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September 30, 1982

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CABLE ADDRESS: ATOMLAW

Mr. Harold R. Denton
Director
Office of Nuclear Reactor
Regulation
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

In the Matter of
Philadelphia Electric Company
(Limerick Generating Station, Units 1 and 2)
Docket Nos. 50-352 and 50-353

Dear Mr. Denton:

By letter dated September 3, 1982, Del-Aware Unlimited, Inc. ("Del-Aware"), by its attorney Robert J. Sugarman, Esq., supplemented its earlier requests by letters dated July 2 and August 13, 1982, concerning the status of construction permits issued to the Philadelphia Electric Company ("Licensee") in the captioned proceeding. While the Licensee is of the view that the most recent correspondence does not raise any significantly new matters and simply reargues the points previously made, Licensee nonetheless responds to this letter as discussed more fully in the attached Supplemental Comments of Philadelphia Electric Company on Del-Aware Unlimited's Request for Suspension or Revocation of Construction Permits Pursuant to 10 C.F.R. §2.202 and §2.206(a) in order to provide the Director with a complete record on each of the factual and legal arguments presented to date by Del-Aware, in addition to the responses to various questions submitted to the Applicant by the Staff.

Additionally, Licensee has previously provided a copy of a report prepared by the Commonwealth of Pennsylvania, Department of Environmental Resources (PaDER), entitled "Environmental Assessment Report and Findings - Point Pleasant Water Supply Project" (August 1982). In essence, the PaDER Environmental Assessment confirms the validity of the previous findings by the NRC and the Delaware River Basin Commission regarding the absence of significant

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environmental impacts from the construction and operation of the Point Pleasant project. PaDER has also analyzed a number of the particular environmental concerns expressed by Del-Aware, such as the alleged presence of certain "toxics" in the Delaware River, and found alleged environmental impacts to be insignificant.

We have also enclosed a corrected copy of page 14 to be substituted in Applicant's Comments submitted by letter dated September 3, 1982.

Sincerely,

Troy B. Conner, Jr. / RMR
Troy B. Conner, Jr.

cc: Eugene J. Bradley, Esq.
Robert J. Sugarman, Esq.

CONNER & WETTERHAHN, P.C.

Donna L. Field

To be substituted in Comments of
Philadelphia Electric Company on
Del-Aware Unlimited, Inc's Request
for Suspension or Revocation of
Construction Permits Pursuant to
10 C.F.R. §2.202 and §2.206(a).

by the Licensing Board in its recent Special Prehearing Conference Order.

Thus, a great deal of the petition does not even purport to address environmental concerns as such, but rather the relationship between Licensee and NWRA in the construction and operation of the Point Pleasant pumping station and transmission main. Del-Aware erroneously assumes that the cost-benefit analysis at the construction permit stage proceeded on the premise that the Point Pleasant pumping station would not be built regardless of Limerick. In fact, the Appeal Board held that the cost-benefit ratio favored construction of Limerick under the Point Pleasant Diversion Plan "so long as the record demonstrated that the net benefit of Limerick operating under that alternative would be as great as that of either a non-nuclear plant at the same or a different site or a nuclear plant located elsewhere." ^{15/} The Appeal Board then found that such a demonstration had been made. There is no support for the assertion by Del-Aware ^{16/} that the Point Pleasant Diversion was not "fully explored" at the construction permit stage. Del-Aware points to no limitation by the Licensing Board which precluded the consideration of Point Pleasant contentions during the hearing at that time.

^{15/} Limerick, ALAB-262, supra, 1 NRC at 182-83.

^{16/} Petition at 13.

SUPPLEMENTAL COMMENTS OF PHILADELPHIA ELECTRIC
COMPANY ON DEL-AWARE UNLIMITED, INC'S REQUEST FOR
SUSPENSION OR REVOCATION OF CONSTRUCTION PERMITS
PURSUANT TO 10 C.F.R. §2.202 and §2.206(a)

The Philadelphia Electric Company ("Licensee") will address each of the points raised by Del-Aware in its September 3, 1982 letter seriatim.

