

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

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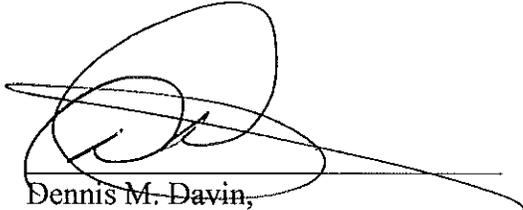
IN RE: :  
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BOROUGH OF COLWYN : Request for Determination of  
: Distress under Act 47  
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ORDER

AND NOW, this 10<sup>th</sup> day of May, 2015, upon consideration of the Certified Record, and the Proposed Findings of Fact and Conclusions of Law submitted by the Applicant, Borough of Colwyn, for the reasons set forth in the accompanying Findings of Fact and Conclusions of Law, it is hereby ORDERED that the Borough of Colwyn has met the criterion set forth in Section 201(8) of the Municipalities Financial Recovery Act, 53 P.S. § 11701.201(8), and, therefore, a determination of municipal financial distress is hereby issued. Pursuant to the requirements of 53 P.S. § 11701.221(a), a coordinator shall be appointed to prepare a financial recovery plan to address the Applicant's financial distress.

By:

  
Dennis M. Davin,  
Acting Secretary

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

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FINDINGS OF FACT

1. On February 26, 2015, the Borough of Colwyn, Delaware County, Pennsylvania (“Borough”) filed an application for a determination of municipal financial distress under the Municipalities Financial Recovery Act (“Act 47”), 53 P.S. §§ 11701.101 – 11701.712. Exhibit C, Request for Determination of Distress.
2. The Borough’s application identified four (4) criteria under Section 201 of Act 47 to support a determination of municipal financial distress. *Id.*
3. Specifically, the Borough has alleged in its application that it has maintained a deficit over a three-year period, with a deficit of 1% or more in each of the previous fiscal years. *Id.*
4. The Borough also alleges in its application that its expenditures have exceeded revenues for a period of three (3) years or more. *Id.*
5. The Borough further alleges in its application that it has accumulated and has operated for each of two (2) successive years a deficit equal to 5% or more of its revenues. *Id.*
6. Finally, the Borough alleges in its application that it has failed to make the budgeted payment of its minimum municipal obligation (MMO) as required by section 302, 303 or

602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act, with respect to a pension fund during the fiscal year for which the payment was budgeted and has failed to take action within that time period to make required payments. *Id.*

7. Following the Borough's application, and in accordance with the requirements of 53 P.S. § 1701.203(c), the Governor's Center for Local Government Services (Center) conducted an investigation into the financial affairs of the Borough by coordinating with the Borough's Early Intervention Program consultant to review various financial reports and conduct interviews with Borough officials and employees. Exhibit A, Consultative Evaluation.
8. On April 7, 2015, a public hearing was held to hear testimony regarding the Borough's application.
9. At the April 7, 2015 public hearing, Mayor Michael Blue testified that he was concerned about the state of the Borough's police department, especially with regard to the Borough's need for equipment, vehicles, and training.
10. At the April 7, 2015 public hearing, Borough Council President Paul Meuser testified that Colwyn experienced financial difficulties from 2008 to 2013, but that the Borough was working to correct these issues.
11. Mr. Meuser further testified that the Borough was behind on many of its payments to vendors.
12. Lastly, Mr. Meuser testified that the Borough was negatively affected by a large number of lawsuits – at one time, as many as 29 in total – but that many of these are now resolved.

13. At the April 7, 2015 public hearing, Councilperson Fred Lesher testified that the difficulties in Colwyn extend twenty (20) years into the past, that the municipal government is wasteful, and that the solution is to make significant budget cuts.
14. At the April 7, 2015 public hearing, Councilperson Massa Kamara testified that the Borough is having difficulties and would greatly benefit from assistance because it is running out of money.
15. At the April 7, 2015 public hearing, Councilperson Patricia Williams testified that the Borough is in financial trouble, that the governing body must work together to solve its problems, and that it must not allow anyone other than Council to run the Borough.
16. Ms. Williams further testified that she has been on Council for the past 4 years, but the Borough's difficulties began at least twenty (20) years ago.
17. At the April 7, 2015 public hearing, Councilperson Tonette Pray testified that she has been on Council for twelve (12) years, but that the Borough's financial difficulties began much earlier than 2008.
18. Additionally, Ms. Pray testified that receivership would benefit the Borough, especially because there have been extraordinary difficulties on Council over the previous year.
19. Lastly, Ms. Pray testified that she prepared a presentation on the Borough's finances from 2008 to 2011, which she submitted with her testimony. Exhibit E, Financial Presentation, 2008-2011.
20. At the April 7, 2015 public hearing, Councilperson Jesse Brundage testified that upon becoming a part of the majority on Council in 2014, he realized that the Borough government was in shambles, a myriad of problems existed, and that giant unpaid debts were a great difficulty, especially the Borough's MMO, sewer, insurance, liquid fuels, and other unpaid bills.

21. Mr. Brundage further testified that the Borough is expecting a property tax revenue shortfall and that in total, the Borough is expecting a deficit of \$1,185,103 for 2015.
22. Lastly, Mr. Brundage testified that the Borough would greatly benefit from Act 47 assistance, especially technical and financial assistance, and that the Borough particularly needs a no-interest loan.
23. At the April 7, 2015 public hearing, Borough Secretary/Treasurer/Manager Paula Brown testified that the Borough experienced considerable administrative instability from 2008 through 2013 that contributed to the Borough's financial distress.
24. Ms. Brown further testified that prior to 2014, the Borough experienced severe financial management difficulties, but that in the last year things have begun to improve.
25. Lastly, Ms. Brown testified that the Borough could benefit from Act 47 assistance.
26. At the April 7, 2015 public hearing, Borough Solicitor John McBlain testified that the Borough is in a better financial position than many other municipalities that have been considered for distressed status because it does not have difficulty generating revenue.
27. Mr. McBlain further testified that while the Borough does not have a revenue problem it does have an expenditure problem and that in 2014, Borough Council enacted austere measures in an effort to control spending.
28. Additionally, Mr. McBlain testified that with professional assistance through the state, the Borough will be able to emerge from Act 47, although the Borough will need to receive loan assistance and continue to control its expenditures.
29. Lastly, Mr. McBlain testified that the State should approve the Borough's request for financially distressed status.
30. At the April 7, 2015 public hearing, Borough codes officer, Daniel Rutland, testified that he organized petitions in an effort to request a distress determination by the citizens

because the Borough has not had functioning Councils since at least 2007, resulting in decreased services.

31. Mr. Rutland further testified that Act 47 technical assistance would greatly benefit Council, along with every taxpayer, because the Borough needs a plan to overcome its financial difficulties.
32. At the April 7, 2015 public hearing, Colwyn Borough Police Lieutenant Mike Dructor testified that he has been on the police force for five (5) years, but due to turnover, he has been on the force twice as long as any other officer.
33. Lt. Dructor further testified that the Borough was extremely mismanaged: that officers often worked without pay for up to two (2) pay periods at the end of the year; that the Borough would pay administrative support staff, but would not pay for fuel in police cars; that overtime was not properly managed; and that often no one is available to respond to emergency calls.
34. Additionally, Lt. Dructor testified that the Borough is unable to obtain credit, so when he is able to pay for fuel in his police car, he must do so with cash in an envelope and that the Borough's police vehicles are falling apart or ill-equipped for police service.
35. Lastly, Lt. Dructor testified that things in the Borough have improved over the last year, but that the Borough needs state assistance.
36. At the April 7, 2015 public hearing, Stephen McGonigle, owner and operator of McGonigle Auto Repair in Darby, testified that the Borough's police and roads-crew vehicles are extremely inadequate and that the Borough would benefit from technical assistance.

37. At the April 7, 2015 public hearing, William Judge, solicitor for the Darby Creek Joint Authority (DCJA), testified that DCJA is a membership organization that conveys all the sewage for its member organizations.
38. Mr. Judge further testified that the Borough is DCJA's largest debtor and that the Borough is creating a strain on the other member organizations because those organizations have been required to pay the Borough's share of expenses.
39. Lastly, Mr. Judge testified that DCJA has a vested interest in seeing the Borough succeed because it wants the Borough to continue as a member of DCJA, but it also wants the Borough be able to pay for the services DCJA provides.
40. At the April 7, 2015 public hearing, James Halligan, outside counsel for DCJA responsible for debt collection, testified and provided evidence that the Borough owes DCJA an extraordinary amount of outstanding fees, and that DCJA has begun the process of recovering those fees through litigation. Exhibit F, Darby Creek Joint Authority Exhibit.
41. Mr. Halligan further testified that it is in Colwyn's best interest to be determined distressed and that the Borough would benefit from an emergency loan, part of which would pay the fees the Borough owes to DCJA.
42. At the April 7, 2015 public hearing, Borough resident Ruth Meuser testified that beginning in 2008, the Borough experienced extraordinary financial, managerial, and governance dysfunction, resulting in mismanagement of finances and threats of violence from Council. Further, she testified that the Borough has inadequate managerial capacity to maintain proper operations.
43. At the April 7, 2015 public hearing, Brian Lock, Borough resident and board member of the DCJA, testified that he has been a resident for 37 years and until 2007, audits were

always completed, and tax increases were rare; however, since 2008, audits have been either questionable or nonexistent.

44. At the April 7, 2015 public hearing, Borough resident and property manager, Luis Kunz testified that when applying for a permit, he would often pay for the permit, but never receive it and then receive threats from Borough officials regarding not having a permit. He further testified that he believes the Borough is misusing public funds.
45. At the April 7, 2015 public hearing, Borough resident Nina Bryant testified that the Borough's governance dysfunction is of great concern.
46. At the April 7, 2015 public hearing, Ryan Hottenstein of Financial Solutions, who through a grant to the Borough from the Department of Community & Economic Development (DCED), prepared the Borough's February 12, 2015 Emergency Action Plan and assisted in the development of the Consultative Evaluation, testified that the Borough's financial management is severely deficient, with many financial records missing, and that the Borough has no ability to manage its recordkeeping system.
47. Mr. Hottenstein further testified that the Borough is experiencing extraordinary governance dysfunction, including the inability to run council meetings or properly prepare a budget.
48. Additionally, Mr. Hottenstein testified that the Borough currently has unpaid liabilities in excess of \$1.185 million, which includes unpaid MMO pension payments for 2012, 2013, and 2014, unpaid sewer fees, insurance deductibles, liquid fuels reimbursements, and other bills accrued prior to 2015.
49. Lastly, Mr. Hottenstein testified that because the Borough is unable to fulfill the policy objectives of Act 47, the Secretary of DCED should declare the Borough to be a distressed municipality.

50. At the April 7, 2015 public hearing, Jonathan Hendrickson, Local Government Policy Specialist, testified regarding the investigation into the financial affairs of the Borough conducted by the Governor's Center for Local Government Services.
51. The investigation into the financial affairs of the Borough conducted by the Center is published as the Municipalities Financial Recovery Act Consultative Evaluation, April 7, 2015 and is Exhibit A, attached to this report.
52. Mr. Hendrickson testified that Borough Council successfully applied for a determination of municipal financial distress.
53. Mr. Hendrickson also testified that the citizens of the Borough filed petitions to request financial distress, but that DCED determined this request to be insufficient.
54. Mr. Hendrickson testified that the Center's investigation concluded that it could prove the Borough had met one (1) of the four (4) criteria the Borough had alleged: the Center was able to validate Section 201 criterion eight (8), but was unable to validate criteria one (1), two (2), or seven (7), due to inadequate or non-existent financial records.
55. Additionally, Mr. Hendrickson testified that because the Center was able to verify a criterion from Section 201, it could consider whether the Borough was able to fulfill the policy objectives of the Act and should be determined to be distressed.
56. Mr. Hendrickson further testified that the Borough was unable to fulfill the policy objectives of the Act: to provide for the health, safety, and welfare of its citizens; meet financial obligations to its employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices.
57. Lastly, Mr. Hendrickson testified that the Center recommends that the Borough be determined to be a financially distressed municipality.

## CONCLUSIONS OF LAW

At issue in the instant matter is whether the Borough of Colwyn has met the criteria set forth in Section 201 of Act 47, and whether the Borough of Colwyn should be determined to be in financial distress under Section 203 of Act 47. Based on the findings of fact recited above and the conclusions of law set forth below, it is hereby determined that the Borough of Colwyn has satisfied Section 201(8) of Act 47, and is hereby determined to be in financial distress under Section 203 of Act 47.

To support a determination of municipal financial distress under Section 203 of Act 47, the Department of Community & Economic Development ("DCED") is required to evaluate a municipality's financial stability against certain criteria set forth in Section 201 of Act 47. In its application for determination of financial distress, the Borough alleges that it has satisfied the criteria set out in Section 201 (1), (2), (7), and (8) of Act 47. Section 201(1) of Act 47 provides that it is a valid indication of municipal financial distress if a "municipality has maintained a deficit over a three-year period, with a deficit of 1% or more in each of the previous fiscal years." 53 P.S. § 11701.201(1). Section 201(2) of Act 47 provides that it is a valid indication of municipal financial distress if a "municipality's expenditures have exceeded revenues for a period of three years or more." 53 P.S. § 11701.201(2). Section 201(7) of Act 47 provides that it is a valid indication of municipal financial distress if a "municipality has accumulated and has operated for each of two (2) successive years a deficit equal to 5% or more of its revenues." 53 P.S. § 11701.201(7). Section 201(8) of Act 47 provides that it is a valid indication of municipal financial distress if a "municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302, 303 or 602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act,

with respect to a pension fund during the fiscal year for which the payment was budgeted and has failed to take action within that time period to make required payments.” 53 P.S. § 11701.201(8).

In the Municipalities Financial Recovery Act Consultative Evaluation prepared by the Governor’s Center for Local Government Services (Center), it was noted that the Center’s investigation was unable to verify Borough deficits before 2014. Due to lack of audits, general ledger, or other complete financial records, the Center found great difficulty in gathering the information necessary to determine whether deficits were present. Most importantly, no audits exist for 2011, 2012, 2013, or 2014, and attempts by the Borough to complete these audits have been largely unsuccessful. The Center was able to identify certain records for 2014 and has verified that the Borough has significant unpaid liabilities, totaling over \$1.06 million in a municipality with an annual budget of \$2.08 million. With current liabilities equaling more than half the Borough’s annual budget, it seems extremely likely that all three (3) deficit criteria are true. However, because the Center was unable to obtain reliable records of expenditures or revenues for 2012 or 2013, it is not possible to prove a deficit or that expenditures exceeded revenues for these years. For 2014, the Borough had a deficit of at least \$328,000, but because of the Borough’s deficient financial management system and questionable prior finances, it is even difficult to know the exact amount of the 2014 deficit. Regardless, because DCED was only able to gather data for 2014 and not for 2012 or 2013, the Borough has failed to satisfy the criteria of Section 201(1), (2), and (7) of Act 47.

The Consultative Evaluation confirmed that as of the date of the investigation, the Borough had failed to pay its budgeted Minimum Municipal Obligation (MMO) for 2012, 2013, or 2014. Auditor General reports on the Borough’s pension system indicate that Colwyn has both failed to make its budgeted MMO payments for 2012 and 2013, and failed to properly deposit its state aid allocations into an eligible pension plan. While it did pay a portion of its 2012 and 2013

MMO, the \$11,653 in payments thus far represents less than 10% of the \$125,167 owed for these two (2) years. Additionally, the Borough has paid only a small portion of its MMO due on December 31, 2014, with \$87,763 of the total \$126,249 remaining unpaid. Currently, Colwyn owes \$234,373 in past due pension payments to its pension fund. According to data from the Pennsylvania Public Employee Retirement Commission (PERC), Colwyn's pension fund is among the least funded in the Commonwealth and with a fund ratio of 47%, as of its most recent actuarial valuation, is classified as severely distressed. Thus, the record supports the conclusion that the Borough has failed to make the budgeted payment of its minimum municipal obligation as required by section 302, 303 or 602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act. Therefore, the Borough has met the criteria of Section 201(8) of Act 47.

Having determined that the Borough has met one (1) criterion of Section 201 of Act 47, which is a valid indication of municipal financial distress, the question becomes whether the financial affairs of the Borough warrant a determination of municipal financial distress. A determination of municipal financial distress is not mandatory even if all of the criteria of Section 201 of Act 47 are present. See, Dupont v. Dep't of Community Affairs, 114 Pa.Commw. 234 (1991). A determination of municipal financial distress lies within the exclusive discretion of the Secretary of DCED. *Id.*

In addition to the indicia of municipal financial distress discussed above, there exists ample evidence of record that a determination of municipal financial distress is both necessary and appropriate. As is set out in detail in the Consultative Evaluation, the Borough has experienced a continuing pattern of significant outstanding payables, failure to meet required obligations to its pension plans, and an apparent inability of the Borough government to successfully manage its financial affairs and operations.

For a municipality with a \$2.08 million budget, the Borough's outstanding liabilities are extraordinary. As of April 1, 2015, payables incurred prior to 2015 reached \$1,060,979.42. The borough owes payments to a variety of entities, including the Darby Creek Joint Authority, the Pennsylvania Department of Labor & Industry's Office of Unemployment Compensation Tax Services, attorneys, engineers, the Borough's insurance company, its waste management company, its pension funds, and reimbursements to its liquid fuels fund. In general, these payables were caused by the Borough's inability to properly budget. Because financial record keeping is largely non-existent, Borough officials are unable to adequately project future expenditures. Conversely, revenues are almost entirely based on real estate taxes and should be relatively easy to project. However, Borough officials over-estimated real estate revenue by more than \$180,000 in 2015. When combining Colwyn's outstanding liabilities together with its projected revenue shortfall, estimates for accumulated deficits by the close of 2015 are in excess of \$1.24 million.

Colwyn's Pension liabilities are equally problematic. In August 2014, the Public Employee Retirement Commission deemed Colwyn's pension system to be "Severely Distressed." At that time, the actuarial valuation of Colwyn's pension fund indicated its fund ratio was 47%, with unfunded liabilities of \$762,153. This fund ratio is one of the 20 lowest public pension fund ratios in the state; yet, because the Borough failed to pay the majority of its 2014 MMO, it is likely even lower. The 2014 actuarial valuation of its pension is not yet available, but of its \$126,249 in 2014 pension obligations, \$87,763 remains unpaid.

