conduct that constitutes a conflict of interest:

§ 1103. Restricted activities

(a) **Conflict of interest.**—No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa.C.S. § 1103(a).

The following terms are defined in the Ethics Act as follows:

§ 1102. Definitions

"Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

"Authority of office or employment." The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

"Business." Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

"Business with which he is associated." Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

"Financial interest." Any financial interest in a legal

entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in indebtedness.

65 Pa.C.S. § 1102.

Section 1103(a) of the Ethics Act prohibits a public official/public employee from using the authority of public office/employment or confidential information received by holding such a public position for the private pecuniary benefit of the public official/public employee himself, any member of his immediate family, or a business with which he or a member of his immediate family is associated.

As noted above, the parties have submitted a Consent Agreement and Stipulation of Findings. The parties' Stipulated Findings are set forth above as the Findings of this Commission. We shall now summarize the relevant facts as contained therein.

The PGC is an independent agency governed by an eight Member Board of Commissioners.

From 1993 through May 18, 2015, Capouillez was employed by the PGC in various positions that involved leasing of State Game Lands ("SGL") to oil and natural gas entities. From approximately January 2003 through May 2015, Capouillez was responsible for the oversight of the PGC oil, gas, and mineral leasing program as it related to SGL. Capouillez interacted with oil and natural gas exploration and/or production companies and their representatives through his PGC employment.

As PGC's Environmental Planning Manager from May 25, 2002, to December 1, 2006, Capouillez's duties and responsibilities in relation to oil, gas, and mineral recovery included, *inter alia*, administering the PGC's oil, gas, and mineral resource management program, maintaining liaison with major energy company staffs, negotiating details of oil, gas, and mineral leasing programs with private company representatives, and preparing leases and agreements.

From approximately December 2, 2006, through May 18, 2015, Capouillez was Director of the BWHM. The BWHM directly manages approximately 1.4 million acres of SGL and assists with approximately 3 million more acres of private land enrolled in PGC's Public Access Program. The BWHM performs comprehensive planning for the development of lands for wildlife habitats, timber harvests, and removal of oil, gas, and/or minerals.

Due to the five-year statute of limitations set forth at Section 1108(m) of the Ethics Act, 65 Pa.C.S. § 1108(m), our review in this matter is limited to the time period from January 10, 2009, forward.³ Capouillez served as Director of the BWHM during the time period under review.

³ See, Stipulated Finding 76 a. Section 1108(m) of the Ethics Act provides:

§ 1108. Investigations by commission

- (m) **Limitation of time.**—The commission may conduct an investigation within five years after the alleged occurrence of any violation of [the Ethics Act].

65 Pa.C.S. § 1108(m).

This Commission's Regulations provide, in part:

§ 11.3. Statute of limitations.

The Commission may investigate a violation of the act within 5 years of its occurrence. The occurrence transpires when an act is complete or requires no

As Director of the BWHM, Capouillez's duties included directing the statewide land acquisition and leasing program, which included the oil, gas, and mineral recovery program. The BWHM's Division of Environmental Planning and Habitat Protection is primarily responsible for determining the SGL tracts to be leased, when the tracts are offered for lease, the method by which the lease is awarded, and negotiation of lease terms including payments. Capouillez's position as BWHM Director included responsibilities and authority in the leasing processes.

The leasing of OGM rights on PGC SGL may be accomplished via a "public bid" or "sole source" process. In the public bid process, the BWHM Director is responsible for determining if OGM standard operating procedures and OGM policy have been met or if corrections to the bid package are required. If corrections are required, the package is sent to the OGM Section for changes. In the sole source process, the BWHM Director is responsible for determining if OGM standard operating procedures and OGM policy have been met, if the potential lease should be considered for further processing, or if the terms of the lease should be modified through the PGC chain of command.

As BWHM Director, Capouillez had the authority to make recommendations to the PGC chain of command regarding whether to approve, modify, or terminate the OGM lease process. Final approval of leases was made by PGC chain of command above Capouillez and relied primarily on recommendations made by Capouillez and his staff. There is no record of any of Capouillez's recommendations not being approved.