1. The scope of the NRC Staff's review of the Point Pleasant diversion in preparing the EROL for Limerick has not changed. Del-Aware claims that in a letter dated January 5, 1981 from Mr. Robert L. Tedesco, Assistant Director for Licensing, Division of Licensing, the NRC Staff took the position that its review of the Point Pleasant diversion would not be limited to operating impacts or impacts arising from changes since the construction permit stage but would, in essence, start from scratch. Del-Aware's interpretation of this particular correspondence is entirely without merit and has been expressly rejected by the Atomic Safety and Licensing Board ("Licensing Board") in the captioned proceeding.

Clearly, nothing in this letter states that the Staff intended to require Licensee to submit any information beyond that which is required under the Commission's regulations in 10 C.F.R. Part 51 for the preparation of an Environmental Report. The Staff's current approach in reviewing the earlier environmental findings by DRBC was expressly approved by the Appeal Board at the construction

permit stage in Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 186 (1975). There is no reason to believe that the Staff intended to deviate from this methodology.

Although Del-Aware may not be familiar with the narrower scope of review of environmental impacts at the operating license stage, such is clearly mandated under the terms of 10 C.F.R. §51.21 and the applicable precedents in the NRC case law, by which the Licensing Board has itself determined that it lacks jurisdiction in the operating license proceeding to consider construction impacts, absent significantly changed circumstances. ^{1/} Moreover, in its recent Memorandum and Order (September 3, 1982), the Licensing Board expressly rejected the argument that the January 5, 1981 letter from Mr. Tedesco indicated that the Staff intended to conduct a review broader in scope than as defined by the Licensing Board. The Licensing Board stated: "Del-Aware's characterization, particularly after the lengthy discussion of similar arguments in the [Special Prehearing Conference Order (June 1, 1982)], are unsupported by the language of the letter." ^{2/}

It is also worth noting that Mr. William J. Dircks, Executive Director of Operations, stated at a conference on

^{1/} Del-Aware acknowledges this holding at page 1 of its recent letter.

^{2/} Memorandum and Order at 7 (September 3, 1982).

NEPA and NRC regulations sponsored by the Atomic Industrial Forum in October 1981 that one of the primary problems in the NRC Staff's environmental review is, in fact, the submission of duplicative information at the operating license stage. Mr. Dircks stated in part: "Unnecessary and redundant information, in addition to increasing the expense of license application, slows the staff review of the submittal by requiring a large amount of information to be sifted in order to find the changed or new environmental information which would be subject to detailed analysis." ^{3/} The claim by Del-Aware that the January 5, 1981 letter from the Staff reflects a decision to the contrary is therefore entirely without merit.

2. The DRBC Final Section 3.8 approvals for the Point Pleasant project and related EPA correspondence do not reflect any understanding by DRBC that the NRC would enlarge the scope of its review. Del-Aware also argues that the promise of a broader environmental review by the NRC Staff should be inferred from certain statements appearing in the transcript of the DRBC proceedings on February 18, 1981. Del-Aware also apparently contends that the NRC made certain representations to the Environmental Protection Agency ("EPA") and DRBC that an all encompassing review would be conducted. Again, there is no substance to this assertion, likewise rejected by the Licensing Board in the pending

3/ Nuclear Industry, Vol. 28, p.12 (November 1981).

proceeding, which held: "[I]t is far from clear from his statements in the transcript of the DRBC meeting that Governor Tribbitt was laboring under a misapprehension of the type of actions NRC would take in evaluating the environmental impacts of the Limerick plant. It is not clear to the Board from reading the transcript and the letters it references what Governor Tribbitt (or EPA) understood to be NRC's intentions." ^{4/} Accordingly, there is absolutely nothing inconsistent with the NRC's previous statements to these agencies and the presently indicated scope of review it is undertaking for the Point Pleasant project.