While Colwyn's outstanding payables and underfunded pensions are areas of great concern, Colwyn's most profound issue has been its extreme governance dysfunction. For example, in two (2) separate February 2015 meetings, the January 2015 bills were presented to Council for their approval, and even the simple task of approving bills devolved into a shouting

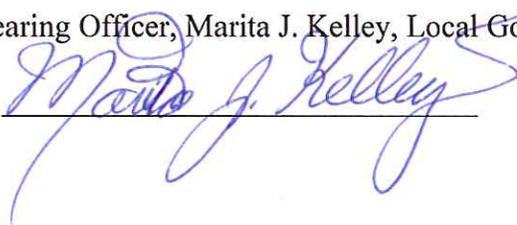
match among council and the citizenry, eventually concluding with bill payments remaining unapproved. Likewise, evidence of mismanagement is extensive. Financial records from 2011 to 2014 are almost entirely nonexistent, and no audits have been conducted for those years. Similarly, the Auditor General found that Colwyn had a significant deficiency in internal controls which resulted in a material weakness in the Borough. More than anything else, it is because of the Borough's extraordinary dysfunction that it has been unable to meet its financial obligations or provide for proper accounting procedures, budgeting, and taxing practices.

It is the public policy of the Commonwealth, as stated in Act 47, "to foster fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices." 53 P.S. § 11701.102. Based on the testimony presented at the public hearing, including evidence gathered through the Consultative Evaluation, the Borough meets the criteria for a determination of distress status under Sections 201 and 203 of Act 47. Furthermore, based on the testimony presented at the public hearing, the Borough will be unable to fulfill the policy objectives of Act 47 identified above without the remedies afforded by Act 47. Therefore, it is hereby determined that the Borough is in municipal financial distress pursuant to Act 47.

Respectfully submitted to Dennis Davin, Secretary of DCED

By: Hearing Officer, Marita J. Kelley, Local Government Policy Manager

By:



— PENNSYLVANIA. BUILT TO ADVANCE. —

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# Municipalities Financial Recovery Act Consultative Evaluation

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Borough of Colwyn  
Delaware County, Pennsylvania



April 7, 2015

**Commonwealth of Pennsylvania**

Tom Wolf, Governor

**Department of Community & Economic Development**

Dennis M. Davin, Acting Secretary



**pennsylvania**

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## **Introduction**

The Municipalities Financial Recovery Act (Act 47 of 1987, as amended) was promulgated to foster the fiscal integrity of municipalities so that they can provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices. According to the Act, “the failure of a municipality to do so is hereby determined to affect adversely the health, safety and welfare not only of the citizens of the municipality but also of other citizens in this Commonwealth.”

Section 202 of Act 47, “Standing to request a determination,” provides ten categories of parties and individuals who have standing and may request a determination of municipal financial distress from the Secretary of the Department of Community & Economic Development (Department).

One party that has standing to request such a determination is “the Governing body of the municipality upon passing a resolution by a majority vote of the governing body after a special public meeting duly advertised as provided by law.”

On February 19, 2015, the Borough Council of the Borough of Colwyn passed a resolution authorizing the Borough to “seek a determination of municipal financial distress and to seek financial aid by way of loans, grants or otherwise under and by authority of the Municipalities Financial Recovery Act.”

Subsequently, the Borough of Colwyn filed with the Department, on a form provided by the Department, a request that the Secretary of the Department determine that the Borough is a financially distressed municipality under the provisions of the Municipalities Financial Recovery Act. On February 20, 2015, the request was signed by the President of Borough Council, Paul C. Meuser, notarized, sealed, and sent to the Department, where it was received on February 26, 2015.

Another party that has standing to allege that the municipality is financially distressed is “ten percent of the number of electors of the municipality that voted at the last municipal election, by petition to the Department alleging the municipality is fiscally distressed.”

On February 26, 2015, the Department received petitions from at least ten percent of the number of electors of Colwyn that voted at the last municipal election (referred collectively as the “Colwyn electors”). In the last Colwyn Borough municipal election, 552 citizens cast ballots. Therefore, the petitions must contain at least 55 valid signatures. The Department found that the petitions were circulated by a valid party, were obtained in a valid manner, and contained 68 valid signatures of Colwyn electors, an adequate number to establish standing for a request for determination of municipal financial distress. Additionally, the request, made on a form supplied by the Department, that accompanied the petitions was found to be valid. However, the Act requires that the petition circulators “attest to the accuracy of the signatures and addresses obtained and the method used to obtain them.” The Department found this attestation to be insufficient and therefore was unable to consider the petitions from the Colwyn electors a valid request. With this in mind, the Colwyn

Borough Council's request for determination of financial distress is the only legally sufficient request.

Section 203(c) of Act 47 authorizes the Department to conduct a consultative investigation into the financial affairs of the municipality after receiving the aforementioned request but prior to conducting a public hearing, as required under Section 203(b) of Act 47. This document, in conjunction with the Borough's Early Intervention Program (EIP) Emergency Action Plan (see Appendix A) described below, will serve as that investigation. A public hearing is scheduled for Tuesday, April 7, 2015 at 7:00pm to receive testimony from Borough Council, Borough Officials and other interested parties relative to whether the Secretary of DCED should declare the Borough of Colwyn a distressed municipality under Act 47.

Section 201 of Act 47 enumerates eleven criteria, at least one of which must be present in order for a municipality to be considered for a distress determination by the Secretary. Both the Borough Council of the Borough of Colwyn and the Colwyn electors allege that the following criteria, as set forth in Section 201 of Act 47, are present:

1. The municipality has maintained a deficit over a three-year period, with a deficit of 1% or more in each of the previous fiscal years.
2. The municipality's expenditures have exceeded revenues for a period of three years or more.
7. The municipality has accumulated and has operated for each of two successive years a deficit equal to 5% of more of its revenues.
8. The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302, 303 or 602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act, with respect to a pension fund during the fiscal year for which the payment was budgeted and has failed to take action within that time period to make required payments.

## **Scope of Investigation**

The review by the Department's Governor's Center for Local Government Services (the Center) of the financial position of the Borough utilized the Borough's 2015 Early Intervention Program (EIP) Emergency Action Plan, along with the services of the EIP consultant and information gathered through site visits and other communication with Borough officials. The Emergency Action Plan was fully funded by the Department, and the Department had intimate involvement in the development of the Plan. In fact, the Department's involvement with the Borough of Colwyn precedes the 2014 EIP Plan by many months and is detailed in the "History of the Department's Recent Involvement with the Borough" section below.

In conducting an investigation into the Borough's financial condition, the Center and the EIP consultant relied upon the accuracy and completeness of the financial information that was available from Borough officials as well as certain information that was obtained from other sources. Financial, personnel, and other pertinent administrative records and information, including interim financial reports, to the extent that they were available, were all considered in this investigation. Limited efforts were made to verify available information by comparing with original source documents, as would be done on a selective basis in an audit of the municipality.

Our examination utilized the work of the EIP consultant, Ryan Hottenstein of Stevens & Lee and Financial S&Lutions. The Mayor, Borough Council, and Borough Manager were instrumental in providing their assistance and cooperation in gathering information during the course of the investigation.

## **Objectives of Investigation**

The objectives of this investigation are threefold:

1. To provide a brief history of the Department's involvement with the Borough's financial situation, the development of the Early Intervention Program Emergency Action Plan, and the Borough's eventual request for distress determination;
2. To determine whether the Borough has met one or more of the eligibility requirements for a determination of distress under Act 47, and if so,
3. To examine available financial records and other relevant data in order to recommend whether or not the Borough should be determined to be distressed under the provisions of Act 47.

The Borough Council's request for a determination of financial distress alleges the presence of Section 201 criteria numbers 1, 2, 7, and 8. Central to criterion 1 is the existence of a deficit of 1% or more in each of the previous three fiscal years; validation of criterion 2 requires evidence of expenditures in excess of revenues for a period of three years; and criterion 7 requires the municipality to have operated with a deficit of 5% or more of its revenues for two consecutive years; and validation of criterion 8 requires confirmation that the municipality has failed to make its Minimum Municipal Obligation (MMO) pension payments as required under Act 205 of 1984. A deficit is defined under Section 103 of Act 47 as "the excess of expenditures over revenues, stated as a percentage of revenue, during an accounting period."

## **History of the Department's Recent Involvement with the Borough**

In March of 2014, the Department rescinded the distressed status of the Borough of Millbourne, also in Delaware County. At the meeting to officially announce the rescission, Millbourne's solicitor, who is also the solicitor of Colwyn, approached Center staff about potential difficulties within the Borough of Colwyn. The solicitor believed that Colwyn could benefit from technical assistance, but suggested that the Department wait until after an investigation by the Delaware County District Attorney's office was completed.

In early summer of 2014, the Center's analysis of municipalities through its Early Warning System for financial distress identified Colwyn as one of the most likely municipalities in Pennsylvania to enter distressed status. However, the investigation by the District Attorney's office was ongoing, and DCED's access to the Borough was limited.

In August of 2014, the Department met with Borough officials and presented the Early Intervention Program at a public meeting. Subsequent to this, on September 11, 2014, the Borough passed Resolution 2014-16 authorizing Colwyn's application for an Early Intervention Program grant. The Borough submitted its EIP application on October 3, 2014, and was awarded an EIP grant of \$60,000 for a consultant to conduct a financial and strategic plan for the borough. Generally, EIP plans span five years, although in municipalities experiencing immediate difficulties, the development of an Emergency Action Plan is the first step of the process.

By mid-December of 2014, the Borough had engaged its EIP consultants, Stevens & Lee and Financial S&Lutions (collectively referred to as S&L) as its EIP consultants. Shortly after the engagement began, S&L immediately realized the necessity for the development of an Emergency Action Plan to address critical fiscal issues.

Center staff and the EIP consultant visited Colwyn on January 7, 2015 in an attempt to begin gathering data for the Emergency Action Plan; however, very few records exist earlier than 2014. The EIP consultant made several subsequent attempts at acquiring data, but was generally unsuccessful. DCED and the consultant found record keeping to be almost non-existent prior to 2014 and merely insufficient beginning in 2014. While attempts at improvements were clearly made throughout 2014, Colwyn's general lack of administrative capacity prevented the borough manager from maintaining adequate financial management.

On February 12, 2015, Stevens & Lee presented its Emergency Action Plan to Borough Council during its regular monthly meeting. Council voted unanimously at the meeting to approve the Emergency Action Plan and begin implementing it. Highlights of the plan include requiring the Borough to:

- Improve its governance and the order of its Council meetings
- Immediately apply for an Act 47 Determination
- Continuously monitor revenues and expenditures
- Limit expenditures to necessary purchases only
- Limit personnel costs by freezing wages and salary, limiting overtime, and evaluating all

staffing levels.

On February 19, 2015, in a special meeting, Colwyn Borough unanimously voted to request that the Secretary of DCED determine Colwyn to be a financially distressed municipality.

In an effort to investigate this request, Center staff have visited the Borough several more times and made many requests for data and documentation. In general, documentation has been unavailable or incomplete. The Borough Manager has made a valiant effort to provide everything the Department has requested, but many records simply do not exist.

## Conclusions on Presence of Distress Criteria

**Based upon an analysis of available records, it is our conclusion that the Borough of Colwyn can be considered for a distress determination because criterion 8 can be definitively validated.**

### Act 47, Section 201, Criteria 1, 2, 7, and 8 Examined

The following summary is provided to validate the criteria alleged by the Borough for Act 47 consideration. The Borough has set forth criteria 1, 2, 7, and 8 under Section 201 of the Act that it believes make the Borough eligible to be considered for an Act 47 determination.

#### Criteria 1, 2, and 7, Not Validated:

**Criterion 1:** The municipality has maintained a deficit over a three-year period, with a deficit of 1% or more in each of the previous fiscal years.

**Criterion 2:** The municipality's expenditures have exceeded revenues for a period of three years or more.

**Criterion 7:** The municipality has accumulated and has operated for each of two successive years a deficit equal to 5% or more of its revenues.

**Not Validated:** The Center found great difficulty in gathering the information necessary to determine whether these criteria were present due to the lack of audits, general ledger or other complete financial records. Most importantly, no audits exist for 2011, 2012, 2013, or 2014, and attempts by the Borough to complete these audits have been largely unsuccessful due to nonexistent records (See Appendix B). This situation is discussed in more detail in the next section.

While the Center was able to identify certain records for 2014, it was unable to verify data prior to 2014. The Borough has significant unpaid liabilities, but these liabilities are generally not identifiable according to when they accrued. Additionally, these liabilities total over \$1.06 million in a municipality with an annual budget of \$2.08 million. With current liabilities equaling more than half the Borough's annual budget, it seems extremely likely that Criteria 1, 2, and 7 are all true.

However, because the Center was unable to obtain reliable records of expenditures or revenues for 2012 or 2013, it is not possible to prove a deficit or that expenditures exceeded revenues for these years. For 2014, the Borough had a deficit of at least \$328,000, but because of the Borough's deficient financial management system and questionable prior finances, it is difficult to know the exact amount of the 2014 deficit. Regardless, because the Department was only able to gather data for 2014, these criteria remain not validated, despite their likely veracity.

Criterion 8, Validated:

**Criterion 8:** The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302, 303 or 602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act, with respect to a pension fund during the fiscal year for which the payment was budgeted and has failed to take action within that time period to make required payments.

**Validated:** Auditor General reports on the Borough's pension system indicate that Colwyn has failed to make its budgeted MMO payments for 2012 and 2013, nor has it properly deposited its state aid allocations into an eligible pension plan. While it did pay a portion of its 2012 and 2013 MMO, the \$11,653 in payments thus far represents less than 10% of the \$125,167 owed for these two years. Additionally, the Borough has paid only a small portion of its MMO due on December 31, 2014, with \$87,763 of the total \$126,249 remaining unpaid. Currently, Colwyn owes \$234,373 in past due pension payments to its pension fund. According to data from the Pennsylvania Public Employee Retirement Commission (PERC), Colwyn's pension system is among the least funded in the Commonwealth, with a fund ratio of 47%, as of its most recent actuarial valuation. See Appendices C and D for the Auditor General pension reports and an Appendix E for an excerpt from PERC's 2014 Status Report on Local Government Pension Plans.

The Borough's failure to make the budgeted payment of its minimum municipal obligation for 2012, 2013, and 2014, as required by section 302, 303 or 602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act, confirms that the Borough meets criterion 8 as set forth in Section 201 of Act 47.

## **Distress Determination**

Based upon the above analysis, this report has validated the presence of Criterion 8 as enumerated in the Act. The fact that Criterion 8 was found to be present enables the Center to conduct a further evaluation and recommend whether the Borough of Colwyn should be designated as distressed under Act 47.

It is Commonwealth policy, as stated in Act 47, "to foster the fiscal integrity of municipalities so that they provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper accounting procedures, budgeting, and taxing practices."

It is the Center's opinion that the Borough of Colwyn has exhibited conditions that make it difficult to fulfill its responsibilities as outlined above. This conclusion is based on a continuing pattern of significant outstanding payables, failure to meet required obligations to its pension plans, and an apparent inability of the Borough government to successfully manage its financial affairs and operations.

In particular, as detailed further below, the Borough has been experiencing extreme governance dysfunction. For example, in two separate February 2015 meetings, the January 2015 bills were presented to Council for their approval, and even the simple task of approving bills devolved into a shouting match among council and the citizenry, eventually concluding with bill payments remaining unapproved.

Evidence of mismanagement is extensive. Financial records from 2011 to 2014 are almost entirely nonexistent, and no audits have been conducted for those years, although the investigative team continues to try to access this data in an effort to piece together a more complete financial picture.

Because of the Borough's extraordinary dysfunction, it has been unable to meet its financial obligations or provide for proper accounting procedures, budgeting, and taxing practices. This has led to the financial difficulties described below. **Accordingly, it is the Center's recommendation that the Borough of Colwyn be declared financially distressed.**

In arriving at our recommendation, the Center's analysis also considered other relevant factors, which are discussed below:

1. Tax Base.
2. Current and Projected 2015 Financial Position.
3. Accounts Payable
4. Pension Status
5. Socio-Economic and Demographic Trends.
6. Administrative and Financial Management Practices.

**1. Tax Base**

It is evident from the following tax base chart that the Borough is experiencing a loss of taxable properties and thus revenues that further inhibit its ability to pay for basic services. For the seven-year period from 2009 to 2015, the assessed valuation of the Borough has decreased in real dollars more than \$1.4 million. This is equivalent to a loss of 3.16% of the taxable properties (or assessed valuation loss) since 2009.

Coupled with the losses in other critical categories, it is evident that the Borough is experiencing a steadily increasing erosion of sustainable income for the local government.

Colwyn Borough				
Year	Assessed Value	Annual Change	% Change from Prior Year	% Change from Base Year
2009*	44,317,725			
2010*	44,119,428	(198,297)	-0.45%	-0.45%
2011*	44,148,036	28,608	0.06%	-0.38%
2012*	44,022,491	(125,545)	-0.28%	-0.67%
2013*	43,586,511	(435,980)	-0.99%	-1.65%
2014**	43,243,141	(343,370)	-0.79%	-2.42%
2015**	42,916,534	(326,607)	-0.76%	-3.16%

\*As reported by STEB  
 \*\*As reported by Delaware County

**2. Current and Projected 2015 Financial Position**

Efforts to project the cash position for the Borough are difficult because records are fragmented, unpaid bills were not recorded on the financial records, and audits have not been prepared since 2010. Based on our examination of available information, we have developed an assessment of the accounts payable, the outstanding sewer fees, Liquid Fuels reimbursement, and the pension liabilities.

Many of the items discussed in this report indicate a general lack of attention to fiscal affairs by previous Councils. This is evidenced by continuing operating deficits, using unsound budgeting practices, the accumulation of unpaid bills, not adequately addressing findings in the Auditor General’s pension audits, not completing Audits for 2011, 2012, and 2013 and the general lack of capacity to administer the Borough’s financial affairs.

