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UNITED STATES OF AMERICA '84 MAY 29 11:53  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

APPLICANT'S REPLY TO AWPP'S PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW  
RELATING TO CONTENTION VI-1

Introduction

On May 22, 1984, Air and Water Pollution Patrol ("AWPP") filed its Proposed Findings of Fact and Conclusions of Law regarding Contention VI-1 pursuant to the Atomic Safety and Licensing Board's ("Licensing Board" or "Board") oral order of May 10, 1984.<sup>1/</sup> Contention VI-1, as admitted by the Board, reads as follows:

Applicant has failed to control performance of welding and inspection thereof in accordance with quality control and quality assurance procedures and requirements, and has failed to take proper and effective corrective and preventive actions when improper welding has been discovered.

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<sup>1/</sup> Air and Water Pollution Patrol (Romano) Findings and Conclusions Re Contention VI-1 (May 22, 1984) ("Proposed Findings"). The Board's Order is found at Tr. 11,051.

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G PDR

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In its order, the Board stated that AWPP was to point to any record evidence in its filing of proposed findings and conclusions of law that would indicate that Contention VI-1 has merit and that the Applicant had not carried its burden of proof on this issue. Tr. 11,049-52. This AWPP was unable to do. Its assertions relate to procedural or extremely minor matters rather than substantive issues concerning welding and welding inspection. Its proposed findings failed to address any of the specific instances advanced in support of its contention and admitted by the Board or show how, in combination, they demonstrate that the contention has merit. In short, AWPP has raised no points contradicting the cases put forth by the Applicant, Philadelphia Electric Company, or the NRC Staff.

Inasmuch as AWPP's Proposed Findings and Conclusions of Law present no facts or arguments whatsoever by which it could be concluded that the Applicant has not overwhelmingly met its burden of proof on this contention, the Board should find that the Applicant has fully controlled performance of welding and inspection thereof in accordance with quality control and quality assurance procedures and requirements, and has taken proper and effective corrective and preventive actions when improper welding has been discovered. Accordingly, the Board should enter a decision confirming this conclusion. Nevertheless, Applicant has addressed, below, the items raised by AWPP in its pleading

Discussion

AWPP first asserted that it was prejudiced because it did not understand that the documents the Applicant introduced as exhibits could be used for the truth of the matters contained therein and that it had intended to show that this material lacked credibility.<sup>2/</sup> Initially, these documents had been provided to AWPP months in advance of the hearing as part of the discovery process. The record indicates that the Board specifically questioned Mr. Romano as to whether he had any objection to admitting these documents into evidence and further explained that, once admitted, they could then be used for the truth of the matters asserted. Tr. 10,322. Mr. Romano nonetheless stated that he not only had no objection to this procedure, but that he expected to use "the same documents as supporting material." Tr. 10,322. This certainly belies Mr. Romano's statement that he consented to the admission of these documents only because of an alleged hearing problem. Moreover, the Board further stated that while these documents were properly admissible as evidence, it would assign no weight to arguments based on exhibits as to which there had been no testimony adduced at hearing. Tr. 10,326-27. Inasmuch as these exhibits were used at hearing only to the extent that they were related to matters set forth in the

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2/ Proposed Findings at 1.

documents originally submitted to the Board and parties as part of AWPP's required March 6, 1984 specification of issues, AWPP could not possibly have been prejudiced by their admission, even had its consent to their admission not otherwise been fully and fairly granted. Furthermore, AWPP does not point to any specific documents admitted into evidence as prejudicial to its case. In the absence of even an allegation of specific prejudice, this argument has absolutely no merit.

Further, as to Mr. Romano's assertion that his difficulty in hearing coupled with poor acoustics in the hearing room led to his mistakenly consenting to the admission of these documents into evidence, a representative before the Board has an affirmative obligation to ensure that it properly understands all matters to which it is consenting.<sup>3/</sup> To hold otherwise would lead to a permanently unsettled record. The Board, on a number of occasions, had testimony or statements repeated at Mr. Romano's request. Moreover, AWPP did not object at any other time during the hearing to the use of any of these documents, a fact which also belies its argument that a problem with Mr. Romano's hearing led to their admission.

AWPP then asserted that the Board made it feel as if it were not allowed to question the qualifications of the

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<sup>3/</sup> Id.