3. The methodology for the NRC Staff's review of DRBC findings approved in ALAB-262 at the construction permit stage is equally valid at the operating license stage. On the basis of the statement in the DRBC FEIS (1975) that design and construction details were not at that point sufficiently developed to permit evaluation of impacts of the operation of the intake, Del-Aware leaps to the conclusion that, unless the NRC Staff undertakes a de novo environmental review, "there will have been no thorough review of the Point Pleasant diversion at any time." ^{5/} As discussed at length in Licensee's earlier letter dated September 3, 1982 to the Director, this assertion is a total

^{4/} Memorandum and Order at 4 (September 3, 1982).

^{5/} Del-Aware letter at p.2.

non sequitur that ignores the ruling by the Appeal Board in ALAB-262 authorizing the Staff to take a "hard look" at the raw environmental data and findings compiled by DRBC as a basis for the NRC's own Environmental Statement. The same conclusion was reiterated at length by the Licensing Board in the captioned proceeding in its Special Prehearing Conference Order (June 1, 1982) and reaffirmed in two subsequent orders dated July 14, 1982 and September 3, 1982.

Even a cursory review of DRBC's Negative Declaration (August 25, 1980) and the underlying Final Environmental Assessment (August 1980) will refute the assertion by Del-Aware that there has been "no thorough review" of the project. Moreover, specific impacts associated with the operation of the Point Pleasant intake structure are currently under review by the United States Army Corps of Engineers in consultation with the National Marine Fisheries Service in a separate proceeding. Such impacts are also being reviewed by the Staff and have been the subject of admitted contentions by the Licensing Board in the captioned proceeding. Thus, all potential environmental impacts associated with the Point Pleasant project have been considered.

4. The ruling by the Pennsylvania PUC does not justify reconsideration of alternative sources of supplemental cooling water. Del-Aware contends that a ruling by the Pennsylvania Public Utilities Commission ("PUC") on August 27, 1982 requires the NRC to reconsider alternative sources

of cooling water for Limerick. Initially, it should be noted that the order of the PUC has been appealed. Under the existing circumstances, no legal basis has been shown for reopening the findings at the construction permit stage that the Point Pleasant project represents the most environmentally preferable alternative for supplying supplemental cooling water for Limerick.

Given the action by the PUC, the question of whether Limerick Unit 2 will be constructed remains unanswered. Licensee has not, however, withdrawn its application for an operating license for Unit 2. In the past, the NRC has not attempted to draw inferences on its own from decisions under State law to determine for itself whether an application may or may not at some later time be withdrawn. Whatever the final result of the action taken to date by the PUC, the observation by the Appeal Board in the Tyrone proceeding that "[t]he requirements of State law are beyond our ken" is therefore equally applicable here. ^{6/} As long as an applicant is actively pursuing the operating license for which it has applied, there is no basis for the NRC to assume that the unit in question will not be built and operated. ^{7/}

^{6/} See Northern States Power Company (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 375 (1978).

^{7/} See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-466-CP, "Memorandum and Order" (March 9, 1982).

Even if Limerick Unit 2 were not completed, for whatever reason, it does not logically follow, as Del-Aware asserts, that the Point Pleasant project would be rendered unnecessary for Limerick. As the Department of Environmental Resources, Commonwealth of Pennsylvania ("PaDER") stated in rejecting this assertion:

Even if Unit 2 is delayed or cancelled, cooling water requirements for efficient operation of Limerick Unit 1 would still necessitate completion of the proposed Point Pleasant diversion. Under conditions imposed by DRBC, cooling water for Limerick may only be withdrawn from the Schuylkill River when river flows at the Pottstown gage exceed 530 cfs with one Limerick unit operating, or 560 cfs with both proposed Limerick units operating. The difference in the number of days in which Schuylkill River flows would be unavailable under these conditions for one versus two units is insignificant. In sample drought years of 1964, 1965 and 1981, Schuylkill River water could not be withdrawn for cooling water for both units at Limerick 133, 193 and 160 days respectively. If only one unit were operating at Limerick, Schuylkill flows would be available only 7 to 12 additional days of the year (or three percent more of the time).