Consider as an example the Borough’s projected revenue for 2015:

For fiscal year 2015 the Borough budgeted to receive \$1,046,220 in Real Estate Taxes with a general fund tax rate of 24.6 mills. The Borough’s taxable assessment for 2015 is \$42,529,304.

$$\$42,529,304 \times 24.6 \text{ mills} = \$1,046,221$$

In 2014, the Borough received \$922,939 in Real Estate Taxes with a total billable property tax

amount of \$1,117,158 for a collection percentage of only 82.61%. Generally, municipalities should expect collection rates closer to 92%-95%, yet Colwyn assumed it would receive 100% of its real estate tax billings. If the Borough collects in 2015 at the same rate as 2014, though, then the amount of revenue collected in Real Estate Taxes would be \$864,334 or \$181,886 less than the 2015 budgeted amount.

While it is problematic that the Borough is failing to take steps to increase its collection rate, Colwyn's inability to project its revenues is a far greater concern, and unless the Borough takes action to curtail its expenditures, further deficits will occur in 2015.

In addition to this miscalculation in revenue, expenditure reports for 2014 are inconsistent, at best. Financial records for 2014 seem to reveal that the Borough's expenditures did not exceed its revenues, while in reality the Borough likely had a significant 2014 deficit and an accumulated deficit of over \$1 million.

Because of the uncertainty regarding 2014 and prior year liabilities, projections for 2015 remain elusive. Currently, it is likely that the Borough will have a 2015 deficit of at least \$180,000 (from the miscalculation in revenue), but it is uncertain how much greater this deficit will be. Currently, estimates for accumulated deficits by the close of 2015 are in excess of \$1.2 million.

### **3. Accounts Payable**

As of April 1, 2015, payables incurred prior to 2015 have reached \$1,060,979.42 (See Appendix F). The Borough has obligations to eleven vendors with amounts in excess of \$5,000 that total \$1,056,766.31. These include but are not limited to attorneys, the Darby Creek Joint Authority, engineer, insurance deductibles, the delinquent tax collector, the waste management company, the Borough's Pension Funds, and reimbursement to Liquid Fuels. The payable listing also identified a loan of \$14,999 from a Borough Councilperson that is in dispute. The largest creditor is the Darby Creek Joint Authority which is owed more than \$319,000.

The Borough has also failed to remit \$46, 616.61 in unemployment benefit charges, plus interest, from 2012 through the first quarter of 2015. The current manager only discovered this when she received a letter (see Appendix G) in January of 2015 outlining the amounts due. These, as with many other previous liabilities, remain unpaid.

Historically, the Borough has failed to utilize its QuickBooks accounting system. Bills are not recorded in QuickBooks as received and therefore a true picture of the Borough's outstanding liabilities is not easily accessible.

The Borough's failure to pay its sewer fees to the Darby Creek Joint Authority is a particular concern. While no legal action has been taken, the Authority has threatened the Borough with a lawsuit, particularly as there is still no formal settlement between the Borough and the Authority (See Appendix H).

**4. Pension Status**

In a letter (See Appendix I) sent to the Borough on August 14, 2014, the Public Employee Retirement Commission (PERC) stated that it had determined Colwyn’s pension systems to have a Total Distress Score of 3 or “Severely Distressed.” Act 205 of 1984 calls for all public pension systems to receive a score of 0 (Not Distressed), 1 (Minimally Distressed), 2 (Moderately Distressed), or 3 (Severely Distressed), based on their fund ratio, the ratio between the fund’s assets and liabilities. Severely distressed pensions have a fund ratio below 50%.

As of the date of the letter, the actuarial valuation of Colwyn’s pension indicated its fund ratio was 47%, with unfunded liabilities of \$762,153. This fund ratio is one of the 20 lowest public pension fund ratios in the state; yet because the Borough failed to pay the majority of its 2014 MMO, it is likely even lower. The 2014 actuarial valuation of its pension is not yet available, but of its \$126,249 in 2014 pension obligations, \$87,763 remains unpaid.

The Auditor General has made repeated findings concerning the Borough’s pension system, including noncompliance with prior audit recommendations, failure to timely pay its MMO, and failure to deposit state aid into its pension system. The Borough has either not funded or underfunded its pension system for at least each of the last three years. This is indicative of Colwyn’s inability to properly budget or manage its finances, and it puts the health and safety of its employees at risk.

**5. Socio-Economic and Demographic Characteristics and Trends**

Population

Since 2000, Colwyn experienced a 3.7% increase in population to 2,543. Delaware County also experienced a population increase; however at a slightly lower percentage increase of 1.6%.

Median age of the total population in the Borough has decreased from 31.2 years old to 29.5 years old since 2000, in contrast to Delaware County where the median age increased from 37.4 years old to 38.8 years old. The number of individuals over the age of 65 in the Borough has decreased by 41.9% since 2000. Delaware County also experienced a decrease in the number of individuals over the age of 65, although at a much lower percentage of 5.4%. The percentage of the total population of persons over 65 is an important statistic as it reflects those individuals who are typically not part of the work force and who are not generating taxable revenue for the Borough.

<b>Population</b>			
	<b>2000</b>	<b>2009-13</b>	<b>% Change</b>
Borough Population	2,453	2,543	3.7%
County Population	550,864	559,771	1.6%
Borough Median Age	31.2	29.5	
County Median Age	37.4	38.8	
Borough Pop over 65	241	140	-41.9%
% Borough Pop over 65	9.8%	5.5%	
County Pop over 65	85,669	81,024	-5.4%
% County Pop over 65	15.6%	14.5%	

Income

Per capita income has increased since 2000; however, it is lower than Delaware County as a whole. Income disparity is evident compared to Delaware County in median household income (MHI) where the MHI in Colwyn is \$22,151 less than the MHI of Delaware County. A similar comparison can be made with the median family income statistics, as depicted in the table above.

Since 2000, there has been a decrease in total households within the Borough with a real number loss of 55 households, a decrease of 6.4%.

<b>Income</b>		
	Per Capita Income	
	Delaware County	Colwyn Borough
2000	25,040	13,883
2009-13	33,179	16,538
	Median Household Income	
	Delaware County	Colwyn Borough
2000	50,092	33,150
2009-13	64,041	41,890
	Median Family Income	
	Delaware County	Colwyn Borough
2000	61,590	39,861
2009-13	81,523	63,769

Employment

The employment statistics reveal that far more persons over the age of 16 are employed who live in the Borough. Similar to the income statistics above, Colwyn’s employment statistics lag in comparison to Delaware County.

<b>2009-13 ACS Employment Statistics</b>				
	Delaware County		Colwyn Borough	
	Estimate	Percent	Estimate	Percent
<b>EMPLOYMENT STATUS</b>				
Population 16 years and over	447,075	447,075	1,892	1,892
In labor force	292,386	65.4%	1,291	68.2%
Civilian labor force	292,230	65.4%	1,291	68.2%
Employed	265,554	59.4%	1,097	58.0%
Unemployed	26,676	6.0%	194	10.3%
Armed Forces	156	0.0%	0	0.0%
Not in labor force	154,689	34.6%	601	31.8%

Housing

The trend in comparing Delaware County with Colwyn Borough also appears in Housing characteristics with Colwyn underperforming Delaware County.

2009-13 ACS Housing Statistics				
	Delaware County		Colwyn Borough	
	Estimate	Percent	Estimate	Percent
<b>HOUSING OCCUPANCY</b>				
Total housing units	222,471	222,471	917	917
Occupied housing units	204,771	92.0%	802	87.5%
Vacant housing units	17,700	8.0%	115	12.5%
Homeowner vacancy rate	2.0	(X)	3.9	(X)
Rental vacancy rate	8.8	(X)	8.9	(X)
<b>HOUSING TENURE</b>				
Occupied housing units	204,771	204,771	802	802
Owner-occupied	144,471	70.6%	464	57.9%
Renter-occupied	60,300	29.4%	338	42.1%
<b>VALUE</b>				
Owner-occupied units	144,471	144,471	464	464
Less than \$50,000	5,128	3.5%	13	2.8%
\$50,000 to \$99,999	12,709	8.8%	241	51.9%
\$100,000 to \$149,999	18,853	13.0%	126	27.2%
\$150,000 to \$199,999	22,575	15.6%	51	11.0%
\$200,000 to \$299,999	37,298	25.8%	8	1.7%
\$300,000 to \$499,999	32,723	22.7%	16	3.4%
\$500,000 to \$999,999	12,870	8.9%	9	1.9%
\$1,000,000 or more	2,315	1.6%	0	0.0%
Median (dollars)	234,100	(X)	96,500	(X)

**6. Ineffective Administrative and Financial Management Practices**

Budgeting:

While the absence of records prevents us from thoroughly examining the effectiveness of prior year budgets, we can conclude, based on extensive liabilities from previous years, that proper budgeting did not occur in several recent budget years. This, combined with the miscalculation of revenue in the 2015 budget, reveals a pattern of ineffective budgeting practices. Clearly, the Borough’s annual budget must more accurately reflect actual performance based on fiscal trends and prior year performance.

### Financial Reporting:

The lack of a fund accounting structure and the use of a cash basis of accounting have further complicated the Borough's fiscal problems. The Borough has not accounted for its expenditures adequately and cannot validate that dedicated funds such as liquid fuels funds distributed by the Commonwealth have been spent appropriately.

The Borough maintains its financial records on the cash basis of accounting. The cash basis is not in conformity with generally accepted accounting principles (GAAP). Under the cash basis, revenues are recognized when cash is received and expenditures are recognized when the cash for the expenditure is disbursed. GAAP requires revenues to be recognized when earned and expenditures to be recognized when the obligation is incurred rather than paid. The cash basis of accounting cannot be relied upon to accurately portray the financial position of a municipality at a given point in time.

### Lack of Administrative Capacity and Oversight:

In recent years, the chief administrative position (generally a Secretary or Manager) in the Borough has experienced considerable turnover, with the position being vacant for a significant amount of time over the last six years. Various individuals have been employed in an administrative capacity for the Borough, with members of Council assuming administrative responsibilities when the Manager position was unfilled. The results of this turnover are obvious. Office files from prior to 2014 are in a state of disorganization, and many files seem to be missing completely. There has been little to no tracking of certain important files, such as litigation cases. Auditor General findings are repeated and pensions remain severely underfunded. Since there has typically been only one administrative position, every new individual has had to learn on the job. There has been little "in-house memory" on how things are done (or should be done) to carryover from one individual to the next. Currently, given the dire state of Borough finances, the Borough manager is spending a large portion of her time responding to and fending off creditors with no time for needed training and development.

Equally, if not more concerning is the Council's inability to govern the Borough effectively. The Borough Council is comprised of seven members who are elected at-large. The tension among members of Council and the Borough Manager is a direct impediment to the Borough addressing its issues. Recently, what should have been the simple task of paying the Borough's bills was rejected twice, first on February 12 and again at the next Council meeting on February 19, 2015.

Communication among Borough leaders is lacking. Council meetings have little to no order and often consist of Borough leaders using inappropriate language and shouting at or over one another.

While internal audits have been impossible over the last several years, the issues of internal governance have repeatedly been revealed by the external audits of the Auditor General. The Borough has had significant findings within both its liquid fuels and pension audits.

In April of 2014, the Auditor General released a report (See Appendix J) on Colwyn's liquid fuels tax fund which found that Colwyn had a significant deficiency in internal controls which resulted in a material weakness in the Borough. Primarily, the report indicated that "documentation supporting

payroll expenditures was not available for examination.” Additionally, the report found that Colwyn owed over \$80,000 to its Liquid fund due to nonpermissible expenditures and missing documentation.

Similarly, as described above, the Auditor General’s report on the Borough’s pension fund listed significant findings within Colwyn’s police and non-uniformed pension plans. In addition to not making payments and failing to deposit state aid in an eligible pension plan, the audits also revealed that the Borough continued in its non-compliance with prior audit recommendations and provided an unauthorized benefit.

## **Recommendation**

Based on the Center's investigation, conducted in coordination with the EIP Consultant, it is the Center's recommendation that the Borough of Colwyn be determined to be a financially distressed municipality under Act 47. Clearly, the Borough is and has been experiencing ongoing dysfunction over the past several years which has led to significant financial challenges, including substantial unpaid liabilities, an underfunded pension system, the inability to pay bills when due, and severe financial management deficiencies. These conditions make it difficult for the Borough to continue to fulfill its responsibilities to provide for the health, safety, and welfare of its citizens; meet financial obligations to its employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices.

**Appendix A, Colwyn Emergency Action Plan with Appendix**

**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

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Lancaster, PA 17602  
(717) 291-1031 Fax (717) 394-7726  
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Email: jwe@stevenslee.com  
Direct Fax: (610) 236-4174

February 12, 2015

**Via Email and First Class Mail**

Borough Council  
Borough of Colwyn  
221 Spruce Street  
Colwyn, PA 19023

Re: Emergency Action Plan

Dear Members of Council:

The Early Intervention Program (EIP) provides for the development of an Emergency Action Plan to assist the Borough with its critical cash flow situation that may impact the health, safety and welfare of its residents. The Borough has hired Stevens and Lee, P.C. and Financial Solutions, LLC to conduct the Borough's Early Intervention Program Study through funding provided by the Department of Community & Economic Development (DCED).

The following recommendations are provided to assist the Borough in addressing its immediate financial emergency. The Borough will need to take action to implement these recommendations.

In developing these interim actions the consultant team found great difficulty in gathering the financial management information necessary to determine a complete understanding of the fiscal health of the Borough. The Borough has not had an audit prepared by a Certified Public Accountant since 2011 nor are records to accounting journals, a general ledger, or a trial balance available to review in order to properly assess the Borough's finances. A major concern is that there are a number of unpaid invoices that are not incorporated into the cash based accounting records that were available. Because of the consultant team's inability to obtain records for fiscal year 2012, 2013 and 2014, we are unable to determine whether or not a deficit existed. Our review has raised serious concerns relating to the ability of the Borough to manage its' financial management record keeping system. This includes a lack of solid financial management systems, poor record keeping, little presence of internal control mechanisms, and late and inadequate annual audits.

**STEVENS & LEE**  
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***Municipal Governance***

The current state of municipal governance in the Borough is a major concern. "Governance is one of the most important issues of our time. Without accountable, reliable, farsighted governance, the global challenges and the needs of the population cannot be adequately addressed. Also, poor leadership can severely cripple a state's economy and social welfare.<sup>1</sup>" While the aforementioned quote was written in a discussion regarding Zimbabwe's national governance we believe that it is applicable for all levels of government including the Borough of Colwyn.

Colwyn's governance is ineffective at best. Borough Council meetings are disorganized and unruly. During the course of our review nearly every member of Council and the Borough Manager discussed concerns about the decorum of Council meetings. Meetings have become so unruly that on February 2, 2015, NBC 10, Philadelphia ran the first of a multi-part investigation into the operations of the Borough, including a segment on chaotic council meetings. Links to the investigations are included below.

Part 1 – February 2, 2015

<http://www.nbcphiladelphia.com/video/#!/investigations/Chaotic-Council-Meetings-Caught-On-Camera/290583011>

Part 2 – February 3, 2015

<http://www.nbcphiladelphia.com/video/#!/investigations/Investigators--Did-Colwyn-Borough-Abuse-Tax-Payer-Funding-/290720601>

Part 3 – February 5, 2015

<http://www.nbcphiladelphia.com/video/#!/investigations/Colwyn-Borough-Back-Room-Deal/290843411>

The mistrust amongst members of Borough leadership including elected and appointed officials and that lack of good communication between leadership is a direct impediment to the Borough addressing the issues it faces.

In 2014 the Borough approved by Resolution No. 2014-01 rules governing Council operations and the conduct of Council meetings of the Borough, a copy of the Resolution is attached to this Emergency Action Plan as Appendix A, however the Borough is not complying with the Resolution as adopted.

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<sup>1</sup> <http://csis.org/blog/zimbabwe-bad-governance-bad-everyone>

**STEVENS & LEE**  
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- The Borough should immediately comply with the Resolution it adopted.

In an effort to improve communication amongst members of Council, Borough management and the public the Borough should:

- Circulate to all members of Council, make available at Borough Hall and post on the Borough's website the agenda for all regularly scheduled public meetings one week prior to the date of the meeting.
- Council Agenda should be set and approved by the Council President in consultation with members of Council.
- Meeting minutes as approved by Council should be posted to the Borough's website.

***Immediately Apply for Act 47 Determination***

During the course of our review of Borough operations we discovered the concerns stated above and in the effort to foster fiscal integrity of the Borough of Colwyn so that they may provide for the health, safety and welfare of their citizens; pay principal and interest on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial accounting procedures, budgeting and taxing practices, we recommend that:

**The Borough of Colwyn promptly file with the Pennsylvania Department of Community & Economic Development a Request for Determination of Municipal Financial Distress.**

The failure of the Borough to do so not only affects adversely the health, safety and welfare of its citizens but also of other citizens in this Commonwealth.

Section 201 of Act 47 enumerates eleven criteria, at least one of which must be present in order for a municipality to be considered for a distress determination by the Department. During the course of our review we believe that the Borough may meet multiple criteria however due to the very limited amount of data available only one (1) criterion as set forth in Section 201 of Act 47 would be able to be validated by DCED:

8. The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302, 303 of 602 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act, with respect to a pension fund during the fiscal year for which the payment was budgeted and has failed to take action within that time period to make required payments.

Regardless of an Act 47 filing or determination of Distress Status by DCED the Borough should immediately implement the following recommendations that represent an Emergency Action Plan for the Borough.

**STEVENS & LEE**  
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***Budget and Cash Flow***

The Borough should continuously monitor revenues and expenditures and its adherence to its adopted balanced budget.

- For fiscal year 2015 the Borough budgeted to receive \$1,046,220 in Real Estate Taxes with a general fund tax rate of 24.6 mills. The Borough's taxable assessment for 2015 is \$42,529,304.

$$\$42,529,304 \times 24.6 \text{ mills} = \$1,046,221$$

In 2014 the Borough received \$922,939 in Real Estate Taxes with a total billable property tax amount of \$1,117,158 for a collection percentage of 82.61%. Assuming an 82.61% collection percentage for 2015 the amount of revenue collected in Real Estate Taxes would be \$864,334 which is \$181,886 than the 2015 budgeted amount.