Negotiation of oil and/or natural gas leases primarily occurs between representative(s) of the potential leasing company and the property owner or an individual/company retained by the property owner to represent him/her. Multiple terms included within an oil and/or natural gas lease may be negotiated including, but not limited to, bonus payments, shut-in payments, delay payments, and royalty payment percentage.

As a PGC employee, Capouillez was subject to requirements to file a Supplementary Employment Request with PGC official(s) and to obtain approval of same prior to working for compensation or remuneration outside of Commonwealth employment. Capouillez also was required to resubmit such a request when changing supplementary employment or whenever the duties of either his Commonwealth or supplementary employment position would change substantially.

Capouillez is the sole proprietor and sole interest holder of business entities named Geological Assessment & Leasing/Geological Assessment & Leasing, LLC (both entities are also referred to herein as "GAL"). On or about July 23, 1996, Capouillez completed and submitted to the PGC a Supplementary Employment Request for approval in relation to his potential self-employment through GAL. The information supplied by Capouillez indicated that Capouillez had not yet performed any services through GAL as of July 23, 1996. Capouillez documented the type of business as self-employment consulting as a licensed geologist. Capouillez identified his duties as a geology consultant as including

further action. . . .

51 Pa. Code § 11.3.

Section 1108(c) of the Ethics Act provides that "[n]o investigation may be commenced until the person who is the subject of the investigation has been notified and provided a general statement of the alleged violation or violations of this chapter and other applicable statutes with respect to such investigation. Service of notice is complete upon mailing which shall be by certified or registered mail. . . ." 65 Pa.C.S. § 1108(c).

The Regulations of this Commission provide that an investigation is considered commenced when the respondent is notified of the matter as required (51 Pa. Code § 21.3(c)) and that service of the requisite notice to a respondent is complete upon mailing of the notice by certified or registered mail (51 Pa. Code § 21.5(b)).

acting as a consultant/advisor to private property owners as to potential liability from existing/probable hydrologic impacts from construction and development and advising potential real estate owners as to potential oil/gas and mineral development of lands. Capouillez acknowledged on the July 23, 1996, Supplementary Employment Request that his self-employment would involve him in a business or an activity which could possibly be related to his departmental duties, or which could possibly create an actual or apparent conflict with his departmental duties. Capouillez's July 23, 1996, Supplementary Employment Request did not disclose to the PGC that he would be simultaneously representing private landowners in oil and gas lease negotiations with the same companies that were negotiating oil and gas leases with the PGC.

On July 23, 1996, Capouillez's July 23, 1996, Supplementary Employment Request was approved subject to the following conditions: (1) the supplemental employment would not interfere with regular work hours or job performance or violate the provisions of the Governor's Code of Conduct or the Ethics Act; (2) Capouillez could not utilize Commonwealth equipment, supplies, property, information, ideas, or data derived from his Commonwealth employment in the course of his supplemental employment; (3) Capouillez could not participate through the supplemental employment in any matter that presented a conflict with his responsibilities as an employee of the PGC; (4) Capouillez could not participate through the supplemental employment in any transaction in which the Commonwealth had a direct and substantial interest; and (5) Capouillez could not use his position as an employee of the PGC or any confidential information gained through his PGC position in the course of his supplemental employment.

From July 23, 1996, through March 17, 2014, Capouillez operated GAL with the approval of the PGC.

During the time period under review, GAL provided consulting services to landowners regarding negotiation and development of oil and/or natural gas leases. Capouillez performed such work under a private landowner contract, as a part-owner of leases to be performed. The landowner contracts contained a clause that Capouillez would refuse any compensation he was due as a result of any private leases that were affected in any way by activity on neighboring SGL. In such circumstances, the portion of funds potentially due to Capouillez would revert to the private landowner.