Further, the ultimate fate of Limerick Unit 2 would have little effect on the engineering of the water supply facilities. If the possibility exists that a second unit will eventually be constructed over the life of the project, sizing of the Bradshaw Reservoir, conduits and transmission mains to accommodate the water requirements of both units would be prudent. Building in such capacity would avoid the need for later construction of such facilities, or the need to install duplicate facilities. (At the same time, some elements of the

project, such as pump installation, could be developed in modules or phases.) 8/

5. DRBC has determined that there are adequate water resources for the allocation at Point Pleasant. Del-Aware alleges that certain recent reports published by DRBC have led to a determination that water resources in the Delaware River are "inadequate." Del-Aware neither states in what respect DRBC has found water resources to be "inadequate" nor provides any nexus between its allegation and the water allocated by DRBC for the Point Pleasant diversion. Also, contrary to NRC practice, Del-Aware has simply referred to the indicated DRBC reports without any supporting citation of the specific material therein upon which it relies.

In any event, the adequacy of water resources to be allocated for the Point Pleasant diversion goes to the very heart of DRBC's function in regulating Delaware River Basin water. Its allocation is therefore a matter for DRBC, not the NRC, to decide. Thus, the Licensing Board has already ruled that "in light of the DRBC's role in determining the uses for water in the basin, we believe that it bars us from reevaluating the DRBC decision to allocate water to the Limerick facility operating in the river follower mode." 9/ Subsequently, based upon the concurrence by the federal

8/ PaDER Environmental Assessment Report and Findings - Point Pleasant Water Supply Project at 29 (August 1982).

9/ Special Prehearing Conference Order at 70 (June 1, 1982).

representative in DRBC's final approval of the Point Pleasant project, the Licensing Board again expressly found that "it is precluded from considering matters concerning the allocation of Delaware River water for cooling Limerick." ^{10/} Accordingly, the allocation decision lies solely within the jurisdiction of DRBC in the exercise of its reasoned judgment.

It is noted, nonetheless, that none of the cited documents supports the assertion by Del-Aware that water resources are "inadequate" for the allocation at Point Pleasant. The cited documents merely point out that any future allocations should be carefully scrutinized and that consideration should be given to additional augmentation of the Delaware River flow for any such depletive uses. Thus, DRBC stated:

The parties agree that the Basin needs additional flow augmentation facilities if the region is to grow and the risk of saline contamination in the estuary is to be held within reasonable bounds. Development of new facilities according to schedules recommended here will allow the Basin to accommodate to projected demands for new water use and at the same time realize the year 2000 salinity objective. Achievement of these goals will also require careful monitoring of increased depletive water use and rigorous application of conservation measures during drought periods. ^{11/}

^{10/} Memorandum and Order at 18-19 (July 14, 1982).

^{11/} Interstate Water Management - Recommendations of the Parties to the U.S. Supreme Court Decree of 1954 to the Delaware River Basin Commission Pursuant to Commission Resolution 78-20 at p.5 (Draft) (July 1982).

Nothing in these studies suggest that the diversion at Point Pleasant, as limited by the 3,000 cfs flow requirement at the Trenton gage, is incompatible with these objectives.

6. DRBC fully considered all environmental impacts upon aquatic life associated with the Point Pleasant diversion. Del-Aware asserts that the DRBC Final Report and Environmental Impact Statement of the Level B Study (May 1981) establishes that depletive withdrawals in the non-tidal section of the Delaware River adversely affect dissolved oxygen levels in the Estuary. Again, no specific reference to the Level B Study is made, and no nexus to the Point Pleasant diversion is demonstrated.