- The Borough should produce budget reports on a monthly basis which should include budget to actual revenues and expenditures showing monthly and year-to-date comparisons, and should make necessary line item budget adjustments.
- In order to maintain adequate cash balances through fiscal year 2015, the Borough should monitor its balance sheet and cash flow on a weekly and monthly basis.
- The Borough should also monitor, account for, and reconcile all inter-fund transfers on a monthly basis.
- The Borough should file the above weekly and monthly reports with Stevens & Lee and DCED and should notify them of the Borough's designee responsible for providing the reports.
- The Borough should notify Stevens & Lee and DCED if it utilizes any consultants or professionals in conjunction with the management of its affairs.
- The Borough should engage a Certified Public Accountant to assist with pre-closing activities and with the completion of the 2012, 2013 and 2014 audits to provide an accurate year-end fiscal position that will assist with developing the EIP or any subsequent report/s.

***Unfunded Debt***

The Borough should continue to pursue and complete, as soon as possible, the closing on a loan transaction for unfunded debt. During the course of our review we were made aware of outstanding liabilities consisting of:

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Pension MMO payments for 2012, 2013 and 2014 - \$234,373

Unpaid sewer fees - \$319,682

Insurance deductibles - \$150,000

Liquid Fuels Reimbursement - \$106,304

Other Bills Incurred Prior to 2015 - \$192,858

2015 Property Tax Revenue Shortfall - \$181,886

Total - \$1,185,103

- Upon closing, the Borough should pay all outstanding liabilities in addition to delinquent Pension, Sewer and Insurance Deductible payments not incorporated in the 2015 Budget.
- These funds should not be used for any liabilities incurred after February 28, 2015, or for any other purpose.

Obtaining an unfunded debt loan without Audited Financial Statements for 2012 and 2013 will not be feasible; as such the Borough must work to complete its 2012 and 2013 Audits as soon as possible.

A list of outstanding liabilities is attached to this Emergency Action Plan as Appendix B.

***Revenues***

The Borough should pursue increasing revenues by reviewing all outstanding delinquencies and taking appropriate action.

***Expenditures***

The Borough should limit expenditures in the following areas.

- Limit expenditures to necessary purchases only.
- Eliminate all capital purchases.
- Review and evaluate the need for its current vehicles.
- Review and evaluate utility and equipment expenses.

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***Labor and Personnel Costs***

Labor and personnel costs, including wages and benefits, comprise the majority of the Borough's expenditures. Therefore, these expenditures require careful monitoring and may require additional and/or modified reductions to achieve a balanced budget. These may include the following.

- Freeze wage and salary for all employees.
- Limit overtime and compensatory time for hourly employees, with advance approval required.
- Implement health care insurance cost reductions and containment measures, such as increased employee contributions, increased employee copays, increased deductibles, and other plan design changes.
- Consider changes in post-retirement health and other benefits, including the elimination of such benefits for new hires, and the appropriate funding of post-retirement benefits for existing employees.
- Freeze all existing benefits at current levels and do not add any new benefits.
- Evaluate all staffing levels.

The terms and conditions of employment for the police officers and certain non-uniformed employees are governed by their respective collective bargaining agreements. The Borough should engage in collective bargaining negotiations with the Colwyn Fraternal Order of Police and with SEIU Local 32 to identify potential changes for cost savings and the ability to maintain appropriate staffing levels. It is recommended that new collective bargaining agreements be limited to very short terms, such as one year, or provide for reopeners based on budgetary constraints.

The Borough and the Fraternal Order of Police are in the process of scheduling an interest arbitration hearing. The Borough should review and develop additional proposals and attempt to negotiate changes in advance of the arbitration hearing. Such proposals may include all of the items listed above, as well as the elimination of any minimum manning provisions, if applicable. If such negotiations do not result in an agreement, then the Borough should be prepared to fully support the necessity of its proposals in the interest arbitration proceedings.

The Borough should review its personnel policies, wages, and benefits for its employees who are not covered by the collective bargaining agreements to identify potential changes for cost savings and its ability to maintain appropriate staffing.

**STEVENS & LEE**  
LAWYERS & CONSULTANTS

February 12, 2015  
Page 7

***Conclusion***

The Borough should discuss potential concerns with Stevens & Lee and DCED as the Borough implements its 2015 budget and the recommendations in this Emergency Action Plan. This Plan is not intended to be a comprehensive solution and should be regularly reviewed and modified through ongoing dialog with and among all elected and appointed officials. Success will be achieved through the cooperation and coordination of all involved parties.

STEVENS & LEE

John W. Espenshade

cc: Paul Meuser, President of Council  
Massa Kamara, Vice President of Council  
Jesse P. Brundage, Council Member (Chairman of Public Safety and Chairman of Parks & Recreation)  
Fred Leshner, Council Member (Chairman of Finance and Chairman of Ordinance and Municipal Services)  
Patricia Williams, Council Member  
Martha VanAuken, Council Member  
Tonette Pray, Council Member  
Michael Blue, Mayor  
Paula M. Brown, Borough Manager  
Peter J. Zug, Deputy Secretary for Community Affairs & Development, DCED ([pzug@pa.gov](mailto:pzug@pa.gov))  
Marita J. Kelley, Local Government Policy Manager, Governor's Center for Local Government Services, DCED ([markelley@pa.gov](mailto:markelley@pa.gov))  
Jonathan Hendrickson, Local Government Policy Specialist, Governor's Center for Local Government Services, DCED ([jonhendric@pa.gov](mailto:jonhendric@pa.gov))  
Arthur McNulty, Local Government Policy Specialist, Governor's Center for Local Government Services, DCED ([arthmcnul@pa.gov](mailto:arthmcnul@pa.gov))  
Fred Reddig, Special Assistant for Act 47 and Local Government Affairs, Governor's Center for Local Government Services, DCED ([freddig@pa.gov](mailto:freddig@pa.gov))  
Susan R. Friedman, Esq., Stevens & Lee ([srf@stevenslee.com](mailto:srf@stevenslee.com))  
Ryan P. Hottenstein, Vice President, Financial Solutions ([rph@fsandl.com](mailto:rph@fsandl.com))

# Appendix A

**BOROUGH OF COLWYN  
RESOLUTION No. 2014-01**

**A RESOLUTION OF THE COUNCIL OF THE BOROUGH OF COLWYN, COUNTY OF DELAWARE AND  
COMMONWEALTH OF PENNSYLVANIA, ESTABLISHING RULES RELATED TO AND FOR THE CONDUCT OF  
COUNCIL MEETINGS.**

**WHEREAS**, the Borough of Colwyn Council desires to implement and adopt formal rules for the conduct of orderly, professional, and efficient meetings AND;

**WHEREAS**, the Borough of Colwyn Council desires for its members to have sufficient time and opportunity to review material to be discussed and/or deliberated at its meetings AND;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the Borough of Colwyn that:

1. The rules governing Council operations and the conduct of Council Meetings of the Borough of Colwyn will be as stated in the attached document entitled Borough of Colwyn, PA - Rules for Council Meetings
2. These rules may be revised by motion of council.

**NOW THEREFORE**, this Resolution is hereby approved and adopted by the Borough Council.

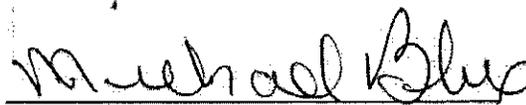
**RESOLVED** this 11<sup>TH</sup> day of September, 2014.

**ATTEST:**

**BOROUGH OF COLWYN:**

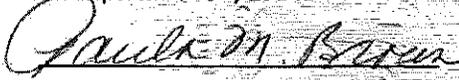
  
Borough Manager/Secretary

  
President of Council

  
Mayor

**CERTIFICATION**

I, Paula M. Brown, Chief Administrative Officer of the Borough of Colwyn certify that the foregoing Resolution was presented and duly adopted by the Borough Council at the Borough Council Meeting held on September 11, 2014.

A handwritten signature in cursive script, appearing to read "Paula M. Brown", written over a horizontal line.

**Paula M. Brown - Borough Manager/Borough Secretary**

**BOROUGH OF COLWYN, PA**  
**RULES FOR COUNCIL MEETINGS**

APPROVED: September 11, 2014  
Resolution 2014-01

## **RULES FOR COUNCIL MEETINGS**

### **RULES**

1. The purpose of these rules is to organize the meeting, provide everyone with a fair opportunity to speak, and keep discussion on track, thereby making more efficient use of members and residents time. These rules are not to be used to confuse issues or cause members to be hampered by needless procedural questions. Should the rules create such confusion, the presiding officer may choose to ignore certain rules without majority objection to move the meeting along. At all times, the borough code shall supersede any rule stated here.

### **PRESIDING OFFICER**

1. The President of Council will serve as presiding officer at each council meeting, or in his/her absence, the vice president. In the absence of both officers, the president pro tem will serve. The presiding officer alone shall decide questions of order without debate, although two members of council may appeal and ask for an immediate vote on the decision.
2. The presiding officer may discuss all issues brought to the floor by other members but may not make a motion without relinquishing the chair to another officer or, if unavailable, other member of council for the duration of the discussion. The presiding officer is bound by the same rules for speaking on a motion as prescribed in these rules. The presiding officer may recommend that a motion be made by another member of Council without relinquishing the chair and, as presiding officer, may request that a motion be presented on a topic of discussion.
3. **At all times, members shall direct comments to the presiding officer and shall address the presiding officer in order to be recognized before speaking.**
4. **These rules will be in effect for all meetings of council (workshop, regular, special, or of any other type)** and for public hearings except that a committee chair may act as presiding officer during public hearings that arise from discussions at his/her committee.

### **MOTIONS**

1. **To make a motion, a council member must be recognized by the presiding officer** either before his/her committee makes its report or when considering new or old business.
2. All motions must have a second before discussion on an item may commence. If there is no second, the motion fails for lack of a second and business moves forward. Motions that fail to obtain a second may not be immediately reconsidered unless another member makes the same motion.
3. **Once seconded, the chair may** restate it (or ask the person proposing the motion to restate it), rule it out of order, or call for debate or questions on the motion. Motions printed on the official agenda need not be restated.

**4. Discussion is limited to the topic of the motion. All other comments are out of order.**

The presiding officer may establish time limits for the course of the discussion consistent with limits imposed on other motions unless otherwise stated in these rules.

5. Each member of council shall have the right to speak **once** until all members of council interested in speaking have been given the opportunity to do so.
6. The presiding officer shall allow the member making the motion the first opportunity to speak followed by the member who seconded the motion. The member making the motion is also entitled to speak last.
7. If the presiding officer calls twice for "any further discussion" without anyone wishing to speak, discussion is automatically closed (unless the member making the motion has a final statement) and the vote is taken.
8. Types of motions with order of precedence are listed in the table at the end of these rules. This table shall serve as the model for all motions and govern consideration and precedence of any motion.
9. A motion or amendment may be withdrawn at any time before the vote by the person proposing it.
10. Motions re: ordinances, resolutions – The member making the motion to approve an ordinance shall announce the substance of the ordinance as part of his/her motion or, at the members discretion, read the title of the ordinance as part of the motion. It is not required that the entire ordinance be read unless a majority of council deems it appropriate during the debate on the motion. The same procedure shall be followed by a member making a motion to approve an ordinance for advertisement.

A member making a motion to approve a resolution shall announce the substance of the resolution as part of his/her motion. It is not required that the entire resolution be read unless a majority of council deems it appropriate during the debate on the motion.

**11. A motion that appears intended to distract council from resolving legitimate business may be objected to and ruled out of order by the presiding officer without debate.**

**PUBLIC PARTICIPATION**

1. As required by the PA Sunshine Act, council shall provide time during each of its meetings for members of the audience to speak on any issue and/or on published agenda items. If an item is added to the published agenda during the meeting, the presiding officer shall allow members of the audience to speak on that item before any vote.
2. Audience members are asked to sign in using the notebook provided by the borough secretary before (or after) the meeting. This list of meeting attendees will be maintained by the borough secretary, and shall be included in the minutes of that

meeting.

3. Those attending council meetings are permitted to use recording equipment to record both audio and video of council's proceedings subject to the following restrictions: (1) those intending to use audio or video recording equipment must inform the president of council prior to the commencement of council's meeting; and **(2) those using video equipment must station all video recording equipment in the rear of the council chamber along the wall or other such location so as not to obstruct the view of any audience member;** (3) those using video equipment may not use supplementary lighting devices; and (4) those using audio and/or video recording equipment must refrain from moving about the council chamber with the equipment during council's meeting.
4. The presiding officer may limit the time an individual has to speak to a maximum of 5 minutes. The presiding officer shall ask each citizen addressing council to state his/her name and address and to spell the last name for the record if necessary. Citizens shall be asked to speak from the speaker's stand and microphone at the front of the audience, if so equipped, or to stand at their seat so that he/she may be heard by all in the audience. **Comments shall be directed to the presiding officer who may or may not refer them to a member of council for comment.**
5. Groups of citizens in attendance who have business before council should select a spokesperson beforehand to present the group's views. The spokesperson shall state his/her name and address and shall spell the last name for the record if necessary. The spokesperson will be limited to a maximum of 10 minutes at the discretion of the presiding officer. The spokesperson may call on another member of the group to speak during his/her allotted time at the discretion of the presiding officer. Speakers shall be asked to speak from the speaker's stand and microphone at the front of the audience, if so equipped, or to stand at their seat so that he/she may be heard by all in the audience.

## **MINUTES**

1. Minutes are taken **to record the substance of each public meeting**. They are not transcripts detailing what each person said, but a **summary of official actions**. Tape recordings of each meeting will be made. Official copies of minutes are available after council has approved them at the following meeting. Draft copies will be available but will not be certified until Council has passed the Minutes. Official Minutes will be posted on the Borough Website [www.colwynborough.com](http://www.colwynborough.com) within two business days after approval by council.
2. Copies of approved minutes will be made after a written request is received and at a cost to cover the expense of doing so as established by administrative staff in accordance with the Borough Open Records Policy.
3. Following a voice vote, a member of council may specify that he/she wants to ensure that his/her vote is recorded as an aye or nay in the minutes. Otherwise, the minutes will simply state the results of the vote as determined by the chair.

### **EXECUTIVE SESSIONS**

1. Executive sessions, when called before a meeting, must end promptly at 7:00 PM in order that the business meeting of council may begin promptly at that time. Further business to be discussed may be handled following the meeting or at a time during the meeting of council's choosing.
2. The presiding officer shall publicly announce the executive session and the reason it was held following the roll call, or if held later in the meeting, the next time council is called into public session.
3. Executive sessions may be called by the presiding officer.
4. When space and circumstances permit, executive sessions should be held in a location that will permit the audience to remain in place with council retiring to an adjoining room for discussion.

### **BUSINESS MEETING AGENDAS**

1. Agenda items shall be submitted to the Borough Manager at least 3 days prior to the meeting in order to provide advance notice to council and the public of **tentative agenda items**. Last minute items may be added to the final agenda no later than 10:00 AM on the day of the meeting.
2. Tentative or draft agendas shall be posted and available for public review at both the Borough office and on the Borough website prior to the public meeting.
3. The presiding officer shall follow the printed agenda as presented and **shall rule out of order any motion or debate that deviates from the agenda unless otherwise permitted by a motion that takes precedence**. Members may consider items not on the agenda under new or old business or may add an item to a committee report during that report as outlined below.
4. The format for a business meeting agenda will, at minimum, include the following items in order:

**Call to Order**

**Pledge of**

**Allegiance**

**Roll Call**

**Announcement of Executive Session (if held before the meeting)**

**Public Comment (agenda items only)**

**Approval of Minutes**

**Solicitor's Report**

**Engineer's Report**

**Mayor's Report**

**Old Business**

**New Business**

**Fire Chief's Report**

**Committee  
Reports**

**Executive Session (if  
needed)**

**Adjournment**

Item(s) may be added to the above list.

5. Committee reports by the chair of the committee (or, in the chair's absence, another committee member) may contain motions approved by the committee and a general report on committee activities. Motions may be added to the agenda during a committee report if appropriate to the committee's business as long as the appropriate public comment is permitted. Likewise, items may be added to the published general report of the committee as the committee chair sees fit.
6. Format for Committee Meetings may be informal and is covered by the separate agenda set by the President of Council Committee Meetings start out with a report from the Chair – followed by Public Participation – followed by comments from council in an orderly fashion. No votes may take place at Committee Meetings.
7. Unfinished business will include a list of "Action Items" maintained by council and/or the borough secretary that will list (at a minimum) all outstanding issues, status of the issue, and the person / department responsible for following up on the issue. All open items on the list will be reviewed and updated at each meeting with an updated list being provided to all borough employees / officials within 3 business days of the conclusion of the council meeting.
8. Council business meetings and public hearings are scheduled to start promptly at 7:00 PM on the date specified by council. This time may be changed by council action for any and all meetings without amending these rules.

### **COUNCIL PACKETS**

Available at the Borough Hall in the Borough Manager's Office. At most times, all information will be emailed to Council so there may be a receipt of when Council was notified of information supplied.

### **QUORUM**

A majority of the membership of council then in office shall constitute a quorum. If, after taking roll at any public meeting, a quorum is not present, the presiding officer shall wait 15 minutes from the call to order before adjourning or recessing the meeting.

1. When referred to in these rules, "a majority of council" refers only to those members present and voting. Abstentions do not count as for or against any motion. A member should refrain from abstaining unless failure to do so could be considered a breach of ethics.