Applicant's witnesses.<sup>4/</sup> To the contrary, the record indicated that AWPP spent a portion of the first and second hearing days questioning those witnesses as to their qualifications regarding welding quality assurance. The only statement which AWPP cites in support of its argument consists of a passage in which the Board informed Mr. Romano that the witnesses' written qualifications had been bound into the record and that there was therefore no need to reiterate the particular information contained therein. In the words of the Board, "[t]he idea is to probe further beyond the material already in evidence [and] not to just report what is already on the qualifications statement." Tr. 10,344. The Board in no way restricted AWPP's examination into the professional qualifications of those witnesses. Indeed, as noted previously, AWPP questioned them extensively in this regard.

AWPP next asserted that its failure to properly present its case was exacerbated by the fact that Dr. Iversen was not permitted to testify on its behalf and that AWPP consequently had to change its plans during a fifteen minute break.<sup>5/</sup> Briefly, given the fact that AWPP had violated all of the Board's requirements regarding the identification of witnesses and advance filing of testimony, and that the

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<sup>4/</sup> Id. at 2.

<sup>5/</sup> Id. at 6.

Board had previously issued a written order striking Dr. Iversen's testimony in advance of the hearing,<sup>6/</sup> AWPP should have anticipated that Dr. Iversen might not be permitted to testify and planned its participation accordingly. There was certainly no guarantee that Dr. Iversen would be permitted to testify. The Board's written ruling and subsequent oral ruling in this regard was entirely correct. Moreover, the Board's rejection of Dr. Iversen as a witness should have in no way affected AWPP's cross-examination of the Staff and Applicant's witnesses, who were known to Mr. Romano and who had presented written testimony well in advance of the hearing, and for whom AWPP had been required to prepare cross-examination plans in advance of the hearing. Certainly, he has not shown how these matters were related.

AWPP's claim that the required list of specifications it filed on March 6, 1984 was meant only as an example of the types of specifications it intended to rely upon at hearing and not as an exhaustive list of what it would present is disingenuous.<sup>7/</sup> As early as October 28, 1983, the Board had informed AWPP that it was to "file a list of all instances of improprieties . . . which [would] form

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<sup>6/</sup> Memorandum and Order Ruling on Pretrial Motions Regarding Testimony on Contention VI-1 (May 2, 1984).

<sup>7/</sup> Proposed Findings at 5-6.

. . . its case on the merits of the contention."<sup>8/</sup> (Emphasis Added). This instruction was repeated time and again in various Board orders and discussions with the parties, including AWPP.<sup>9/</sup>

AWPP's further claim that it felt it was unnecessary to comply with the Board's orders because of its "layman inexperience" is also totally without merit.<sup>10/</sup> AWPP had previously participated in the litigation of another contention (AWPP Contention V-4) before this Board and was fully aware of its obligations as a party to specify issues and to fulfill the substantive and procedural obligations set forth by the Board. Moreover, it should have been clear to any layman that he would not be allowed to rely on new examples at the last minute without good cause after the other parties had spent substantial time and effort preparing their cases on the basis of numerous other previously submitted specifications. See Tr. 10,432.

As to AWPP's next claim, there is simply no evidence that the Applicant's witnesses gave "elongated" answers in

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<sup>8/</sup> Memorandum and Order Confirming Rulings Made at Prehearing Conference (October 28, 1983) (slip op. at 5).

<sup>9/</sup> See, e.g., Memorandum and Order Confirming Rulings Made at Hearing (January 20, 1984) (slip op. at 3); Memorandum and Order Denying AWPP's Motion for Extension of Discovery Time and Appointment of Private Detective (February 28, 1984) (slip op. at 2).

<sup>10/</sup> Proposed Findings at 5-6.

order to evade the questions asked by Mr. Romano.<sup>11/</sup> As noted by the Board during the course of the hearing, many of the questions posed by Mr. Romano were so general as to be incapable of a specific answer. Tr. 10,510. As further noted by the Board, even though many of Mr. Romano's questions were improper because because of their compound or incomprehensible nature, the Board all but prohibited other counsel from objecting to them in an effort to assist Mr. Romano. Tr. 10,878-79. The Board also noted that if it thought for a moment that the witnesses were filibustering in any way it would have stopped them, and that that was not the case with these witnesses. Tr. 10,879.

In the particular exchange pointed to by AWPP as an example of the Applicant's "elongation" tactics,<sup>12/</sup> Mr. Romano asked the Applicant's witness, Mr. Corcoran, whether there were written procedures to ensure the proper selection of weld samples. Mr. Corcoran answered that there are indeed procedures which instruct auditors how to prepare for, scope and conduct an audit. Tr. 10,468. Given the broad nature of this question, Mr. Corcoran's answer was entirely appropriate and not inordinately long.