Moreover, the discussion in the Level B Study relating to dissolved oxygen levels in the Delaware Estuary does not state that low levels of dissolved oxygen result from depletive withdrawals or the withdrawal at Point Pleasant in particular. ^{12/} The problem appears to be one of compliance by major Estuary dischargers with NPDES standards. DRBC's finding that dissolved oxygen concentration standards in the Estuary should be increased "if found to be technically achievable and economically feasible" ^{13/} apparently confirms that this is the problem.

7. The existence of trace amounts of "toxics" in the Delaware River has been considered by DRBC. Del-Aware cites

^{12/} See Level B Study at 26.

^{13/} Level B Study at 76.

to an unspecified "recent identification of various toxic substances in the Delaware River water," which allegedly represents a change in the water quality of the Delaware River since the construction permit stage. Del-Aware fails to specify these "toxic substances," nor has any basis for finding a change in water quality since the construction permit stage been identified. Moreover, Del-Aware has not cited the laws, regulations or the source of any standards which would be applicable to such "toxics," even if specified. Finally, Del-Aware has not alleged any adverse environmental impacts to aquatic life or human health it believes may be associated with such substances.

In point of fact, DRBC is conducting an ongoing evaluation of traces of toxic pollutants in the Delaware River, but has not as yet determined any environmental impact on the area's ecology resulting from these minute quantities. ^{14/} There has been no showing by Del-Aware that these traces are any greater than at any other portion of the Delaware River upstream or downstream of the Point Pleasant project, or that these trace amounts would have any measurable environmental impact. It is noted that the general populace along the Delaware River, for example, Philadelphia and Trenton, utilizes Delaware River water.

In addition to its Level B Study, the record before DRBC on the Point Pleasant project demonstrates that it has

^{14/} See Level B Study at 29.

considered any possible impacts from the diversion of any pollutants in the Delaware River into the Perkiomen Creek or Neshaminy Creek. ^{15/} No basis has been shown for reopening this analysis.

Further, by Order dated September 10, 1982, the Licensing Board in the pending proceeding rejected a proposed contention along the same lines on the grounds that (1) no change in water quality impacts regarding toxics apart from those considered at the construction permit change had been shown, and (2) data on toxics submitted by Del-Aware suggested no significant variance in concentrations upstream or downstream of Point Pleasant. The NRC Staff itself opposed Del-Aware's request to amend this contention for basically the same reasons.

DRBC's analysis that toxic pollutants are not an environmental problem with the Point Pleasant diversion was confirmed recently by PaDER which found that "there is no substantial evidence that Delaware River water in the vicinity of Point Pleasant contains significant levels of toxics or priority pollutants, or that the proposed project will engender the transfer of toxic substances causing contamination of the Neshaminy or Perkiomen watersheds." ^{16/}

^{15/} See DRBC FEIS at 23-24, 33, 35-37 (1973); DRBC Final Environmental Assessment at Part III, pp. 2-36, Part IV-45 to 53 and Part V-E1 to E5 (1980).

^{16/} PaDER Environmental Assessment at 57.

8. Full provision has been made for the preservation and enhancement of historic and archeological resources at Point Pleasant. Del-Aware asserts that the construction permits should be reopened to consider possible impacts upon the proposed Point Pleasant historic district and the Delaware Canal. Significantly, Del-Aware does not assert that the provisions currently in force under DRBC docket decisions and actions initiated by the Corps of Engineers in conjunction with DRBC and concerned State agencies are in any way inadequate to protect historic and archeological resources.

Mitigation of construction impacts upon the Delaware Canal was fully considered by DRBC at the Limerick construction permit stage. DRBC noted that the Delaware Canal would only be temporarily disturbed by construction operations and would be restored to its original condition thereafter. The Pennsylvania Historic Museum Commission was consulted during this consideration. ^{17/}

With regard to archeological finds, Del-Aware has overlooked the fact that DRBC anticipated and adequately provided for the preservation of any archeological finds at the project site. ^{18/}

The eligibility of the Village of Point Pleasant and adjacent townships for designation as an historic district

^{17/} See DRBC FEIS at 22.