**Approved with accompanying Simplified Chart of Motions: September 11, 2014**

### SIMPLIFIED CHART OF MOTIONS - BOROUGH OF COLWYN

Motions are listed in order of priority. When a motion is pending, a member may not introduce a motion below it, but may introduce one above. Motion	Purpose of motion	Interrupt speaker?	Second needed?	Debate-able?	Amend-able?	Vote needed?
<b>PRIVILEGED MOTIONS:</b> <i>Require immediate action because they involve rights of the group. No other motion may be considered until they are settled. The President may recess or adjourn the meeting at his discretion.</i>						
I move we <b>adjourn*</b>	To close meeting	No	Yes	No	No	Majority
I move we <b>recess</b> until....	To recess meeting	No	Yes	No	Yes	Majority
<b>Point or question of privilege*</b>	To interrupt pending business due to a situation affecting comfort, convenience, integrity, rights or privileges of a meeting or an individual member; may also concern member or group's reputation or to present a motion of an urgent nature.	Yes	No	No	No	Chair rules
<b>SUBSIDIARY MOTIONS:</b> <i>Used to dispose of or change main motions</i>						
I move we <b>table</b> the matter	To postpone temporarily (later may <b>take from the table</b> unless time for consideration is specified when tabled)	No	Yes	No	No	Majority
I move the <b>previous question*</b>	To close debate	No	Yes	No	No	Two-thirds
I move <b>debate</b> on this motion be <b>limited to - *</b>	To limit (or extend) amount of time for debate	No	Yes	No	Yes	Two-thirds
I move we <b>postpone</b> this matter until ...*	To delay action	No	Yes	Yes (only on motion)	Yes	Majority
I move we <b>refer</b> this matter to a committee*	To study or take action	No	Yes	Yes	Yes	Majority
I move this motion be <b>amended</b> by ...*	To change or modify (See note below)	No	Yes	Yes	Yes	Majority
Motion to amend: is a motion to change, add words to, or omit words from an original motion and is used to clarify or improve the wording of the original motion. It must pertain to the original motion. An amendment can be amended by an amendment to the amendment but no further. If the original motion is debatable, the amendment is, too. However, debate must be limited to the amendment not the original motion. Amendments are voted on first, in reverse order and new amendments may be proposed once the original amendment has been disposed of. Once amendments have been voted on, debate returns to the original motion before voting. To speed business, an amendment that is a friendly (or pleasing to the proposer's) motion (or amendment) may be immediately enacted and the original motion (amendment) changed immediately as if it had been originally proposed.						
I move this motion be <b>postponed indefinitely*</b>	To reject a motion without actually voting on it	No	Yes	Yes (can go into main question)	No	Majority

## SIMPLIFIED CHART OF MOTIONS - Page 2

Motion	Purpose of motion	Interrupt speaker?	Second needed?	Debate-able?	Amend-able?	Vote needed?
<b>INCIDENTAL MOTIONS:</b> <i>Motions that arise during debate or other business of the meeting. Must be settled before returning to the business pending.</i>						
Point of Order	To correct a procedural error	Yes	No	No	No	Chair rules
Point of Information	To request information ( <i>out of order if used to state an opinion or idea</i> )	Yes	No	No	No	None
I appeal the chair's decision	To assert rights, used to appeal the chair's ruling on an issue	Yes	Yes	Yes	No	Majority
I raise a parliamentary inquiry	To raise a question of parliamentary procedure	Yes	No	No	No	Chair rules
I move to suspend the rules so that . . . ( <i>Will suspend rules only until the required action is taken</i> )	To permit council to take action when it is prevented from doing so by one or more of its rules.	No	Yes	No	No	Two Thirds
I object to the consideration of the question.*	To remove consideration of a motion that is undesirable or outrageous ( <i>see rules section on motions</i> )	Yes	No	No	No	Two Thirds
<b>MAIN MOTIONS:</b> <i>Proposals for final action to be taken or to change a decision.</i>						
I move that . . .*	To introduce new business	No	Yes	Yes	Yes	Majority
I move we reconsider our action regarding...	To change a decision ( <i>See note below</i> )	No	Yes	Yes	No	Majority
A motion to reconsider: 1) can only be made by a member who voted with the majority on the original decision; 2) may be brought up again at a subsequent meeting; 3) takes precedence over other motions and can be made at any time; 4) is not debatable if the motion on the original decision was not debatable; 5) in effect cancels the original vote on the motion to be reconsidered and reopens the matter for debate (if allowable originally) as if the original vote had never occurred. ( <i>NOTE: Because of the nature of the motion, council may choose to require a 2/3rds vote rather than a majority vote to approve this type of motion.</i> )						

\*Motions marked with an asterisk may be reconsidered subject to the following limits:

Previous question - can be reconsidered only before the previous question has been voted on

Refer - can be reconsidered if the committee to which the matter was referred has not started work on the matter

Postpone indefinitely - can be reconsidered only if the motion is passed

## Appendix B

**COLWYN BOROUGH BILL LIST PRIOR TO FY2015**

DATE	VENDOR	DESCRIPTION	AMOUNT	VENDOR AMOUNT
<b>2013 BILLS TO BE PAID</b>				
<b>Administrative</b>				
1/1/2014	Arthur J. Gallagher	McDonald Ford Bond	\$197.00	\$197.00
12/31/2013	Batch Out	Credit Card Merchant Statement	\$26.10	\$26.10
10/11/2013	Beneficial Bank	Visa Non compliance fee	\$63.83	
11/1/2013	Beneficial Bank	Visa Non compliance fee	\$55.90	
12/31/2013	Beneficial Bank	Visa Non compliance fee	\$53.90	\$173.63
5/13/2013	Burton Neil & Assoc Law Offices	Fireman's Fund Insurance overdue bill	\$2,500.00	\$2,500.00
12/31/2013	Department of Auditor General	Overpayment form 2012 for Non-Uniformed employee pension	\$3,235.00	\$3,235.00
11/1/2011	Martha Vanauken	Unauthorized Loan to Colwyn Borough	\$15,000.00	\$15,000.00
12/31/2013	Non Uniformed MMO	Unpaid MMO balance from 2012	\$16,831.41	
12/31/2013	Non Uniformed MMO	Unpaid MMO balance from 2013	\$11,611.17	\$28,442.58
12/31/2013	Safeguard Business Systems	checks	\$126.08	\$126.08
12/31/2013	Unemployment Compensation	UEC for Rochelle Bilal and B H Young	\$46,616.61	\$46,616.61
12/31/2013	Uniformed MMO	Unpaid MMO balance from 2012	\$41,291.78	
12/31/2013	Uniformed MMO	Unpaid MMO balance from 2013	\$48,209.67	
12/31/2013	Uniformed MMO	2012 State Aid Allocation – never deposited	\$10,728.00	\$100,229.45
<b>Administrative Total</b>			<b>\$196,546.45</b>	<b>\$196,546.45</b>
<b>Municipal Service</b>				
11/15/2013	A to U Services	Sink Hole – 3rd & Chestnut;	\$7,670.00	
3/10/2014	A to U Services	Bills from 2013 – 2nd & Pine Sewer video; Re-secure 204 Walnut St; Roa	\$7,547.00	\$15,217.00
2/28/2014	Darby Creek Joint Authority	2011,2012 &2013	\$319,682.17	\$319,682.17
9/1/2013	NDI Engineers	2013 unpaid bills now in litigation	\$56,499.45	\$56,499.45
9/10/2013	Rick's Tree Service	4th and Colwyn Ave – cut stump – remove log	\$700.00	\$700.00
<b>Municipal Service Total</b>			<b>\$392,098.62</b>	<b>\$392,098.62</b>
<b>Liquid Fuels</b>				
	2010-2012 Reimbursement		\$ 81,420.30	
5/15/2013	Lenni Electric Corporation	Street Light Maintenance	\$1,884.00	
	2013 Reimbursement		\$ 23,000.00	
<b>Liquid Fuels Total</b>			<b>\$ 106,304.30</b>	<b>\$ 106,304.30</b>
<b>Police</b>				
10/25/2013	Prime Network	Medical examination - No show – Borough was charged a balance of \$2C	\$200.00	\$200.00
5/20/2013	Trevor Parham	Amount set by former Solicitor Crystal Powell to be paid to Parham	\$7,954.00	\$7,954.00
<b>Police Total</b>			<b>\$8,154.00</b>	<b>\$8,154.00</b>
<b>TOTAL 2013 BILLS</b>			<b>\$703,103.37</b>	<b>\$703,103.37</b>

**COLWYN BOROUGH BILL LIST PRIOR TO FY2015**

DATE	VENDOR	DESCRIPTION	AMOUNT	VENDOR AMOUNT
<b>2014 BILLS TO BE PAID:</b>				
Administrative				
7/29/2014	JWF Specialty Company - Nat. Fire ins	Bryant Sterling - deductible	\$25,000.00	\$25,000.00
12/31/2014	Non Uniformed MMO	Unpaid MMO balance from 2014	\$0.00	\$0.00
12/1/2014	Portnoff Law Associates	tax collection for delinquent sewer and real estate – 125 notices	\$5,686.06	\$5,686.06
11/5/2014	Quill	paper, ink, label tape, folders	\$181.57	
11/5/2014	Quill	supplies	\$27.18	\$208.75
12/31/2014	Uniformed MMO	Unpaid MMO balance from 2014	\$105,701.29	\$105,701.29
<b>Administrative Total</b>			<b>\$136,596.10</b>	<b>\$136,596.10</b>
Municipal Services				
3/12/2014	A to U Services Inc.	Property Abatement – Board and Re-Secure 106 S. 3rd Street	\$750.00	\$750.00
12/31/2014	Catania Engineering	December	\$3,865.02	\$3,865.02
3/28/2014	General Sewer Service	jetvac	\$600.00	\$600.00
11/1/2014	KAJ General Contracting	garage roof	\$750.00	\$750.00
4/16/2014	Suburban Waste	Trash fee	\$7,553.00	\$7,553.00
<b>Municipal Service Total</b>			<b>\$13,518.02</b>	<b>\$13,518.02</b>
Police				
<b>Police Total</b>			<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL 2014 BILLS</b>			<b>\$150,114.12</b>	<b>\$150,114.12</b>
<b>GRAND TOTAL</b>			<b>\$853,217.49</b>	<b>\$853,217.49</b>

Pension Payments	\$	234,373
Unpaid Sewer	\$	319,682
Liquid Fuels	\$	106,304
Unpaid Pension, Sewer & Liquid Fuels	\$	660,360
Other	\$	192,858
	\$	853,217
Estimated Amount of Insurance Deductibles Owed	\$	150,000
Total with deductible	\$	1,003,217
2015 Tax Revenue Shortfall	\$	181,886
<b>Total:</b>	<b>\$</b>	<b>1,185,103</b>

**Appendix B, O'Doherty Audit Letters**



MICHAEL J. O'DOHERTY, P.C. *Certified Public Accountant*

A Professional Corporation

373 Baltimore Pike • Springfield, Pennsylvania 19064 • (610) 604-4700 • Fax (610) 544-9525

February 20, 2014

Colwyn Borough Council  
221 Spruce Street  
Colwyn, Pa 19023

Dear Council Members:

We have prepared the 2011 DCED Annual Financial Report for Colwyn Borough. In the preparation of the report we noted the following items:

1. During 2011 transactions were incurred in a Borough bank account from charges from a debit card. The Borough was unable to provide sufficient documentation to support all of these expenditures. Additionally there were no control procedures in place to monitor the use and charges from the debit card.
2. The Borough did not record all payroll transactions during 2011 to the general ledger. The payroll for the report was entered based on the information provided by the payroll processing company.
3. The Borough booked a loan from the Treasurer during 2011 in the amount of \$14,999. The Borough was unable to produce a promissory note in support of the loan, and no council approval was found to authorize the borrowing. The loan is reflected as proceeds from short term debt in this report.
4. Interfund activity. At various points the Borough transferred funds between the checking accounts of different fund accounts. The fund transfers were made for a variety of purposes. There was little documentation maintained to support the nature and purpose of the interfund transfers.
5. The borough receives funding for certain Highway repairs and maintenance expenses from the Liquid Fuel Fund. The expenses are reported annually to the Commonwealth on form MS965, which is subject to audit.  
Often expenses, including payroll, are paid from other funds for the highway fund. Primarily the general fund pays expenses on behalf of the Highway fund. At various points, the Borough makes fund transfers from the Highway fund to the General fund. The transfers were often made to represent reimbursements to the funds for the payments made for the Highway fund. The transfers were often made in what appeared to be approximated amounts of even, non calculated amounts.

Should you have any questions, please call or email me

Yours Truly,

Michael J. O'Doherty, CPA



MICHAEL J. O'DOHERTY, P.C. *Certified Public Accountant*

A Professional Corporation

373 Baltimore Pike • Springfield, Pennsylvania 19064 • (610) 604-4700 • Fax (610) 544-9525

January 29, 2014

Paula Brown  
Borough Manager  
Borough of Colwyn

Via email paulabrown185@aol.com

Dear Ms. Brown:

In response to our telephone conversation, I offer the following.

We were engaged to prepare the Colwyn Borough 2011 Annual Audit and Financial Report for the Pennsylvania Department of Community Affairs, form DCED-CLGS-30.

In the process of our work, we had made requests for information and documentation to complete the 2011 report. To date we have not received complete responses to the requested items. As a consequence we have been unable to complete the assignment.

We request that the Borough provide us with complete responses to our requests so that we may proceed. Upon receipt of the requested documentation, we evaluate the information to determine what procedures or documentation we deem necessary to proceed with the engagement.

Should you have any questions, please call or email me

Yours Truly,

Michael J. O'Doherty, CPA

**Appendix C, Colwyn Boro, AG Audit, 2014-06-27, Non-Uniformed Pension**



**COLWYN BOROUGH NON-UNIFORMED  
PENSION PLAN**

**DELAWARE COUNTY**

**COMPLIANCE AUDIT REPORT**

**FOR THE PERIOD**

**JANUARY 1, 2010 TO DECEMBER 31, 2012**

**COMMONWEALTH OF PENNSYLVANIA**

**EUGENE A. DEPASQUALE - AUDITOR GENERAL**

**DEPARTMENT OF THE AUDITOR GENERAL**



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Department of the Auditor General  
Harrisburg, PA 17120-0018  
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**EUGENE A. DePASQUALE  
AUDITOR GENERAL**

The Honorable Mayor and Borough Council  
Colwyn Borough  
Delaware County  
Colwyn, PA 19023

We have conducted a compliance audit of the Colwyn Borough Non-Uniformed Pension Plan for the period January 1, 2010 to December 31, 2012. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the finding contained in our prior audit report; and
2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. Our methodology addressed determinations about the following:

- Whether state aid was properly determined and deposited in accordance with Act 205 requirements.
- Whether employer contributions are determined and deposited in accordance with the plan's governing document and applicable laws and regulations.
- Whether employee contributions are required and, if so, are determined, deducted and deposited into the pension plan and are in accordance with the plan provisions and applicable laws and regulations.

- Whether benefit payments, if any, represent payments to all (and only) those entitled to receive them and are properly determined in accordance with applicable laws and regulations.
- Whether obligations for plan benefits are accurately determined in accordance with plan provisions and based on complete and accurate participant data; and whether actuarial valuation reports are prepared and submitted to the Public Employee Retirement Commission (PERC) in accordance with state law and selected information provided on these reports is accurate, complete and in accordance with plan provisions to ensure compliance for participation in the state aid program.
- Whether benefit payments have only been made to living recipients, based on the Social Security numbers found in the pension records for retirees and beneficiaries.
- Whether refunds are made to eligible members in accordance with the plan provisions and applicable laws and regulations.
- Whether transfers were properly authorized, accurate, timely and properly recorded.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Colwyn Borough Non-Uniformed Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the borough's internal controls as they relate to the borough's compliance with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objectives.

The results of our tests indicated that, in all significant respects, the Colwyn Borough Non-Uniformed Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further discussed later in this report:

Finding No. 1 – Failure To Pay The Minimum Municipal Obligation Of The Plan

Finding No. 2 – Failure To Deposit State Aid Into An Eligible Pension Plan

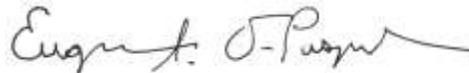
The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it.

As previously noted, one of the objectives of our audit of the Colwyn Borough Non-Uniformed Pension Plan was to determine compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. Act 205 was amended on September 18, 2009, through the adoption of Act 44 of 2009. Among several provisions relating to municipal pension plans, the act provides for the implementation of a distress recovery program. Three levels of distress have been established:

<u>Level</u>	<u>Indication</u>	<u>Funding Criteria</u>
I	Minimal distress	70-89%
II	Moderate distress	50-69%
III	Severe distress	Less than 50%

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it. However, we are extremely concerned about the funded status of the plan contained in the schedule of funding progress included in this report which indicates **the plan's funded ratio is 68.2% as of January 1, 2011. Based on this information, the Public Employee Retirement Commission issued a notification that the borough is currently in Level II moderate distress status.** We encourage borough officials to monitor the funding of the non-uniformed pension plan to ensure its long-term financial stability.

The contents of this report were discussed with officials of Colwyn Borough and, where appropriate, their responses have been included in the report. We would like to thank borough officials for the cooperation extended to us during the conduct of the audit.



EUGENE A. DEPASQUALE  
Auditor General

March 26, 2014

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## BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system state aid and of every municipal pension plan and fund in which general municipal pension system state aid is deposited.

Annual state aid allocations are provided from a 2 percent foreign (out-of-state) casualty insurance premium tax, a portion of the foreign (out-of-state) fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the Colwyn Borough Non-Uniformed Pension Plan is also governed by implementing regulations adopted by the Public Employee Retirement Commission published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes.

The Colwyn Borough Non-Uniformed Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 532. The plan was established January 1, 1992. Active members are required to contribute 5 percent of compensation to the plan. As of December 31, 2012, the plan had 1 active member, 2 terminated members eligible for vested benefits in the future and 7 retirees receiving pension benefits from the plan.

## **BACKGROUND – (Continued)**

As of December 31, 2012, selected plan benefit provisions are as follows:

### Eligibility Requirements:

Normal Retirement	Age 65 and 5 years of service.
Early Retirement	Age 55 and 10 years of vesting service.
Vesting	100% after 5 years of vesting service.

### Retirement Benefit:

1.65% of average compensation (three latest years) multiplied by years of service (maximum 30 years).

### Survivor Benefit:

Monthly annuity payable to qualified surviving spouse equal to 50% of the benefit the participant would have received if terminated at date of death.

### Disability Benefit:

None

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
STATUS OF PRIOR FINDING

Compliance With Prior Audit Recommendation

Colwyn Borough has complied with the prior audit recommendation concerning the following:

- Incorrect Data On Certification Form AG 385 Resulting In An Overpayment Of State Aid

During the current audit period, the borough reimbursed \$3,235 to the Commonwealth for the overpayment of state aid received in 2010.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 - Failure To Pay The Minimum Municipal Obligation Of The Plan**

Condition: Plan officials did not pay the minimum municipal obligation (MMO) of the non-uniformed pension plan for the years 2012 and 2013, as required by Act 205. The municipality had an unpaid MMO of \$13,581 for the year 2012 and an unpaid MMO of \$13,578 for the year 2013.