Capouillez secured groups of property owners as clients and solicited bids from interested oil/natural gas companies. Capouillez organized meetings with the groups to discuss bids received and to award a lease to the successful bidder. Upon selection of an oil/gas company's bid, Capouillez organized a date or dates on which the property owners could meet with the oil/gas company representative(s) to sign their individual leases. Capouillez and/or another representative of GAL were often present at the lease signings. Capouillez routinely signed the leases or addendums that were attached to the leases as an interested party in the leases. As an interested party, Capouillez retained the right to approve any proposed lease revisions which affected Capouillez's delay rental and/or royalty payments, as well as the obligations of the Lessor/Lessee to Capouillez.

The landowner often directed that Capouillez's/GAL's compensation was to be issued directly from the oil and natural gas companies. This arrangement was memorialized in the terms and conditions in the contract between the landowner and Capouillez/GAL.

CAPOUILLEZ'S INTERACTION WITH EXCO RESOURCES

EXCO Resources, Inc. (hereinafter "EXCO") is a natural gas and oil company. EXCO Resources (PA), LLC, (hereinafter "EXCO PA") is a 50/50 joint venture between EXCO and BG Group, a liquefied natural gas company.

EXCO/EXCO PA has entered into six contracts/agreements for the leasing of oil and natural gas rights from under SGL from at least 1994 through the present.

While employed as the Director of the BWHM, Capouillez attended various meetings with EXCO PA representatives and other PGC employees in relation to the leasing of SGL and was courtesy copied on various emails from EXCO PA representatives to PGC representatives and on various correspondences from the PGC to EXCO PA in relation to the leasing of SGL.

During the relevant time period, in his private capacity with GAL, Capouillez solicited interest from EXCO PA on multiple occasions in relation to GAL clients and the potential lease acreage available through his clients. See, Fact Finding 57.

EXCO PA representatives who received email communications from Capouillez in relation to services provided through GAL and/or property owners represented by GAL included: Robert Crissinger, Senior GM of Operations; Frank Rotunda ("Rotunda"), Director of Business Development; Adam Vincent, Senior Landman; Judith Erickson, Senior Landman; Joel Heiser, Vice-President of Legal; and Eric Buddenbohn ("Buddenbohn"), Landman.

Capouillez, in his private capacity through GAL, actively solicited and communicated with EXCO PA representatives in relation to EXCO PA's potential interest in acquiring private landowner leases at a time when EXCO PA was negotiating for and/or engaged in active leasing of SGL with the PGC.

Capouillez contacted Rotunda via email on or around December 28, 2010, inquiring about EXCO PA's interest in approximately 10,000 acres of GAL client property located in Lycoming County. Capouillez informed Rotunda that he/GAL was in the process of soliciting bids at that time and planned to schedule a meeting of the landowner group in January 2011. Rotunda responded to Capouillez via email that same day requesting to see the available property. Capouillez responded to Rotunda on December 29, 2010, and included an attachment of a register of available properties in Lycoming County.

On or about January 24, 2011, EXCO representative Troy Robertson spoke with Michael DiMatteo ("DiMatteo") of the BWHM regarding EXCO PA's potential lease interest in SGL #114. DiMatteo also began communicating with Rotunda on or about February 4, 2011, in relation to EXCO's interest in acreage within SGL #114. Capouillez was DiMatteo's immediate Supervisor at the PGC at that time and was ultimately responsible for DiMatteo's activities in relation to any leasing of PGC lands. DiMatteo routinely informed Capouillez of an entity's interest in leasing SGL once negotiations had become established to a significant extent.

Efforts by the PGC and EXCO PA to negotiate a sole-source lease award for SGL Tract 114B-11 culminated with approval of the proposed lease by the PGC Board of Commissioners at the April 12, 2011, PGC public meeting.

One day after the PGC's public lease approval for SGL 114B-11, Capouillez emailed Rotunda to follow-up on EXCO PA's potential interest in the GAL client acreage identified in December 2010. Capouillez advised that he was finishing up the competitive bid process, and requested a response as soon as possible if EXCO PA had an interest in entering a competitive bid. Capouillez provided Rotunda with an updated client register.