AWPP's assertion that Mr. Manley's testimony concerning the commercial availability of welding aids was contradicted

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<sup>11/</sup> Id. at 7.

<sup>12/</sup> Id.



by Dr. Fisher's testimony is incorrect.<sup>13/</sup> Although Dr. Fisher originally stated that he thought welding extensions could be purchased commercially, he subsequently testified that he had merely assumed that this was true, and that upon discussing this matter with other welding engineers realized that his earlier statement was probably incorrect and that the extensions he had previously viewed were probably hand manufactured on location from available materials. Tr. 10,946. In any event, AWPP failed to demonstrate how any such alleged inconsistency is probative of its contention.

Also contrary to AWPP's assertions, it was not instructed that there was no need for it to submit Findings of Fact and Conclusions of Law, nor was there any implication that the Board has already rendered a decision against AWPP.<sup>14/</sup> The Board informed AWPP at the conclusion of the hearing that, while in its opinion AWPP had not presented any evidence contradicting or opposing the Applicant's evidence, it was giving AWPP an opportunity to file Proposed Findings and Conclusions of Law detailing any record evidence contradicting this view. Tr. 11,046-53. And indeed, it was in response to this discussion that AWPP filed the instant document.

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<sup>13/</sup> Id. at 8.

<sup>14/</sup> Id. at 2, 8.

AWPP's statement that Mr. Coyle admitted that he had inspected welds without proper training or experience is incorrect.<sup>15/</sup> The supporting transcript citation, Tr. 10,365, reveals only Mr. Coyle's statement that if he "gets to the point where I have to actually inspect or see a weld which is questionable in my mind, I call for assistance . . . ." Tr. 10,365-66 (Coyle). He then stated in this respect that "I audit but I do not make the acceptability determination. That is done by a QC inspector." Tr. 10,366 (Coyle). Thus, AWPP's assertion is erroneous.

Nor is there any basis for AWPP's statements that Mr. Corcoran and other members of the Limerick quality assurance program have minimal experience and capability.<sup>16/</sup> The transcript pages cited by AWPP, Tr. 10,361-62, certainly do not support this proposition. Likewise, there is no evidence that Mr. Coyle, to whom AWPP specifically refers, is unqualified for his position. AWPP's statement that Mr. Coyle had only a one week course in lead auditing is taken out of context. Mr. Coyle made this statement in response to Mr. Romano's question concerning how much of his audit training was provided by Bechtel Power Corporation, to which he replied "one week." See Tr. 10,365 (Coyle). This statement in no way purported to be an exhaustive rendition

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<sup>15/</sup> Id. at 3.

<sup>16/</sup> Id.

of Mr. Coyle's training as a quality assurance auditor. As Mr. Coyle testified at hearing, his education as an engineer and further specific training in quality assurance methods and procedures all contributed to his ultimate qualifications as a quality assurance auditor. See Tr. 10,365-79.

AWPP then stated that its allegations concerning IE Inspection Report 76-06-01 were still unresolved because the NRC Staff inspector who had originally reported this deficiency, Mr. Toth, was not presented at hearing as a witness.<sup>17/</sup> Preliminarily, AWPP at no point, either prior to or during the hearing, made a request to the Board that Mr. Toth be put on the stand. More importantly, Mr. Toth's presence as a witness was not required inasmuch as the Applicant and Staff's witnesses fully explained what took place concerning the incident in question and the details surrounding its resolution. AWPP has failed to allege with specificity any evidence to the contrary. Any further evidence would have only been cumulative in any event and would have had no additional probative value.

AWPP's assertions concerning allegedly deficient thermometers and methods of weld rod oven calibration are totally misplaced.<sup>18/</sup> The Board correctly ruled at hearing that this matter was not specified by Mr. Romano in his

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<sup>17/</sup> Id. at 8-9.

<sup>18/</sup> Id. at 10.

March 6, 1984 list of specifications. More importantly, with respect to the thermometers received by an allegedly non-qualified inspector, the testimony indicated that this matter had nothing whatsoever to do with welding. The inspector in question was only a receipt inspector responsible for inspecting incoming shipments for identification, size, configuration, and particularly shipping damage. His work in no way involved welding inspections. Tr. 10,883-84 (Corcoran). Even if the individual identified in NRC Inspection Report 80-12 had served as the receipt inspector for the thermometers in question, it would have made no difference in any event. The testimony indicated that another quality control engineer or inspector would have been responsible for verifying that the weld rod ovens were actually maintained at the proper temperatures. Tr. 10,886 (Corcoran).