Criteria: With regard to the MMO, Section 302(c) of Act 205 states, in part:

Annually, the chief administrative officer of the pension plan shall determine the minimum obligation of the municipality with respect to the pension plan for the following plan year.

Section 302(d) of Act 205 states, in part:

The minimum obligation of the municipality shall be payable to the pension plan from the revenue of the municipality.

Furthermore, Section 302(e) of Act 205 states:

Any amount of the minimum obligation of the municipality which remains unpaid as of December 31 of the year in which the minimum obligation is due shall be added to the minimum obligation of the municipality for the following year, with interest from January 1 of the year in which the minimum obligation was first due until the date the payment is paid at a rate equal to the interest assumption used for the actuarial valuation report or the discount rate applicable to treasury bills issued by the Department of Treasury of the United States with a six-month maturity as of the last business day in December of the plan year in which the obligation was due, whichever is greater, expressed as a monthly rate and compounded monthly.

Cause: Plan officials failed to establish adequate internal control procedures to ensure the MMOs were paid in accordance with Act 205 requirements. In addition, the borough failed to deposit its 2012 and 2013 state aid allocations into their pension plans, as noted in Finding No. 2.

Effect: The failure to pay the MMO could result in the plan not having adequate resources to meet current and future benefit obligations to its members.

Due to the municipality's failure to pay the 2012 and 2013 MMOs by the December 31, 2012 and December 31, 2013 deadlines, the municipality must add the 2012 and 2013 MMOs to the current year's MMO and include interest, as required by Act 205.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 – (Continued)**

Furthermore, the borough's future state aid allocations may be withheld until the finding recommendation is complied with.

Recommendation: We recommend that the municipality pay the MMOs due to the non-uniformed pension plan for the years 2012 and 2013, with interest, in accordance with Section 303(e) of Act 205. A copy of the interest calculation must be submitted to this Department along with evidence of payment of the MMOs due.

Management's Response: Municipal officials agreed with the finding without exception. The borough provided documentation indicating that \$3,884 of its 2013 state aid allocation was remitted to the non-uniformed pension plan in partial satisfaction of the outstanding 2013 MMO due to the plan.

Auditor's Conclusion: The borough's full compliance with the finding recommendation will be monitored subsequent to the release of the audit report and through our next audit of the pension plan.

**Finding No. 2 – Failure To Deposit State Aid Into An Eligible Pension Plan**

Condition: The municipality did not deposit its 2012 and 2013 state aid allocations into an eligible pension plan. The municipality received its 2012 and 2013 state aid allocations in the amounts of \$10,728 and \$11,653, respectively, on October 2, 2012 and September 27, 2013, respectively; however, the state aid allocations were not deposited into an eligible pension plan.

Criteria: Section 402(g) of Act 205 states, in part:

. . . the total amount of the general municipal pension system State aid received by the municipality shall, within 30 days of receipt by the treasurer of the municipality, be deposited in the pension funds or the alternate funding mechanisms applicable to the respective pension plans.

Cause: Plan officials failed to establish adequate internal control procedures to ensure that the 2012 and 2013 state aid allocations were deposited timely into an eligible pension plan.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 – Continued**

Effect: When state aid is not deposited into a pension plan account, the funds are not available to pay operating expenses or for investment and the risk of misapplication is increased.

Furthermore, the borough's future state aid allocations may be withheld until the finding recommendation is complied with.

Recommendation: We recommend that the municipality deposit the borough's 2012 and 2013 state aid allocations in the total amount of \$22,381, plus interest earned during the period beyond the 30 day grace period allowed by Act 205, compounded annually, into an eligible pension plan. A copy of the interest calculation must be submitted to this Department along with evidence of the deposit of the state aid.

We also recommend that plan officials implement adequate internal control procedures to ensure that future state aid allocations are deposited into an eligible pension plan within 30 days of receipt by the municipal treasurer.

Management's Response: Municipal officials agreed with the finding without exception. The borough provided documentation indicating that \$7,769 of its 2013 state aid allocation was remitted to the police pension plan and \$3,884 was remitted to the non-uniformed pension plan.

Auditor's Conclusion: The borough's full compliance with the finding recommendation will be monitored subsequent to the release of the audit report and through our next audit of the pension plan.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
POTENTIAL WITHHOLD OF STATE AID

Conditions such as those reported by the findings contained in this audit report may lead to a total withholding of state aid in the future unless those findings are corrected. However, such action will not be considered if sufficient written documentation is provided to verify compliance with this Department's recommendation. Such documentation should be submitted to: Department of the Auditor General, Bureau of Municipal Pension & VFRA Audits, 316-D Finance Building, Harrisburg, PA 17120.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan's funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2007, is as follows:

	(1)	(2)	(3)	(4)	(5)	(6)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)	Covered Payroll (c)	Unfunded (Assets in Excess of) Actuarial Accrued Liability as a % of Payroll [(b-a)/(c)]
01-01-07	\$ 192,780	\$ 254,843	\$ 62,063	75.6%	\$ 182,815	33.9%
01-01-09	143,776	200,772	56,996	71.6%	81,636	69.8%
01-01-11	109,004	159,874	50,870	68.2%	27,655	183.9%

Note: The market values of the plan's assets at 01-01-09 and 01-01-11 have been adjusted to reflect the smoothing of gains and/or losses at 130 percent of market value. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
SUPPLEMENTARY INFORMATION  
(UNAUDITED)

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

Trends in unfunded (assets in excess of) actuarial accrued liability and annual covered payroll are both affected by inflation. Expressing the unfunded (assets in excess of) actuarial accrued liability as a percentage of annual covered payroll (Column 6) approximately adjusts for the effects of inflation and aids analysis of the plan's progress made in accumulating sufficient assets to pay benefits when due. Generally, where there is an unfunded actuarial accrued liability, the smaller this percentage, the stronger the plan. When assets are in excess of the actuarial accrued liability, the higher the bracketed percentage, the stronger the plan.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2007	\$ 16,089	100.0%
2008	15,183	100.0%
2009	16,220	100.0%
2010	15,636	100.0%
2011	14,648	100.0%
2012	13,581	0.0% *

\* See Finding No. 1 contained in this audit report.

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
SUPPLEMENTARY INFORMATION  
NOTES TO SUPPLEMENTARY SCHEDULES  
(UNAUDITED)

The information presented in the required supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date	January 1, 2011
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	38 years
Asset valuation method	Plan assets are valued using the method described in Section 210 of Act 205, as amended, subject to a ceiling of 130% of the market value of assets.
Actuarial assumptions:	
Investment rate of return	7.0%
Projected salary increases	4.5%
Cost-of-living adjustments	None assumed

COLWYN BOROUGH NON-UNIFORMED PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett  
Governor  
Commonwealth of Pennsylvania

Colwyn Borough Non-Uniformed Pension Plan  
Delaware County  
221 Spruce Street  
Colwyn, PA 19023

The Honorable Michael Blue	Mayor
Mr. Paul Meuser	Council President
Ms. Paula Brown	Borough Manager

This report is a matter of public record and is available online at [www.auditorgen.state.pa.us](http://www.auditorgen.state.pa.us). Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to: [news@auditorgen.state.pa.us](mailto:news@auditorgen.state.pa.us).

**Appendix D, Colwyn Boro, AG Audit, 2014-06-27, Police Pension**



**COLWYN BOROUGH POLICE  
PENSION PLAN**

**DELAWARE COUNTY**

**COMPLIANCE AUDIT REPORT**

**FOR THE PERIOD**

**JANUARY 1, 2010 TO DECEMBER 31, 2012**

**COMMONWEALTH OF PENNSYLVANIA**

**EUGENE A. DEPASQUALE - AUDITOR GENERAL**

**DEPARTMENT OF THE AUDITOR GENERAL**



**Commonwealth of Pennsylvania  
Department of the Auditor General  
Harrisburg, PA 17120-0018  
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**EUGENE A. DePASQUALE  
AUDITOR GENERAL**

The Honorable Mayor and Borough Council  
Colwyn Borough  
Delaware County  
Colwyn, PA 19023

We have conducted a compliance audit of the Colwyn Borough Police Pension Plan for the period January 1, 2010 to December 31, 2012. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of the audit were:

1. To determine if municipal officials took appropriate corrective action to address the finding contained in our prior audit report; and
2. To determine if the pension plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies.

Our audit was limited to the areas related to the objectives identified above. Our methodology addressed determinations about the following:

- Whether state aid was properly determined and deposited in accordance with Act 205 requirements.
- Whether employer contributions are determined and deposited in accordance with the plan's governing document and applicable laws and regulations.
- Whether employee contributions are required and, if so, are determined, deducted and deposited into the pension plan and are in accordance with the plan provisions and applicable laws and regulations.

- Whether benefit payments, if any, represent payments to all (and only) those entitled to receive them and are properly determined in accordance with applicable laws and regulations.
- Whether obligations for plan benefits are accurately determined in accordance with plan provisions and based on complete and accurate participant data; and whether actuarial valuation reports are prepared and submitted to the Public Employee Retirement Commission (PERC) in accordance with state law and selected information provided on these reports is accurate, complete and in accordance with plan provisions to ensure compliance for participation in the state aid program.
- Whether the special ad hoc postretirement adjustment granted to eligible pensioners is in accordance with applicable laws and regulations and whether the ad hoc reimbursement received by the municipality was treated in accordance with applicable laws and regulations.
- Whether benefit payments have only been made to living recipients, based on the Social Security numbers found in the pension records for retirees and beneficiaries.
- Whether transfers were properly authorized, accurate, timely and properly recorded.

Borough officials are responsible for establishing and maintaining effective internal controls to provide reasonable assurance that the Colwyn Borough Police Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. In conducting our audit, we obtained an understanding of the borough's internal controls as they relate to the borough's compliance with those requirements and that we considered to be significant within the context of our audit objectives, and assessed whether those significant controls were properly designed and implemented. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to provide reasonable assurance of detecting instances of noncompliance with legal and regulatory requirements or noncompliance with provisions of contracts, administrative procedures, and local ordinances and policies that are significant within the context of the audit objectives.

The results of our tests indicated that, in all significant respects, the Colwyn Borough Police Pension Plan was administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies, except as noted in the following findings further discussed later in this report:

- Finding No. 1 – Noncompliance With Prior Audit Recommendation - Failure To Update Plan's Governing Document
- Finding No. 2 – Failure To Pay The Minimum Municipal Obligation Of The Plan
- Finding No. 3 – Failure To Deposit State Aid Into An Eligible Pension Plan
- Finding No. 4 – Unauthorized Provision For A Killed In Service Benefit

Finding No. 1 contained in this audit report repeats a condition that was cited in our previous audit report that has not been corrected by borough officials. We are concerned by the borough's failure to correct this previously reported audit finding and strongly encourage timely implementation of the recommendation noted in this audit report.

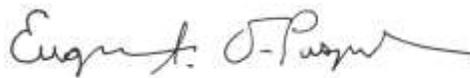
As previously noted, one of the objectives of our audit of the Colwyn Borough Police Pension Plan was to determine compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. Act 205 was amended on September 18, 2009, through the adoption of Act 44 of 2009. Among several provisions relating to municipal pension plans, the act provides for the implementation of a distress recovery program. Three levels of distress have been established:

<u>Level</u>	<u>Indication</u>	<u>Funding Criteria</u>
I	Minimal distress	70-89%
II	Moderate distress	50-69%
III	Severe distress	Less than 50%

The accompanying supplementary information is presented for purposes of additional analysis. We did not audit the information or conclude on it and, accordingly, express no form of assurance on it. However, we are extremely concerned about the funded status of the plan contained in the schedule of funding progress included in this report which indicates **the plan's funded ratio is 55.0% as of January 1, 2011. Based on this information, the Public Employee Retirement Commission issued a notification that the borough is currently in Level II moderate distress status.** We encourage borough officials to monitor the funding of the police pension plan to ensure its long-term financial stability.

The contents of this report were discussed with officials of Colwyn Borough and, where appropriate, their responses have been included in the report. We would like to thank borough officials for the cooperation extended to us during the conduct of the audit.

March 26, 2014



EUGENE A. DEPASQUALE  
Auditor General

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## BACKGROUND

On December 18, 1984, the Pennsylvania Legislature adopted the Municipal Pension Plan Funding Standard and Recovery Act (P.L. 1005, No. 205, as amended, 53 P.S. § 895.101 et seq.). The act established mandatory actuarial reporting and funding requirements and a uniform basis for the distribution of state aid to Pennsylvania's public pension plans. Section 402(j) of Act 205 specifically requires the Auditor General, as deemed necessary, to make an audit of every municipality which receives general municipal pension system state aid and of every municipal pension plan and fund in which general municipal pension system state aid is deposited.

Annual state aid allocations are provided from a 2 percent foreign (out-of-state) casualty insurance premium tax, a portion of the foreign (out-of-state) fire insurance tax designated for paid firefighters and any investment income earned on the collection of these taxes. Generally, municipal pension plans established prior to December 18, 1984, are eligible for state aid. For municipal pension plans established after that date, the sponsoring municipality must fund the plan for three plan years before it becomes eligible for state aid. In accordance with Act 205, a municipality's annual state aid allocation cannot exceed its actual pension costs.

In addition to Act 205, the Colwyn Borough Police Pension Plan is also governed by implementing regulations adopted by the Public Employee Retirement Commission published at Title 16, Part IV of the Pennsylvania Code and applicable provisions of various other state statutes including, but not limited to, the following:

Act 147 - Special Ad Hoc Municipal Police and Firefighter Postretirement Adjustment Act, Act of December 14, 1988 (P.L. 1192, No. 147), as amended, 53 P.S. § 896.101 et seq.

Act 600 - Police Pension Fund Act, Act of May 29, 1956 (P.L. 1804, No. 600), as amended, 53 P.S. § 761 et seq.

The Colwyn Borough Police Pension Plan is a single-employer defined benefit pension plan locally controlled by the provisions of Ordinance No. 426, as amended, and a plan agreement, effective January 1, 2003, adopting Act 600 provisions. The plan is also affected by the provisions of collective bargaining agreements between the borough and its police officers. The plan was established May 12, 1978. Active members are required to contribute 5 percent of compensation to the plan. As of December 31, 2012, the plan had 1 active member, no terminated members eligible for vested benefits in the future and 4 retirees receiving pension benefits from the plan.

## **BACKGROUND – (Continued)**

As of December 31, 2012, selected plan benefit provisions are as follows:

### Eligibility Requirements:

Normal Retirement    Age 55 and 25 years of service.

Early Retirement     20 years of service.

Vesting                100% after 12 years of service.

### Retirement Benefit:

50% of final 36 months average salary, plus \$100 per month after 26 years of service.

### Survivor Benefit:

Before Retirement Eligibility    Refund of member contributions plus interest. If killed in service, 100% of the officer's salary at the time of death.

After Retirement Eligibility     A monthly benefit equal to 50% of the pension the member was receiving or was entitled to receive on the day of the member's death. If killed in service, 100% of the officer's salary at the time of death.

### Service Related Disability Benefit:

Greater of 50% of final 36 months average compensation or 50% of base salary, offset by Social Security disability benefits received for the same injury.

COLWYN BOROUGH POLICE PENSION PLAN  
STATUS OF PRIOR FINDING

Noncompliance With Prior Audit Recommendation

Colwyn Borough has not complied with the prior audit recommendation concerning the following as further discussed in the Findings and Recommendations section of this report:

- Failure To Update Plan's Governing Document

COLWYN BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 1 - Noncompliance With Prior Audit Recommendation – Failure To Update Plan’s Governing Document**

Condition: As disclosed in the prior audit report, municipal officials have not updated the plan’s governing document through a properly executed ordinance to reflect the current benefit provisions of the plan. The plan agreement with Principal Financial Group was restated January 1, 2003 to adopt Act 600 provisions; however, this agreement was not adopted by ordinance. In addition, this plan agreement does not reflect several modifications to the provisions of the police pension plan made throughout the years through the collective bargaining process, which are codified in an appendix to the collective bargaining agreement between the borough and its police officers for the period January 1, 2007 through December 31, 2009. As of the date of this report, there is not a more recent collective bargaining agreement.

Criteria: Section 1(a)(1) of Act 600 states, in part:

Each borough, town and township. . . maintaining a police force of three or more full-time members shall . . . establish, by ordinance or resolution, a police pension fund. . . .

Furthermore, in Wynne v. Lower Merion Township, 181 Pa. Superior Ct., 524, the Pennsylvania Superior Court held that an ordinance may be amended only by another ordinance and not by a resolution.

Cause: Municipal officials failed to establish adequate internal control procedures to ensure compliance with the prior audit recommendation.

Effect: The plan’s current benefit provisions have not been adopted through a properly executed ordinance. This could result in inconsistent benefit calculations for plan members and/or eligible beneficiaries.

Recommendation: We again recommend that municipal officials, with the assistance of their solicitor, establish the police pension plan’s current benefit provisions through a properly executed ordinance at their earliest opportunity to do so.

Management Response: Management is working with the police on the collective bargaining agreement and both parties are resolving issues which would impact the governing document. Therefore, the borough is waiting to restate the governing document, in its entirety, to include such changes so that all plan documents will be consistent.

Auditor Conclusion: We are concerned that the municipality has not complied with the prior audit recommendation and encourage compliance at the earliest opportunity to do so.

COLWYN BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 - Failure To Pay The Minimum Municipal Obligation Of The Plan**

Condition: Plan officials did not pay the minimum municipal obligation (MMO) of the police pension plan for the years 2012 and 2013, as required by Act 205. The municipality had an unpaid MMO of \$49,532 for the year 2012 and an unpaid MMO of \$48,476 for the year 2013.

Criteria: With regard to the MMO, Section 302(c) of Act 205 states, in part:

Annually, the chief administrative officer of the pension plan shall determine the minimum obligation of the municipality with respect to the pension plan for the following plan year.

Section 302(d) of Act 205 states, in part:

The minimum obligation of the municipality shall be payable to the pension plan from the revenue of the municipality.

Furthermore, Section 302(e) of Act 205 states:

Any amount of the minimum obligation of the municipality which remains unpaid as of December 31 of the year in which the minimum obligation is due shall be added to the minimum obligation of the municipality for the following year, with interest from January 1 of the year in which the minimum obligation was first due until the date the payment is paid at a rate equal to the interest assumption used for the actuarial valuation report or the discount rate applicable to treasury bills issued by the Department of Treasury of the United States with a six-month maturity as of the last business day in December of the plan year in which the obligation was due, whichever is greater, expressed as a monthly rate and compounded monthly.