Rotunda responded to Capouillez via email on April 14, 2011, stating that the potential lease acreage previously forwarded by Capouillez had been lost. Rotunda asked if Capouillez could resubmit the acreage that was still available, and if it was limited to the acreage documented in Capouillez's April 13, 2011, email attachment.

Capouillez responded via email that same day (April 14, 2011) and resubmitted the available acreage as well as a copy of the Lycoming County bid prospectus supplied to interested entities. The prospectus identified that bids were to have been received by March 9, 2011, 5:00 p.m. Eastern Time.

Capouillez informed Rotunda that he was meeting with the group during the next week (April 21, 2011). Capouillez instructed Rotunda to inform him "ASAP" if EXCO PA was interested in any or all of the tracts.

Capouillez repeated his inquiry in a private email to Rotunda dated April 20, 2011. Fact Finding 63 f. Rotunda replied to Capouillez via private email dated April 21, 2011, and indicated that EXCO PA needed more time. Rotunda indicated that EXCO PA "obviously" was interested in the area as EXCO PA's drilling focus at that time was Lycoming County.

In multiple private email transmissions between Rotunda and Capouillez from May 6, 2011, through June 23, 2011, Rotunda expressed interest in pursuit of the majority of the available acreage presented by Capouillez which was located in the Gamble and Lewis Township area of Lycoming County.

In a private email to Rotunda dated June 16, 2011, Capouillez identified a meeting to be held with his clients on June 18, 2011, and questioned Rotunda about which specific tracts EXCO PA was interested in leasing. Rotunda specifically identified leases that EXCO PA was interested in obtaining in an email and attachment dated June 17, 2011. In the email, Rotunda documented EXCO PA's offer of 18% royalty and \$3,500.00 per net acre regarding royalty and bonus consideration respectively for a five year paid up term lease.

Private email communication between Capouillez and EXCO PA representatives regarding lease review, potential additional acreage available, and lease finalization continued into August 2011. On August 17, 2011, Capouillez sent a private email to Rotunda that identified the need to get the revised lease down "asap" so that Capouillez could reconvene with the landowner group members involved and present EXCO PA's offer for consideration. Capouillez sent the private email to Rotunda the day after Capouillez was informed that Rice Energy had offered an area property owner \$5,000.00 per acre.

Buddenbohn became involved in the lease negotiations between EXCO and Capouillez/GAL on or about August 19, 2011. On that date, Buddenbohn provided Capouillez with a lease form for review via private email. Capouillez responded to Buddenbohn on August 23, 2011, and presented his belief that the parties were close in regard to the actual lease form. Capouillez expressed surprise regarding adjustments made to the royalty and bonus consideration offered to private landowners. Adjustments proposed by Buddenbohn included a reduction in royalty percentages from 18% to 17% and a reduction in bonus consideration from \$3,500.00 per net acre to \$3,020.00 per net acre. Capouillez based his surprise on what he identified Seneca Resources, Rice Energy, and Big Star Energy offering in the area to private landowners (19% and \$4,000.00; \$5,000.00; and 18% and \$4,000 respectively).

Capouillez stated in the private email, in part, the following:

There are many reasons why I want Exco to be the successful bidder . . . but at the rate reduction you are proposing, I seriously doubt I will be able to persuade my group to execute the lease.

Fact Finding 63 o. The royalty percentage and bonus consideration were subsequently changed back to the original amounts offered by Rotunda.

Through the competitive bid process and with the approval of his landowner clients, Capouillez's communications with EXCO PA representatives in relation to lease acreage available in Lycoming County ultimately resulted in the execution of eighteen leases between Capouillez/GAL clients and EXCO PA. Capouillez, as a representative of GAL, signed all eighteen of the leases executed between the private landowners and EXCO PA. Per the executed lease terms and conditions, Capouillez/GAL was due compensation in the amount of \$20.00 per acre in bonus consideration and 0.75% of all royalties for each lease.

During this time frame, as described in part above, EXCO PA was negotiating and/or engaged in leasing of SGL with the PGC. EXCO has had existing lease interests in effect for SGL Tracts 100A-00, 100A-01, and 100B-01 during the time period of November 2, 2004, through the present. EXCO PA executed a lease for SGL Tract 114B-11 on July 7, 2011, and was negotiating with the PGC regarding this lease as early as January 2011.