AWPP repeatedly asserted that it was hampered in the presentation of its case by the lack of counsel and that the Board should have appointed an attorney to represent it, or have at least informed the parties that they should retain counsel.<sup>19/</sup> Preliminarily, the parties have been free to retain counsel at any point during the proceeding. The Board additionally advised Mr. Romano that he should have sought non-legal assistance both from other members of AWPP

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<sup>19/</sup> Id. at 1, 6, 11.

and persons outside that organization. As to AWPP's assertion that the Board should have appointed counsel to represent it, the Commission's regulations do not provide for such action which fact has been repeatedly explained to Mr. Romano.

In connection with its argument that it was prejudiced in the presentation of its case by the absence of legal counsel, AWPP also asserted that it was hampered by the Board's restrictive application of highly technical and formalized courtroom rules and procedures.<sup>20/</sup> This argument simply has no merit. The Board was patient and tolerant of AWPP even beyond what was reasonably required for a party not represented by counsel. For example, in the cited instance, Tr. 10,451, the Board was merely attempting to determine, as a mechanistic matter, which portion of the many cross-examination plans submitted by AWPP was being used at that particular time. Further, Mr. Romano was correctly not permitted to conduct voir dire examination of the Staff's witnesses at that particular time because the Applicant's, and not the Staff's, witnesses were on the stand. The Staff's witnesses subsequently took the stand in accordance with normal procedure and AWPP questioned them at length as to, inter alia, their qualifications.

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<sup>20/</sup> Id. at 5, 6.

The Board's requirements for participation in this proceeding, including that by AWPP, have been minimal and have been imposed only to the extent necessary to ensure that the proceeding was conducted in an orderly fashion. Mr. Romano's lack of preparations and unwillingness to adhere to the minimal requirements imposed by the Board are the only factors that may have prejudiced its case.

AWPP then claimed that confidence is not warranted in the Applicant's welding quality assurance program because Mr. Corcoran stated that, when appropriate, as a rule of thumb he would, in the first instance, select 10% of a class of welds for auditing and then, in one instance, selected a sample of 52 instead of 42 from a class of 423 welds.<sup>21/</sup> This assertion is utterly preposterous. In the first place, as noted by AWPP, the selection of an 10% sample is only a rule of thumb and is not based on any requirement. Also, obviously, as was described to Mr. Romano at hearing, a sample of 52 rather than 42 is actually larger than 10% of the subject population and thus ensures the greater reliability of the sample. Tr. 10,781-86 (Corcoran).

Contrary to AWPP's assertion, the Applicant and Staff counsel's understanding of statistics is irrelevant to this contention.<sup>22/</sup> Also, as discussed previously, Dr. Iversen

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<sup>21/</sup> Id. at 2.

<sup>22/</sup> Id. at 5.

was not permitted to testify as a witness on behalf of AWPP because of its failure to meet the Board's requirements concerning, inter alia, prefiled testimony. Most importantly, Dr. Iversen's testimony, even if it were otherwise proven that he was qualified to testify, would have added nothing to the record on the Board's understanding of the issues at hand. AWPP was given the opportunity to make a proffer as to Dr. Iversen's testimony and was given adequate opportunity to argue for its admission. The reasons for the Board's rejection are clearly contained on the record. See Tr. 10,428-35. More importantly, the Applicant's witnesses testified at hearing that all safety-related welds at Limerick are inspected, thus effectively eliminating the need for statistically based sampling program. Moreover, those welds that are further re-examined are selected on the basis of past experience or a demonstrated problem, which ever is more appropriate, thus again decrying the need for statistical sampling. Tr. 10,462-63. Finally, contrary to AWPP's further assertion, Mr. Corcoran in no way admitted that the Applicant had a weak weld sampling program.<sup>23/</sup> This cited transcript pages, e.g., Tr. 10,436, do not support this statement.

AWPP's statement that Mr. Corcoran "tried to cover up the absence of Mr. Ferretti's initials on the weld

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<sup>23/</sup> Id.

[discussed in IE Report 76-06-01]" is unsupported by the record evidence.<sup>24/</sup> The record indicates only Mr. Corcoran's statement that weld inspectors are required by inspection procedures to initial a weld once they have inspected it. Mr. Corcoran further stated that he could not recall looking for the subject inspector's initials on the weld in question at the time he and the NRC inspector examined it in 1976. He further explained that inasmuch as those welds were replaced, they could not be subsequently checked for the inspector's initials. The testimony did indicate, however, that the same inspector's initials have been identified on other welds at that elevation. Tr. 10,614-17 (Corcoran).