Cause: Plan officials failed to establish adequate internal control procedures to ensure the MMOs were paid in accordance with Act 205 requirements. In addition, the borough failed to deposit its 2012 and 2013 state aid allocations into their pension plans, as noted in Finding No. 3.

Effect: The failure to pay the MMO could result in the plan not having adequate resources to meet current and future benefit obligations to its members.

Due to the municipality's failure to pay the 2012 and 2013 MMOs by the December 31, 2012 and December 31, 2013 deadlines, the municipality must add the 2012 and 2013 MMOs to the current year's MMO and include interest, as required by Act 205.

COLWYN BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 2 - (Continued)**

Furthermore, the borough's future state aid allocations may be withheld until the finding recommendation is complied with.

Recommendation: We recommend that the municipality pay the MMOs due to the police pension plan for the years 2012 and 2013, with interest, in accordance with Section 303(e) of Act 205. A copy of the interest calculation must be submitted to this Department along with evidence of payment of the MMOs due.

Management's Response: Municipal officials agreed with the finding without exception. The borough provided documentation indicating that \$7,769 of its 2013 state aid allocation was remitted to the police pension plan on March 28, 2014, in partial satisfaction of the outstanding 2013 MMO due to the plan.

Auditor's Conclusion: The borough's full compliance with the finding recommendation will be monitored subsequent to the release of the audit report and through our next audit of the pension plan.

**Finding No. 3 - Failure To Deposit State Aid Into An Eligible Pension Plan**

Condition: The municipality did not deposit its 2012 and 2013 state aid allocations into an eligible pension plan. The municipality received its 2012 and 2013 state aid allocations in the amounts of \$10,728 and \$11,653, respectively, on October 2, 2012 and September 27, 2013, respectively; however, the state aid allocations were not deposited into an eligible pension plan.

Criteria: Section 402(g) of Act 205 states, in part:

. . . the total amount of the general municipal pension system State aid received by the municipality shall, within 30 days of receipt by the treasurer of the municipality, be deposited in the pension funds or the alternate funding mechanisms applicable to the respective pension plans.

Cause: Plan officials failed to establish adequate internal control procedures to ensure that the 2012 and 2013 state aid allocations were deposited timely into an eligible pension plan.

COLWYN BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 3 - (Continued)**

Effect: When state aid is not deposited into a pension plan account, the funds are not available to pay operating expenses or for investment and the risk of misapplication is increased.

Furthermore, the borough's future state aid allocations may be withheld until the finding recommendation is complied with.

Recommendation: We recommend that the municipality deposit the borough's 2012 and 2013 state aid allocations in the total amount of \$22,381, plus interest earned during the period beyond the 30 day grace period allowed by Act 205, compounded annually, into an eligible pension plan. A copy of the interest calculation must be submitted to this Department along with evidence of the deposit of the state aid.

We also recommend that plan officials implement adequate internal control procedures to ensure that future state aid allocations are deposited into an eligible pension plan within 30 days of receipt by the municipal treasurer.

Management's Response: Municipal officials agreed with the finding without exception. The borough provided documentation indicating that \$7,769 of its 2013 state aid allocation was remitted to the police pension plan and \$3,884 was remitted to the non-uniformed pension plan.

Auditor's Conclusion: The borough's full compliance with the finding recommendation will be monitored subsequent to the release of the audit report and through our next audit of the pension plan.

**Finding No. 4 - Unauthorized Provision For A Killed In Service Benefit**

Condition: Colwyn Borough maintains a police pension plan governed by the provisions of Act 600, as amended. Prior to the adoption of Act 51 of 2009, Act 600 contained a mandatory killed in service benefit provision; however, Act 51 specifically repealed the section of Act 600 that referenced the mandatory killed in service benefit. During the prior audit period, a verbal observation was given to plan officials notifying them of the passage of Act 51. It was recommended that plan officials review the act's implications for the police pension plan and the collective bargaining agreement in effect for the period January 1, 2007 to December 31, 2009 with their municipal solicitor. During the current audit period, it has been determined that the pension plan document continues to provide for a killed in service benefit that is no longer authorized by Act 600. Furthermore, as of the date of this report, there is not a more recent collective bargaining agreement.

COLWYN BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 4 - (Continued)**

Section 5.01(a) of the plan document states, in part:

If the Participant dies in the line of duty, ... the survivor annuity shall be equal to 100% of the Participant's Salary as of the date of his death.

Criteria: Section 1(a) of Act 51 of 2009 states, in part:

In the event a law enforcement officer, ambulance service or rescue squad member, firefighter, certified hazardous material response team member or National Guard member dies as a result of the performance of his duties, such political subdivision, Commonwealth agency or, in the case of National Guard members, the Adjutant General, or, in the case of a member of a Commonwealth law enforcement agency, the authorized survivor or the agency head, within 90 days from the date of death, shall submit certification of such death to the Commonwealth.

In addition, Section 1(d) of Act 51 of 2009 states, in part:

. . . the Commonwealth shall, from moneys payable out of the General Fund, pay to the surviving spouse or, if there is no surviving spouse, to the minor children of the paid firefighter, ambulance service or rescue squad member or law enforcement officer who died as a result of the performance of his duty the sum of \$100,000, adjusted in accordance with subsection (f) of this section, and an amount equal to the monthly salary, adjusted in accordance with subsection (f) of this section, of the deceased paid firefighter, ambulance service or rescue squad member or law enforcement officer, less any workers' compensation or pension or retirement benefits paid to such survivors, and shall continue such monthly payments until there is no eligible beneficiary to receive them. For the purpose of this subsection, the term "eligible beneficiary" means the surviving spouse or the child or children under the age of eighteen years or, if attending college, under the age of twenty-three years, of the firefighter, ambulance service or rescue squad member or law enforcement officer who died as a result of the performance of his duty. When no spouse or minor children survive, a single sum of \$100,000, adjusted in accordance with subsection (f) of this section, shall be paid to the parent or parents of such firefighter, ambulance service member, rescue squad member or law enforcement officer. (Emphasis added)

COLWYN BOROUGH POLICE PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

**Finding No. 4 - (Continued)**

Furthermore, Section 2 of Act 51 of 2009 states:

Repeals are as follows:

- (1) The General Assembly declares that the repeals under paragraph (2) are necessary to effectuate the amendment of section 1 of the act.
- (2) The following parts of acts are repealed:
  - (i) Section 5(e)(2) of the act of May 29, 1956 (1955 P.L.1804, No. 600), referred to as the Municipal Police Pension Law.
  - (ii) Section 202(b)(3)(vi) and (4)(vi) of the act of December 18, 1984 (P.L.1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act.

Therefore, since Act 51 specifically repealed the killed in service provision of Act 600 and the funding provisions for the killed in service benefit that were contained in Act 205, the provision of a killed in service benefit is no longer authorized.

Cause: Plan officials are currently negotiating the collective bargaining agreement and the killed in service provision is being discussed as part of the negotiations.

Effect: Since Section 1 of Act 51 provides that the Commonwealth is obligated to pay the killed in service benefit less any pension or retirement benefits paid to eligible survivors, the continued provision of a killed in service benefit could result in the pension plan being obligated to pay a benefit that is no longer authorized by Act 600, and would have been paid entirely by the Commonwealth absent such provision.

Recommendation: We recommend that the municipality review the plan's killed in service benefit with its solicitor in conjunction with Act 51 of 2009, and eliminate this unauthorized benefit provision at its earliest opportunity to do so.

Management's Response: The borough is in the process of negotiating the police collective bargaining agreement.

Auditor's Conclusion: Compliance will be evaluated during our next audit of the plan.

COLWYN BOROUGH POLICE PENSION PLAN  
POTENTIAL WITHHOLD OF STATE AID

Conditions such as those reported by Finding Nos. 2 and 3 contained in this audit report may lead to a total withholding of state aid in the future unless those findings are corrected. However, such action will not be considered if sufficient written documentation is provided to verify compliance with this department's recommendation. Such documentation should be submitted to: Department of the Auditor General, Bureau of Municipal Pension & VFRA Audits, 316-D Finance Building, Harrisburg, PA 17120.

COLWYN BOROUGH POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF FUNDING PROGRESS

Historical trend information about the plan is presented herewith as supplementary information. It is intended to help users assess the plan's funding status on a going-concern basis, assess progress made in accumulating assets to pay benefits when due, and make comparisons with other state and local government retirement systems.

The actuarial information is required by Act 205 biennially. The historical information, beginning as of January 1, 2007, is as follows:

	(1)	(2)	(3)	(4)	(5)	(6)
Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded (Assets in Excess of) Actuarial Accrued Liability (b) - (a)	Funded Ratio (a)/(b)	Covered Payroll (c)	Unfunded (Assets in Excess of) Actuarial Accrued Liability as a % of Payroll [(b-a)/(c)]
01-01-07	\$ 663,314	\$ 902,135	\$ 238,821	73.5%	\$ 138,550	172.4%
01-01-09	561,149	938,965	377,816	59.8%	101,875	370.9%
01-01-11	590,335	1,074,131	483,796	55.0%	None	N/A

Note: The market values of the plan's assets at 01-01-09 and 01-01-11 have been adjusted to reflect the smoothing of gains and/or losses at 130 percent of market value. This method will lower contributions in years of less than expected returns and increase contributions in years of greater than expected returns. The net effect over long periods of time is to have less variance in contribution levels from year to year.

COLWYN BOROUGH POLICE PENSION PLAN  
SUPPLEMENTARY INFORMATION  
(UNAUDITED)

The comparability of trend information is affected by changes in actuarial assumptions, benefit provisions, actuarial funding methods, accounting policies, and other changes. Those changes usually affect trends in contribution requirements and in ratios that use the actuarial accrued liability as a factor.

Analysis of the dollar amount of the actuarial value of assets, actuarial accrued liability, and unfunded (assets in excess of) actuarial accrued liability in isolation can be misleading. Expressing the actuarial value of assets as a percentage of the actuarial accrued liability (Column 4) provides one indication of the plan's funding status on a going-concern basis. Analysis of this percentage, over time, indicates whether the system is becoming financially stronger or weaker. Generally, the greater this percentage, the stronger the plan.

Trends in unfunded (assets in excess of) actuarial accrued liability and annual covered payroll are both affected by inflation. Expressing the unfunded (assets in excess of) actuarial accrued liability as a percentage of annual covered payroll (Column 6) approximately adjusts for the effects of inflation and aids analysis of the plan's progress made in accumulating sufficient assets to pay benefits when due. Generally, where there is an unfunded actuarial accrued liability, the smaller this percentage, the stronger the plan. When assets are in excess of the actuarial accrued liability, the higher the bracketed percentage, the stronger the plan.

COLWYN BOROUGH POLICE PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF CONTRIBUTIONS FROM EMPLOYER  
 AND OTHER CONTRIBUTING ENTITIES

Year Ended December 31	Annual Required Contribution	Percentage Contributed
2007	\$ 50,684	100.0%
2008	51,047	100.0%
2009	50,677	100.0%
2010	49,955	100.0%
2011	41,150	100.0%
2012	49,532	0.0% *

\* - See Finding No. 2 contained in this audit report.

COLWYN BOROUGH POLICE PENSION PLAN  
SUPPLEMENTARY INFORMATION  
NOTES TO SUPPLEMENTARY SCHEDULES  
(UNAUDITED)

The information presented in the required supplementary schedules was determined as part of the actuarial valuation at the date indicated. Additional information as of the latest actuarial valuation date follows:

Actuarial valuation date	January 1, 2011
Actuarial cost method	Entry age normal
Amortization method	Level dollar
Remaining amortization period	11 years
Asset valuation method	Plan assets are valued using the method described in Section 210 of Act 205, as amended, subject to a ceiling of 130% of the market value of assets.
Actuarial assumptions:	
Investment rate of return	7.25%
Projected salary increases	5.0%
Cost-of-living adjustments	3.0% per annum

COLWYN BOROUGH POLICE PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Tom Corbett  
Governor  
Commonwealth of Pennsylvania

Colwyn Borough Police Pension Plan  
Delaware County  
221 Spruce Street  
Colwyn, PA 19023

The Honorable Michael Blue	Mayor
Mr. Paul Meuser	Council President
Ms. Paula Brown	Borough Manager

This report is a matter of public record and is available online at [www.auditorgen.state.pa.us](http://www.auditorgen.state.pa.us). Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to: [news@auditorgen.state.pa.us](mailto:news@auditorgen.state.pa.us).

**Appendix E, Excerpt, PERC 2014 Status Report, Local Government Pension Plans**

TABLE I

## GENERAL MUNICIPAL PENSION PLAN DATA

CO.	MUNICIPALITY	PLAN TYPE	MEMBERS		ACCRUED LIABILITY (\$)	ASSETS (\$)	UNFUNDED ACCRUED LIABILITY		FUNDED RATIO (%)
			ACTIVE	RETIRED			(\$)	% OF PAY	
DEL	Clifton Heights Borough	N U	3	0	0	0	0	0	100
DEL	Clifton Heights Borough	P C	8	10	5,829,005	4,815,915	1,013,090	131	83
DEL	Collingdale Borough	N C	13	6	2,662,682	2,507,913	154,769	26	94
DEL	Collingdale Borough	P C	8	7	5,684,410	3,639,787	2,044,623	265	64
DEL	Colwyn Borough	N C	1	7	189,314	115,070	74,244	193	61
DEL	Colwyn Borough	P C	1	4	1,257,865	569,956	687,909	1,183	45
DEL	Concord Township	N C	21	6	4,141,751	3,689,139	452,612	35	89
DEL	Darby Borough	N C	4	8	952,618	859,536	93,082	58	90
DEL	Darby Borough	P C	16	16	9,073,653	6,080,471	2,993,182	183	67
DEL	Darby Township	N C	7	0	402,046	408,504	-6,458	-2	102
DEL	Darby Township	P C	14	10	7,864,492	4,619,913	3,244,579	266	59
DEL	Delaware Co Reg Water Quality Control Au	N1 A	49	0	1,148,609	1,148,609	0	0	100
DEL	Delaware Co Reg Water Quality Control Au	N2 C	115	6	12,730,961	8,091,840	4,639,121	63	64
DEL	Delaware County Housing Authority	N A	71	0	6,091,850	6,091,850	0	0	100
DEL	Delaware County Solid Waste Authority	N C	22	12	3,689,899	3,583,355	106,544	9	97
DEL	East Lansdowne Borough	P C	3	4	1,791,984	1,003,893	788,091	314	56
DEL	Eddystone Borough	P C	5	7	3,225,563	2,036,570	1,188,993	302	63
DEL	Edgmont Township	N A	5	0	93,275	93,275	0	0	100
DEL	Folcroft Borough	N C	4	1	619,336	733,043	-113,707	-62	118
DEL	Folcroft Borough	P C	10	7	5,980,806	4,912,896	1,067,910	127	82
DEL	Glenolden Borough	N C	7	4	541,286	494,515	46,771	16	91
DEL	Glenolden Borough	P C	7	7	6,218,508	4,116,617	2,101,891	308	66
DEL	Haverford Township	N1 C	126	78	29,003,965	22,629,304	6,374,661	89	78
DEL	Haverford Township	N2 A	10	0	19,853	19,853	0	0	100
DEL	Haverford Township	P C	70	76	38,045,779	25,093,752	12,952,027	212	66
DEL	Lansdowne Borough	N A	33	0	1,918,610	1,918,610	0	0	100
DEL	Lansdowne Borough	P C	15	16	9,420,806	7,452,178	1,968,628	153	79
DEL	Lower Chichester Township	N A	5	0	393,256	393,256	0	0	100
DEL	Lower Chichester Township	P C	5	2	901,905	912,661	-10,756	-3	101
DEL	Marcus Hook Borough	N C	6	9	2,076,488	1,802,874	273,614	121	87
DEL	Marcus Hook Borough	P C	5	7	4,111,525	2,452,494	1,659,031	390	60
DEL	Marple Township	N C	63	15	5,886,563	4,230,035	1,656,528	56	72
DEL	Marple Township	P C	29	34	19,136,823	10,190,505	8,946,318	302	53
DEL	Media Borough	N C	16	15	5,640,978	5,018,748	622,230	75	89
DEL	Media Borough	P C	16	6	10,356,555	7,803,596	2,552,959	164	75
DEL	Middletown Township	N C	19	9	2,986,539	2,960,232	26,307	3	99
DEL	Middletown Township Sewer Authority	N C	2	5	734,789	755,640	-20,851	-13	103
DEL	Millbourne Borough	P C	0	4	781,854	321,939	459,915	*	41
DEL	Morton Borough	N A	3	0	69,622	69,622	0	0	100
DEL	Morton Borough	P C	4	2	2,293,059	1,661,243	631,816	172	72
DEL	Nether Providence Township	N C	14	3	1,948,113	1,410,881	537,232	73	72
DEL	Nether Providence Township	P C	14	13	7,802,988	3,978,288	3,824,700	313	51
DEL	Newtown Township	N C	13	7	2,125,093	2,384,874	-259,781	-40	112
DEL	Newtown Township	P C	16	9	9,623,967	8,532,087	1,091,880	74	89
DEL	Norwood Borough	N C	3	4	228,878	241,297	-12,419	-9	105