Capouillez participated in and/or was responsible for direction and oversight of the statewide land acquisition and leasing program during the time frames noted above.

The parties have stipulated that while serving as the BWHM Director for the PGC, Capouillez represented GAL clients in the competitive bid process by negotiating and executing leases with EXCO, at a time concurrent with PGC lease negotiations with EXCO PA on SGL properties, which led to a financial gain to Capouillez/GAL of \$31,358.70.

CAPOUILLEZ'S INTERACTION WITH ENDLESS MOUNTAIN ENERGY

Endless Mountain Energy Partners, LLC (also referred to herein as "EME"), is a natural gas exploration and production company that develops Marcellus acreage in Clinton and Tioga Counties. While serving as BWHM Director for the PGC, Capouillez represented GAL clients in negotiating and executing leases in Clinton County at a time when EME had expressed interest in and/or was actively involved in negotiations with the PGC for the leasing of SGL in Tioga County. Per the Stipulated Findings, the respective land and leases were not sufficiently close in time or geographic proximity to enable the Investigative Division to recommend the finding of a violation of Section 1103(a) of the Ethics Act in this regard. Stipulated Finding 74 a.

CAPOUILLEZ'S INTERACTION WITH TALISMAN ENERGY U.S.A.

Talisman Energy U.S.A., Inc. (also referred to herein as "Talisman") is an oil and gas production company and a wholly owned subsidiary of Talisman Energy, Inc., based in Calgary, Alberta. Talisman has entered into contracts/agreements for the leasing of oil and natural gas rights under SGL or has been a joint operator with an entity leasing SGL for such from at least 2007 through the present. See, Stipulated Finding 78.

Talisman representatives specifically contacted the OGM Development Section of the Environmental Planning and Habitat Division of the BWHM as early as August 2009 regarding SGL 219, November 2009 regarding SGL 66, and June 2010 regarding SGL 140. Talisman was pursuing its interest in the potential leasing of SGL 66, 140, and/or 219 via communication with multiple PGC representatives, including Capouillez in 2010.

In his public capacity as the BWHM Director responsible for oversight of the PGC statewide leasing program, Capouillez interacted with representatives of Talisman and supervised PGC employees negotiating leases. Capouillez had knowledge of Talisman's interest in leasing SGL and/or communicated with Talisman representatives regarding such on at least six occasions between January 2010 and February 10, 2012. While employed as the Director of the BWHM, Capouillez participated in various meetings with Talisman representatives in relation to the leasing of SGL, was directly addressed or copied by Talisman representatives on email to PGC representatives regarding leasing of SGL, and

was courtesy copied on email from PGC representatives to Talisman in relation to the leasing of SGL.

Capouillez actively communicated in 2009 and 2010 with Talisman representatives regarding Talisman's interest in acquiring private leases with GAL clients at a time when Talisman was negotiating for and/or engaged in active leasing of SGL with the PGC and Capouillez had complete oversight of the statewide land acquisition and leasing program. Capouillez was responsible for direction and oversight of the PGC statewide land acquisition and leasing program at all times during the negotiations between Talisman and the PGC for SGL Tract 219A-13 and 140A-13 and during the negotiations between Talisman and private landowners represented by Capouillez/GAL.

Talisman's sole source request for SGL 219 was provided to Capouillez via email on June 4, 2010, approximately one week prior to the execution of at least seventy leases between Talisman and GAL clients.

Capouillez's 2009 and 2010 negotiations with Talisman representatives in relation to lease acreage available from clients represented by Capouillez/GAL ultimately resulted in the execution of approximately 73 leases directly between Capouillez/GAL clients and Talisman. Capouillez, as a representative of GAL, signed all 73 of the leases executed between the private landowners and Talisman. Per the executed lease terms and conditions, Capouillez/GAL was due compensation in an amount range of \$50.00 per acre in bonus consideration and 1.75% of all royalties for each lease.