^{18/} See Condition W in Docket No. D-65-76 CP(8) at 15 (February 18, 1981).

arose later, by letter dated April 3, 1980 from the State Historic Preservation Officer, which directed DRBC, as the lead federal agency in the project, to request a determination of eligibility from the Advisory Council on Historic Preservation. The Corps of Engineers is presently cooperating with the Advisory Council on Historic Preservation in its determination of the eligibility of Point Pleasant for inclusion on the National Register of historic sites. There is absolutely no indication of any action required on the part of the NRC.

The adequacy of these measures has been reconfirmed by PaDER in its recently published report. ^{19/} In its letter to the Advisory Council on Historic Preservation, dated August 13, 1982 (copy attached), PaDER stated that it has "thoroughly evaluated," inter alia, the "effects on historical and aesthetic resources" ^{20/} attributable to the Point Pleasant project. PaDER also stressed that it had explored "[e]very alternative raised by Del-Aware Unlimited, Inc. and other opponents to the project." ^{21/} Accordingly, no basis for reconsidering the construction permits with regard to historic or archeological matters has been shown by Del-Aware.

^{19/} PaDER Environmental Assessment at 61-62.

^{20/} Letter dated August 13, 1982 from Peter S. Duncan, Secretary of Environmental Resources to Jordan E. Tannenbaum, Chief, Eastern Division of Project Review, Advisory Council on Historic Preservation at p.1.

^{21/} Id.

Conclusion

For the reasons discussed more fully above, Del-Aware has failed to make any showing whatsoever that matters pertinent to the issuance of construction permits for Limerick have not been fully considered by the NRC and/or DRBC and the Corps of Engineers. The comment by the Court in Delaware Water Emergency Group v. Hansler, 536 F. Supp. 26, 43 (E.D. Pa. 1981), that plaintiffs there "seek to reopen and challenge [plans for the Point Pleasant project] . . . that have long been approved" simply because "they disagree with the basic concept of diverting water from the Delaware River" would seem to apply equally here. The NRC Staff should continue to pursue its environmental review of the Point Pleasant project in line with the guidance provided by the Appeal Board in ALAB-262 and the Licensing Board in the pending operating license proceeding. The application for relief under 10 C.F.R. §2.206 should be denied.

Post Office Box 2063
Harrisburg, Pennsylvania 17120
August 13, 1982

(717) 787-2184

Mr. Jordan E. Tannenbaum
Chief, Eastern Division of Project Review
Advisory Council on Historic Preservation
1522 K Street, NW
Washington, DC 20005

Dear Mr. Tannenbaum:

This Department recently received correspondence addressed to you from the Bucks County Conservancy regarding the Point Pleasant Water Supply Project. As the lead State regulatory agency with jurisdiction over this project, and as the owner in administering agency of the Delaware Canal and Roosevelt State Park, the Department of Environmental Resources would like to clarify and correct several items raised in that correspondence.

The Department recently completed its own Environmental Assessment Report and Findings on the Point Pleasant Water Supply Project. That Assessment, which took over nine months and involved the review of literally thousands of pages of plans, reports, studies and testimony, is enclosed for your reference. The Department has thoroughly evaluated the need for the project, its impacts on the environment and land use, effects on historical and aesthetic resources, and alternatives to the proposed project.

Alternatives:

Contrary to assertions made by the Bucks County Conservancy, the alternatives to the Point Pleasant Project have been assessed, in terms of feasibility, cost-effectiveness and relative environmental impact. This project culminates over 16 years of studies, environmental reports, impact statements, and plans conducted by this Department, the involved counties, the Delaware River Basin Commission and other agencies. The Environmental Impact Statements prepared on the project have twice been challenged in the federal courts, and found to provide an adequate and accurate basis for decision. We would hope the Advisory Council will take cognizance of these federal court decisions. Such findings by the courts, based on voluminous records, should not be lightly set aside.