Finally, AWPP appears to contend that the Board incorrectly excluded its questions concerning NRC Inspection Report 75-21, relating to, inter alia, mandatory hold points.<sup>25/</sup> Again, as the Board ruled during hearing, this report was not part of AWPP's required March 6, 1984 specification and it was, therefore, properly excluded from consideration. Tr. 10,847.

#### Conclusion

For the reasons stated above, the Board should reject the Findings of Fact and Conclusions of Law proposed by AWPP

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<sup>24/</sup> Id. at 9.

<sup>25/</sup> Id. at 10.



and find that the Applicant has fully met its burden of proof with respect to proving that it has fully controlled the performance of welding and inspection thereof in accordance with quality control and quality assurance procedures and requirements, and has taken proper and effective corrective and preventive actions when improper welding has been discovered.

Respectfully submitted,  
CONNER & WETTERHAHN, P.C.

*Mark J. Wetterhahn / NNN*

Mark J. Wetterhahn

*Nils N. Nichols*

Nils N. Nichols

Counsel for the Applicant

May 25, 1984

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Reply to AWPP's Proposed Findings of Fact and Conclusions of Law Relating to Contention VI-1," in the captioned matter have been served upon the following by deposit in the United States mail this 25st day of May, 1984:

* Lawrence Brenner, Esq. (2) Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Atomic Safety and Licensing Appeal Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555
* Dr. Richard F. Cole Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Docketing and Service Section Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555
* Dr. Peter A. Morris Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	** Ann P. Hodgdon, Esq. Counsel for NRC Staff Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555

\* Hand Delivery on May 29, 1984  
\*\* Hand Delivery

Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Philadelphia Electric Company  
ATTN: Edward G. Bauer, Jr.  
Vice President &  
General Counsel  
2301 Market Street  
Philadelphia, PA 19101

\*\*\*Mr. Frank R. Romano  
61 Forest Avenue  
Ambler, Pennsylvania 19002

Mr. Robert L. Anthony  
Friends of the Earth of  
the Delaware Valley  
106 Vernon Lane, Box 186  
Moylan, Pennsylvania 19065

Limerick Ecology Action  
P.O. Box 761 762 Queen Street  
Pottstown, PA 19464

Charles W. Elliott, Esq.  
Brose and Postwistilo  
1101 Building  
11th & Northampton Streets  
Easton, PA 18042

Zori G. Ferkin, Esq.  
Assistant Counsel  
Commonwealth of Pennsylvania  
Governor's Energy Council  
1625 N. Front Street  
Harrisburg, PA 17102

\*\*\*Jay M. Gutierrez, Esq.  
U.S. Nuclear Regulatory  
Commission  
631 Park Avenue  
King of Prussia, PA 19406

Angus Love, Esq.  
107 East Main Street  
Norristown, PA 19401

Robert J. Sugarman, Esq.  
Sugarman, Denworth &  
Hellegers  
16th Floor, Center Plaza  
101 North Broad Street  
Philadelphia, PA 19107

Director, Pennsylvania  
Emergency Management Agency  
Basement, Transportation  
and Safety Building  
Harrisburg, PA 17120

Martha W. Bush, Esq.  
Kathryn S. Lewis, Esq.  
City of Philadelphia  
Municipal Services Bldg.  
15th and JFK Blvd.  
Philadelphia, PA 19107

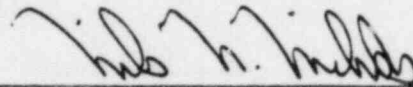
Spence W. Perry, Esq.  
Associate General Counsel  
Federal Emergency  
Management Agency  
500 C Street, S.W., Rm. 840  
Washington, DC 20472

Thomas Gerusky, Director  
Bureau of Radiation  
Protection  
Department of Environmental  
Resources  
5th Floor, Fulton Bank Bldg.  
Third and Locust Streets  
Harrisburg, PA 17120

\*\*\* Federal Express

James Wiggins  
Senior Resident Inspector  
U.S. Nuclear Regulatory  
Commission  
P.O. Box 47  
Sanatoga, PA 19464

Timothy R.S. Campbell  
Director  
Department of Emergency  
Services  
14 East Biddle Street  
West Chester, PA 19380



---

Nils N. Nichols