In addition to the 73 leases executed directly between Talisman and clients represented by GAL, an additional 221 leases involving Capouillez/GAL clients were assigned to Talisman from Range Resources and/or EOG Resources. Capouillez played no role in the assignment of the leases from Range Resources to Talisman or EOG Resources to Talisman.

Talisman has had existing lease interests in effect for SGL Tract 219A-13 and 140A-13 from November 15, 2011, through the present and October 17, 2013, through the present respectively.

The parties have stipulated that Capouillez actively represented clients through GAL, his private consulting business, before Talisman representatives for the leasing of private lands and had also originally served as a consultant for GAL clients which were ultimately assigned to Talisman, while simultaneously serving in the position of the BWHM Director for the PGC, resulting in payment to Capouillez/GAL of an undeterminable amount during the same time period Talisman was engaged in an existing business relationship with the PGC regarding the leasing of SGL and was actively involved in negotiations with PGC representatives supervised by Capouillez for the leasing of additional SGL.

CAPOUILLEZ'S INTERACTION WITH EQT CORPORATION

EQT Corporation is an integrated energy company involved in natural gas production, gathering, and transmission. In or about December 2009, EQT entered into a joint venture with EME for the purpose of securing oil and gas leases in northeastern Pennsylvania, including private as well as SGL leases.

In 2010, as the BWHM Director, Capouillez was copied on all correspondence from the PGC to EQT in relation to the leasing of SGL and had interactions and communications with various EQT representatives regarding potential SGL leasing. Specifically, as the Director of the BWHM, Capouillez attended meetings with EQT representatives in relation to the potential leasing of SGL during the week of April 26, 2010. Capouillez authored correspondence dated May 26, 2010, to Timothy Matthews, Senior Vice President of American Exploration Company, regarding PGC's intent to approve the assignment of SGL Lease 014A-01 to EQT subject to certain conditions. Capouillez, as BWHM Director, also

was the specific addressee on correspondence dated June 4, 2010, regarding potential lease amendments upon assignment of the lease for SGL014A-01 from American Exploration Company to EQT.

Capouillez's involvement with the assignment of SGL leases with American Exploration Company to EQT occurred during the same time that he was representing GAL clients whose leases with EME were assigned to EQT. All of the leases initially executed between private landowners represented by Capouillez/GAL and EME were assigned to EQT in June 2010. Capouillez did not, either as an individual and/or as a representative of GAL, play any role in the assignment of EME leases to EQT.

Capouillez received payment totaling \$56,301.34 from EQT as a result of the assignment of those leases from EME, at a time when he was also serving as Director of the BWHM.

CONSOL ENERGY, INC.

Consol Energy, Inc./CNX Gas (hereinafter "Consol") is a publicly owned producer of natural gas and coal that has entered into no less than three contracts/agreements for the leasing of oil and natural gas rights from under SGL from at least 2010 through the present.

In April and May 2010, Capouillez inquired of Consol regarding Consol's interest in leasing property from GAL clients. However, Consol did not execute any leases as a result of this inquiry.

At the time Capouillez sought interest from Consol regarding the potential leasing of property from GAL clients, he was involved as Director of BWHM with actions relating to the assignment of the lease for SGL 195B from Dominion Transmission to Consol. The assignment of the lease for SGL 195B from Dominion Transmission to Consol was granted by the PGC effective May 18, 2010. Capouillez signed the PGC Consent to Assignment of Oil and Gas Lease on behalf of the PGC in his position as BWHM Director.

Consol made payments to Capouillez totaling \$643.88 during the relevant time period as a result of a different lease assignment from Range Resources to Consol in December 2011. Capouillez was not specifically involved in the negotiations of that partial assignment, and the parties are in agreement that the amount Capouillez received was de minimis.

The parties have stipulated that the actions of Capouillez as to Consol do not give rise to a violation of the Ethics Act. See, Stipulated Finding 105.

As to other oil and gas companies referenced in the Stipulated Findings, the parties have stipulated that any actions of Capouillez resulting in a private pecuniary benefit occurred prior to January 10, 2009, and are outside of the applicable limitations period. 65 Pa.C.S. § 1108(m).