Every alternative raised by DelAWARE Unlimited, Inc. and other opponents to the project was explored by this Department in the process of preparing its Environmental Assessment. None of the alternatives, or combinations of alternatives, was found to be more cost-effective or involve substantially less environmental impacts. Several of the alternatives put forth by DelAWARE were found, after analysis, to be technically unsound or unfeasible, or to engender greater and more widespread adverse environmental effects.

Delaware Canal

As the owner and manager of the Delaware Canal and Roosevelt State Park, no entity has a greater interest in its protection than the Department. Further, in our 50 years of operating the Canal, we have gained considerable expertise and experience regarding measures to preserve and restore these historically valuable facilities.

For this reason, the Department's park, engineering, construction and blasting staffs have thoroughly evaluated all aspects of the proposed project. Detailed procedures have been developed governing construction under and in the vicinity of the Canal, blasting practices, and the restoration of all affected facilities. These procedures are outlined in the Environmental Assessment, and made binding by permit, license, and right-of-way conditions.

You should be aware that the installation of conduits by the Neshaminy Water Resources Authority under the Canal would certainly not be unique or unusual. In order to gain access to water supply, or for sewage discharges, communities all along the Canal's length must maintain crossings under or over the Canal. Through the 60-mile long Roosevelt State Park, there are at least 127 water, sewer and other utility crossings, along with 135 public and private bridges and culverts providing access and transport.

It is the Department's considered opinion that construction of the Point Pleasant project, followed by restoration in accordance with the specifications approved by this agency, will leave the Delaware Canal in the vicinity of Point Pleasant in better shape than it is today. All appropriate mitigation measures and procedures have been considered and incorporated into the project.

Archaeology

The Department, along with the Pennsylvania State Historic Preservation Officer (SHPO), is interested in preserving archaeological resources to the maximum extent feasible. We believe that the procedures outlined in the draft agreement discussed between the NWRA, the Army Corps of Engineers, the SHPO and the Advisory Council should prove adequate to this end. We endorse the concept, accepted by NWRA, that the area in the vicinity of the Point Pleasant pumping station—where Indian artifacts are suspected may be found—should be the subject of archaeological investigation prior to construction. Where possible, archaeologically significant resources should be recovered and preserved. Where not possible to physically remove the material, it should be studied, cataloged, and photographed for future reference.

Oversight

We believe that oversight of activities to protect historical and archaeological resources should be undertaken as a cooperative effort by the SHPO, the Advisory Council, and the Department. Staff from our Bureau of State Parks will, in fact, be in the area on a regular basis and may be of assistance to you in this effort.

Mr. Jordan E. Tannenbaum

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August 13, 1982

With due deference to the Bucks County Conservancy, we must question its request to be made an overseeing agency at the applicant's expense, "with decision making power regarding adequacy measures." As you are aware, a government agency cannot lawfully delegate its regulatory and decision-making authority to another, non-governmental entity. Further caution should be exercised before the Advisory Council considers forcing the taxpayers of any county to provide financial support to a private organization, regardless of the laudable purposes it may serve.

Under Pennsylvania law, the Department of Environmental Resources is vested with the public trust of managing the lands and facilities of the Delaware Canal. This Department—rather than a private organization unaccountable to the people of Pennsylvania—must exercise the lawful responsibility to oversee any activities affecting the Canal or State Park.

I hope this serves to clarify our position in this matter, and assist the advisory council in its review of the Point Pleasant Project. We look forward to working with the council as this project is implemented. If we can be of further assistance, or provide additional information, please let us know.

Sincerely,

PETER S. DUNCAN
Secretary of Environmental Resources

cc: R. Timothy Weston
Larry Tice
Herschel Richman ✓
Deputy Secretary's Office
Peter S. Duncan