Effective March 18, 2014, PGC rescinded its approval for Capouillez's supplementary employment with/through GAL, after receiving recommendations from then Governor Corbett and legislative leaders for the revocation of Capouillez's supplemental employment authorization.

Having highlighted the Stipulated Findings and issues before us, we shall now apply the Ethics Act to determine the proper disposition of this case.

The parties' Consent Agreement sets forth a proposed resolution of the allegations as follows:

3. As part of a negotiated settlement agreement, the Investigative Division will recommend the following in relation to the above allegations:
 - a. That a violation of Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(a), occurred when Mr. Capouillez, while serving as the Director of the Bureau of Wildlife [Habitat] Management, represented clients through his private consulting business, GAL, in negotiating and executing leases with gas companies, at a time concurrent to PGC lease negotiations with the same gas companies on unrelated State Game Land parcels, which led to a pecuniary benefit to Mr. Capouillez/GAL.
 - b. The Investigative Division has conducted a comprehensive investigation and review of the allegations as contained above in paragraph two (2) [of the Consent Agreement]. After said investigation and review, and upon a careful review of its investigative files, the parties, both Investigative Division and Respondent, have agreed to submit the instant Consent Agreement and Stipulation of Findings in settlement of the matter.
4. In full and final settlement of the alleged violations, Mr. Capouillez agrees to make payment in the total sum of \$75,000.00 (the "Settlement Amount") as provided in this paragraph.
 - a. \$75,000.00 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission within thirty (30) days of the issuance of the final adjudication in this matter. Following the issuance of a Final Order, and upon payment of the Settlement Amount, Mr. Capouillez shall have no further financial obligations under this Consent Agreement or otherwise arising out of the alleged violations.
5. The Investigative Division shall recommend that the Pennsylvania State Ethics Commission take no further action in this matter and shall make no referral or recommendations to any law enforcement or other authority to take action regarding the Allegations as set forth in the Investigative Complaint/Findings Report. However, nothing shall prohibit the Investigative Division from seeking to enforce this Consent Agreement or the Commission's Final Order.

Consent Agreement, at 2.

In considering the Consent Agreement, we agree that a violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. § 1103(a), occurred when Capouillez, while serving as the Director of the BWHM, represented clients through his private consulting business, GAL, in negotiating and executing leases with gas companies, at a time concurrent to PGC lease negotiations with the same gas companies on unrelated SGL parcels, which led to a pecuniary benefit to Capouillez/GAL.

As Director of the BWHM, Capouillez's duties included directing the statewide land acquisition and leasing program, which included the oil, gas, and mineral recovery program. The BWHM's Division of Environmental Planning and Habitat Protection is primarily responsible for determining the SGL tracts to be leased, when the tracts are offered for lease, the method by which the lease is awarded, and negotiation of lease terms including payments. Capouillez's position as BWHM Director included responsibilities and authority in the leasing processes.

Capouillez used the authority of his public position as Director of the BWHM in performing responsibilities and exercising authority as to PGC lease negotiations for SGL parcels with the very oil/gas companies with which he concurrently negotiated and executed leases for private clients through his private consulting business, GAL.

During the time period under review, while serving as the BWHM Director for the PGC, Capouillez represented GAL clients in the competitive bid process by negotiating and executing leases with EXCO, at a time concurrent with PGC lease negotiations with EXCO PA on SGL properties, which led to a financial gain to Capouillez/GAL of \$31,358.70.

Capouillez actively represented clients through GAL before Talisman representatives for the leasing of private lands and had also originally served as a consultant for GAL clients which were ultimately assigned to Talisman, while simultaneously serving in the position of the BWHM Director for the PGC, resulting in payment to Capouillez/GAL of an undeterminable amount during the same time period Talisman was engaged in an existing business relationship with the PGC regarding the leasing of SGL and was actively involved in negotiations with PGC representatives supervised by Capouillez for the leasing of additional SGL.

Capouillez's involvement with the assignment of SGL leases with American Exploration Company to EQT occurred during the same time that he was representing GAL clients whose leases with EME were assigned to EQT. All of the leases initially executed between private landowners represented by Capouillez/GAL and EME were assigned to EQT in June 2010. Capouillez received payment totaling \$56,301.34 from EQT as a result of the assignment of those leases from EME, at a time when he was also serving as Director of the BWHM.

Based upon the Stipulated Findings and Consent Agreement, we hold that a violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. § 1103(a), occurred when Capouillez, while serving as the Director of the BWHM, represented clients through his private consulting business, GAL, in negotiating and executing leases with gas companies, at a time concurrent to PGC lease negotiations with the same gas companies on unrelated SGL parcels, which led to a pecuniary benefit to Capouillez/GAL.

As part of the Consent Agreement, Capouillez has agreed to make payment in the amount of \$75,000.00 payable to the Commonwealth of Pennsylvania and forwarded to this Commission within thirty (30) days of the issuance of the final adjudication in this matter.

At this juncture, we note that there are times, such as in this case, where the legally correct result is not particularly satisfying. We recognize that the recommended settlement amount is a fraction of the gain Respondent/GAL is alleged to have received over the years Respondent was employed by the PGC. However, we are duty bound to observe the law and to apply the law in a fair and objective manner. The statute of limitations issue is a critical factor in this case; it impacts not only the conduct that may be reviewed in this case, but also, as a direct consequence, the amount of the financial penalty that may be ordered. Based upon a fair and objective application of the law, and in light of the totality of the facts and circumstances, we determine that the Consent Agreement submitted by the parties sets forth a proper disposition for this case.

Accordingly, per the Consent Agreement of the parties, Respondent Capouillez is directed to make payment in the amount of \$75,000.00 payable to the Commonwealth of Pennsylvania and forwarded to this Commission by no later than the thirtieth (30th) day after the mailing date of this adjudication and Order.

Compliance with the foregoing will result in the closing of this case with no further action by this Commission. Noncompliance will result in the institution of an order enforcement action.

IV. CONCLUSIONS OF LAW:

1. As the Director of the Bureau of Wildlife Habitat Management ("BWHM") for the Pennsylvania Game Commission ("PGC") from approximately December 2, 2006, through May 18, 2015, Respondent William Capouillez ("Capouillez") was a public official/public employee subject to the provisions of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq.
2. A violation of Section 1103(a) of the Ethics Act, 65 Pa.C.S. § 1103(a), occurred when Capouillez, while serving as the Director of the BWHM, represented clients through his private consulting business, Geological Assessment & Leasing/Geological Assessment & Leasing, LLC ("GAL"), in negotiating and executing leases with gas companies, at a time concurrent to PGC lease negotiations with the same gas companies on unrelated State Game Land parcels, which led to a pecuniary benefit to Capouillez/GAL.

In Re: William Capouillez,
Respondent

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File Docket: 13-032
Date Decided: 8/10/16
Date Mailed: 8/11/16

ORDER NO. 1695-2

1. A violation of Section 1103(a) of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1103(a), occurred when William Capouillez ("Capouillez"), while serving as the Director of the Bureau of Wildlife Habitat Management for the Pennsylvania Game Commission ("PGC"), represented clients through his private consulting business, Geological Assessment & Leasing/Geological Assessment & Leasing, LLC ("GAL"), in negotiating and executing leases with gas companies, at a time concurrent to PGC lease negotiations with the same gas companies on unrelated State Game Land parcels, which led to a pecuniary benefit to Capouillez/GAL.
2. Per the Consent Agreement of the parties, Capouillez is directed to make payment in the amount of \$75,000.00 payable to the Commonwealth of Pennsylvania and forwarded to the Pennsylvania State Ethics Commission by no later than the thirtieth (30th) day after the mailing date of this Order.
3. Compliance with paragraph 2 of this Order will result in the closing of this case with no further action by this Commission.
 - a. Non-compliance will result in the institution of an order enforcement action.

BY THE COMMISSION,


Nicholas A. Colafella, Chair