TABLE IV

**Listing of Self-Insured, Defined Benefit Municipal Pension Plans  
Reporting Funding Deficiencies in 2012**

CO.	MUNICIPALITY	PLAN TYPE	FUNDING DEFICIENCY (\$)	FUNDING DEFICIENCY AS A % OF			FUNDED RATIO %	FUNDING DEFICIENCY RESOLVED
				MMO	TOTAL COST	PAY		
<b><u>CRITICAL FUNDING DEFICIENCIES</u></b>								
ALL	Avalon Borough	P	49,184	41	31	13	73	Yes
ALL	Leetsdale Borough	P	50,297	100	59	18	67	Yes
CMB	Dale Borough	N	5,998	100	233	6	79	Yes
CHE	Honey Brook Borough	P	17,328	100	102	29	82	Yes
CHE	West Brandywine Township	P	64,682	52	34	16	72	Yes
CUM	Newville Borough	P	73,649	100	291	58	78	No
DAU	Middletown Borough	N	308,340	65	58	20	72	Yes
DAU	Middletown Borough	P	209,864	68	62	21	73	Yes
DAU	Cumb-Dau-Hbg Transportation Authority	N2	79,802	53	105	25	87	Yes
DEL	Colwyn Borough	N	14,606	50	134	38	61	Yes
DEL	Colwyn Borough	P	52,515	56	55	90	45	Yes
DEL	Darby Borough	P	1,008,306	85	126	62	67	Yes
LAC	Carbondale City	F	161,066	100	169	32	92	Yes
LAC	Carbondale City	P	444,257	100	186	54	90	Yes
LAC	Dunmore Borough	F	176,174	33	54	19	80	Yes
LAC	Dunmore Borough	P	599,221	54	105	48	64	Yes
LEH	Lynn Township	N1	14,485	100	167	7	83	Yes
LUZ	Forty Fort Borough	P	57,619	62	30	26	58	Yes
LUZ	Wyoming Borough	P	158,096	61	122	102	83	No
SCH	Frackville Borough	P	177,455	100	105	81	54	Yes
SCH	Shenandoah Borough Municipal Authority	N	5,491	14	128	2	96	Yes
SUS	New Milford Township	N	27,686	99	73	25	41	Yes
WES	Jeannette City	P	414,406	100	69	39	58	Yes
<b><u>NON-CRITICAL FUNDING DEFICIENCIES</u></b>								
ADA	Liberty Township	P	9,718	44	77	17	115	
ALL	Avalon Borough	N	454	4	4	0	97	
ALL	Green Tree Borough	P	143,896	52	74	17	89	
ALL	Munhall Borough	P	262,757	93	77	17	95	
ALL	Munhall Borough	N	204,427	42	94	20	84	
ALL	Pleasant Hills Borough	N	57,247	43	28	5	86	
ALL	Pleasant Hills Borough	P	44,880	33	19	4	97	
ALL	Sewickley Borough	P	12,213	11	6	2	84	
ARM	Kiltanning Borough	P	53,165	30	26	10	75	
BEA	Harmony Township	P	22,623	33	27	15	89	
BER	Birdsboro Borough	P	4,080	17	6	1	119	
BRA	Towanda Borough	P	8,707	11	6	3	58	
CMB	Johnstown City Housing Authority	N1	17,256	4	4	1	93	
CEN	Phillipsburg Borough	N	2,416	10	8	1	113	
CHE	Upper Uwchlan Township	N	14,069	21	15	2	98	
CUM	Newville Borough	N	12,117	100	101	6	141	
DEL	Darby Township	P	968	0	0	0	59	
DEL	Ridley Park Borough	P	8,364	9	6	1	105	
ERI	Albion Borough	N	24,135	40	29	4	76	
IND	Rayne Township	N	5,206	100	50	4	97	
LAC	Throop Borough	P	16,772	17	7	4	55	
LAN	Southern Regional Police Department	P	4,903	6	5	1	119	
LAN	Susquehanna Regional Police Department	P	8,942	5	5	1	90	
LEH	Macungie Borough	N	1,139	2	2	0	102	
LUZ	Edwardsville Borough	P	32,948	46	64	12	96	

**Appendix F, Bills prior to 2015**

Martha Vanauken	Loan made in 2011	\$14,999.00
Michael Schleigh Esq.	Injunction - not to be paid	\$4,013.11
A to U Services Inc.	Plate Rental - Sinkhole 3rd & Chestnut	\$13,417.00
The Prime Network	Bill for cancellation of Bryan Hills evaluation	\$200.00
Darby Creek Joint Authority	4th Quarter -2014 - payment	69,875.25
JWF Specialty Company - National Fire Insurance	Bryant Sterling - deductible	\$25,000.00
PA Unemployment	Statement of Account	\$46,616.61
NDI Engineering	Lawsuit - back bills	\$56,499.45
Darby Creek Joint Authority	Arrears for 2011, 2012, 2013	\$319,682.00
Liquid Fuels	Reimbursement for misappropriated funds	\$106,304.00
MMO	Pension payments for 2012, 2013 partial 2014	\$234,373.00
Insurance Deductibles	potential lawsuits - insurance deductibles	\$150,000.00
Ridley Excavating	demolition -204 Walnut Street	\$20,000.00
	<b>TOTAL</b>	<b>\$1,060,979.42</b>

**Appendix G, PA Unemployment Compensation Statement**



**pennsylvania**

DEPARTMENT OF LABOR & INDUSTRY

OFFICE OF UNEMPLOYMENT COMPENSATION TAX SERVICES

Date: 01/11/2015

UC Account Number: 2338197

COLWYN BOROUGH HALL  
COLWYN BOROUGH  
221 SPRUCE ST  
COLWYN PA 19023

**PENNSYLVANIA UNEMPLOYMENT COMPENSATION  
STATEMENT OF ACCOUNT**

Dear Employer:

Your account shows a total balance due of \$46,616.61, interest calculated through 01/11/2015. See page two for an itemization.

You may pay amounts due electronically through your employer self-service portal at [www.paucemployers.state.pa.us](http://www.paucemployers.state.pa.us), or you may mail your remittance, made payable to the "Pennsylvania Unemployment Compensation Fund" (PA UC Fund), to the Office of Unemployment Compensation Tax Services, PO Box 60848, Harrisburg, PA 17106-0848. *If mailing payment please include the Payment Voucher and add your UC Account number on your remittance.*

Payment of current benefit charges must be received within 30 days from the date of this notice to avoid the assessment of interest charges.

Interest shall continue to accrue on the assessed contributions at the rate determined by the Department of Revenue (DOR) under Section 806 of the Fiscal Code, 72 P.S. §806, per month or fraction of a month, until the contributions are paid or, effective 01/01/06, the interest rate will be higher of the DOR rate or 9%.

If you have any questions, please contact the UC Tax Information Line at 1-866-403-6163 or, within the Harrisburg area at 717-787-7679, on weekdays from 8:00 a.m. until 4:30 p.m., Eastern Standard Time. Visit your employer self-service portal at [www.paucemployers.state.pa.us](http://www.paucemployers.state.pa.us) for additional information regarding your account, or access the department website shown below.

# NOTICE TO REIMBURSABLE EMPLOYERS OF COMPENSATION CHARGED

OFFICE OF UC TAX SERVICES  
EMPLOYER ACCOUNT SERVICES  
651 BOAS STREET  
HARRISBURG, PA 17121

IMPORTANT: PLEASE REFER TO THE ACCOMPANYING FORM UC-1863/6 FOR THE AMOUNT PAYABLE  
TO THE PENNSYLVANIA UNEMPLOYMENT COMPENSATION FUND.

SEE REVERSE SIDE  
FOR EXPLANATION

23-38197M  
EMPLOYER  
ACCOUNT NUMBER

23-38197M  
BOROUGH OF COLWYN  
PAYCHEX INC  
PO BOX 2000  
HENNERIETTA NY 14467

0001  
PAGE  
NO.

1 PLANT NO.	2 SOCIAL SECURITY NUMBER	3 CLAIMANT'S NAME	4			5			6			7			8 AMOUNT OF COMP.	9 PER- CENT OF CHARGE	10 AMOUNT OF CHARGE	11 LOCAL OFFICE NUMBER
			A	B	C	MO.	DAY	YR.	MO.	DAY	YR.	MO.	DAY	YR.				
1																		
1336	48	0190	M	TELTSSER	5	25	14	9	27	14	10	7	14	257	100	257	00	0993
1336	48	0190	M	TELTSSER	5	25	14	10	11	14	10	21	14	257	100	257	00	0993
1336	48	0190	M	TELTSSER	5	25	14	10	18	14	10	13	14	257	100	257	00	0993
1336	48	0190	M	TELTSSER	5	25	14	11	8	14	11	13	14	257	100	257	00	0996
1336	48	0190	M	TELTSSER	5	25	14	11	15	14	11	25	14	257	100	257	00	0996
1336	48	0190	M	TELTSSER	5	25	14	11	22	14	12	25	14	257	100	257	00	0996
1336	48	0190	M	TELTSSER	5	25	14	11	29	14	12	13	14	257	100	257	00	0996
1336	48	0190	M	TELTSSER	5	25	14	12	6	14	12	13	14	257	100	257	00	0996
1336	48	0190	M	TELTSSER	5	25	14	12	13	14	12	26	14	257	100	257	00	0996
1336	48	0190	M	TELTSSER	5	25	14	12	20	14	12	30	14	271	95	262	20	0994
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1336	48	0190	M	TELTSSER	5	30	14	12	27	14	10	30	14	271	95	262	20	0994
1336	48	0190	M	TELTSSER	5	30	14	12	27	14	10	30	14	271	95	262		

## CURRENT BENEFIT CHARGE ACTIVITY

BENEFIT CHARGES	
Billing Period	Amount of Charges
4/2014	\$4,424.90

BENEFIT CHARGE CREDITS*
\$0.00

\*Benefit Charge Credits will reduce the Amount Due for the period to which they apply. If the period is paid in full, the credit will be applied as an Amount Paid to outstanding balances due. If the Benefit Charge Credits are more than the balance due on the account, the excess credit will be applied to the next Statement of Account.

## STATEMENT OF ACCOUNT SUMMARY

	AMOUNT DUE
REIMBURSABLE BENEFIT CHARGES and/or INTEREST	\$46,616.61
TOTAL BALANCE DUE	\$46,616.61

## REIMBURSABLE BENEFIT CHARGES

BILLING PERIOD	RECEIVABLE TYPE	AMOUNT DUE	AMOUNT PAID	BALANCE DUE
3/2012	Benefit Charges	\$6,391.06	\$6,391.06	\$0.00
3/2012	Benefit Charge Interest	\$251.86	\$244.11	\$7.75
4/2012	Benefit Charges	\$5,490.50	\$5,490.50	\$0.00
4/2012	Benefit Charge Interest	\$268.00	\$182.96	\$85.04
1/2013	Benefit Charges	\$2,196.11	\$2,196.11	\$0.00
1/2013	Benefit Charge Interest	\$65.88	\$32.94	\$32.94
2/2013	Benefit Charges	\$6,281.00	\$3,143.84	\$3,137.16
2/2013	Benefit Charge Interest	\$447.18	\$34.90	\$412.28
3/2013	Benefit Charges	\$11,991.00	\$0.00	\$11,991.00
3/2013	Benefit Charge Interest	\$1,349.10	\$0.00	\$1,349.10
4/2013	Benefit Charges	\$8,905.80	\$0.00	\$8,905.80
4/2013	Benefit Charge Interest	\$801.60	\$0.00	\$801.60
1/2014	Benefit Charges	\$5,070.20	\$0.00	\$5,070.20
1/2014	Benefit Charge Interest	\$342.18	\$0.00	\$342.18
2/2014	Benefit Charges	\$4,788.22	\$0.00	\$4,788.22
2/2014	Benefit Charge Interest	\$215.52	\$0.00	\$215.52
3/2014	Benefit Charges	\$4,941.74	\$0.00	\$4,941.74
3/2014	Benefit Charge Interest	\$111.18	\$0.00	\$111.18
4/2014	Benefit Charges	\$4,424.90	\$0.00	\$4,424.90
<b>TOTAL</b>				<b>\$46,616.61</b>

Department of Labor & Industry | Office of UC Tax Services | 651 Boas Street | Harrisburg, PA 17121-0750 | www.uc.pa.gov



=====  
=====

Cut Here

PAYMENT VOUCHER

Legal Name: COLWYN BOROUGH HALL

Mail your voucher and remittance to:  
OFFICE OF UC TAX SERVICES  
PO BOX 60848  
HARRISBURG, PA 17106-0848

UC Account Number: 2338197

Amount Owed       \$                   46,616.61

Payment Amount   ¢                   46,616.61

000000000000002261222813893136099

**Appendix H, Darby Creek Joint Authority letter from Colwyn Borough Solicitor**



Swartz Campbell LLC  
115 N Jackson St  
Media PA 19063

voice (610) 566-9222  
facsimile (610) 566-7351  
jmcbain@swartzcampbell.com  
www.swartzcampbell.com

John P. McBlain  
*Attorney at Law*

June 23, 2014

Ms. Paula Brown  
Borough Manager  
Borough of Colwyn  
221 Spruce Street  
Colwyn, PA 19023

Re: Darby Creek Joint Authority Arrearage

Dear Paula:

As you may know, Colwyn Borough is one of twelve (12) municipalities in Eastern Delaware County that are a part of the Darby Creek Joint Sewer Authority ("DCJA"). The DCJA is the agency that receives and transports the sanitary sewer waste from the Borough of Colwyn and delivers it to DELCORA for disposal.

DELCORA charges a fee to all of its users, including the DCJA. In turn, the DCJA charges a fee to each of its twelve (12) member municipalities. The fee charged by DCJA to its member municipalities is based upon the number of equivalent dwelling units ("EDU"). Typically speaking, a single family home would have one (1) EDU; a duplex, two (2) EDU's, etc. A commercial property is assigned a specific number of EDU's based upon that property's usage.

The Borough of Colwyn receives invoices from the DCJA on a quarterly basis. Sometime over the last several years, it appears that the Borough of Colwyn failed to make multiple quarterly payments to the DCJA which has resulted in an arrearage of \$247,734.19.

On several occasion since my appointment as Borough Solicitor, I have discussed the issue of this arrearage with James J. Merkins, Jr., Esquire, the Solicitor for the DCJA. On these occasions, Mr. Merkins indicates that he has had discussions with various Borough Solicitors over these past years regarding the arrearages and some agreement on payments on the arrearages. He indicates that the DCJA had reached a verbal agreement with previous Borough officials that the Borough of Colwyn would make each of its current quarterly payments in a timely manner to the DCJA and, pay an additional \$15,000 per quarter towards the arrearage. Based upon the present arrearage, such a payment plan

Ms. Paula Brown  
Re: Borough of Colwyn - DCJA  
June 23, 2014  
Page 2

would take a little over four (4) years (without interest) to pay back. Mr. Merkins informs that although this verbal understanding had been reached, there apparently was no formal action by the Borough of Colwyn to approve the settlement agreement; nor did the supplemental payments of \$15,000 per quarter ever begin.

As we have discussed several times, it is our recommendation that this Borough administration examine its finances and make a determination about what, if any, supplemental payments it can afford in 2014 and/or any other type of structure by which the Borough can propose to the DCJA to begin to pay back this arrearage.

Most recently, I spoke with Mr. Merkins on June 18, 2014, prior to the DCJA meeting scheduled for that evening. I related to Mr. Merkins that based upon my observations of Borough finances in 2014, it was unlikely that the Borough would be able to afford the proposed supplemental payments of \$15,000 per quarter for the remainder of calendar year 2014. I suggested to him that if the DCJA Board was agreeable, I would recommend to the Borough Council that we enter into a settlement agreement with the DCJA whereby the Borough of Colwyn would agree to make current and timely payments of its usual quarterly bills, plus an additional \$15,000 per quarter beginning in the first quarter of 2015. I indicated to Mr. Merkins that, realistically, I was unsure that the Borough could make the \$15,000 per quarter supplemental payment in 2014 if it promised to do so right now. If the Borough were to be allowed to begin making the supplemental payments in the first quarter of 2015, that would allow the Borough sufficient time to budget in its 2015 general fund and/or sewer fee for the supplemental payment.

Mr. Merkins indicated that he would pass on this suggestion to the DCJA Board. He indicates to me that in prior discussions by the DCJA Board, the representatives from Lansdowne Borough and Darby Borough urged the DCJA to file a law suit against the Borough of Colwyn in order to recover the arrearage. Mr. Merkins indicated that the other municipal representatives were willing to be restrained regarding legal action but that he feared without a written settlement agreement in place, the majority of the DCJA Board may move to authorize him to file legal action against the Borough of Colwyn for the recovery of the arrearages.

As of the writing of this correspondence, I have not heard from Mr. Merkins about what legal action, if any, the DCJA Board authorized him to file at its meeting of June 18, 2014. Regardless of whether or not the DCJA initiates legal process against the Borough of Colwyn, it is our strong recommendation that this matter be discussed by the Borough Council and that the Borough come to some agreement on what settlement terms may be proposed to the DCJA to pay the arrearage.

Ms. Paula Brown  
Re: Borough of Colwyn - DCJA  
June 23, 2014  
Page 3

Upon your review of the above, should you wish to discuss this matter or have any questions, please do not hesitate to contact us.

Very truly yours,

SWARTZ CAMPBELL LLC



John P. McBlain

JPM/erc

cc: The Honorable Patricia Williams, Council President  
The Honorable Michael Blue, Mayor  
Borough Council Members

**Appendix I, PERC Letter**



COMMONWEALTH OF PENNSYLVANIA  
PUBLIC EMPLOYEE RETIREMENT COMMISSION  
P. O. BOX 1429, HARRISBURG, PA 17105-1429

August 14, 2014

Mr. Daniel McEnhill, Manager  
Borough of Colwyn [DEL]  
221 Spurce Street  
Colwyn, PA 19023

Re: Act 205 of 1984  
Notice of 2014 Distress Determination

Dear Mr. McEnhill:

Act 205 of 1984 requires the Public Employee Retirement Commission to make biennial distress determinations for all municipalities. The results of the 2014 distress determination for your municipality are as follows:

**TOTAL DISTRESS SCORE: 3**

Based on the above distress score, your municipality has been assigned to Level 3 of the Recovery Program for municipal pension plans established by Chapter 6 of Act 205. The Act allows your municipality to continue to utilize the remedies that may have been previously implemented.

Enclosed is the applicable election form. Based on your distress score, the municipality has mandatory remedies that must be implemented, if not already implemented. The municipality may also elect any of the voluntary remedies on the election form. The executed election form (PC-204D3) must be submitted to the Commission by December 1, 2014. If the election form is not returned, it will be deemed that no additional voluntary remedies were elected, and the mandatory remedies were implemented.

Please note that the enclosed election form also serves as a way to opt out of any voluntary remedies that had been elected previously.

If you have any questions concerning this notice, please do not hesitate to contact the Commission's office at (717) 783-6100.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. McAneny".

James L. McAneny  
Executive Director

Enclosure



RECEIPT

REVIEW

INPUT

FUND RATIO

47

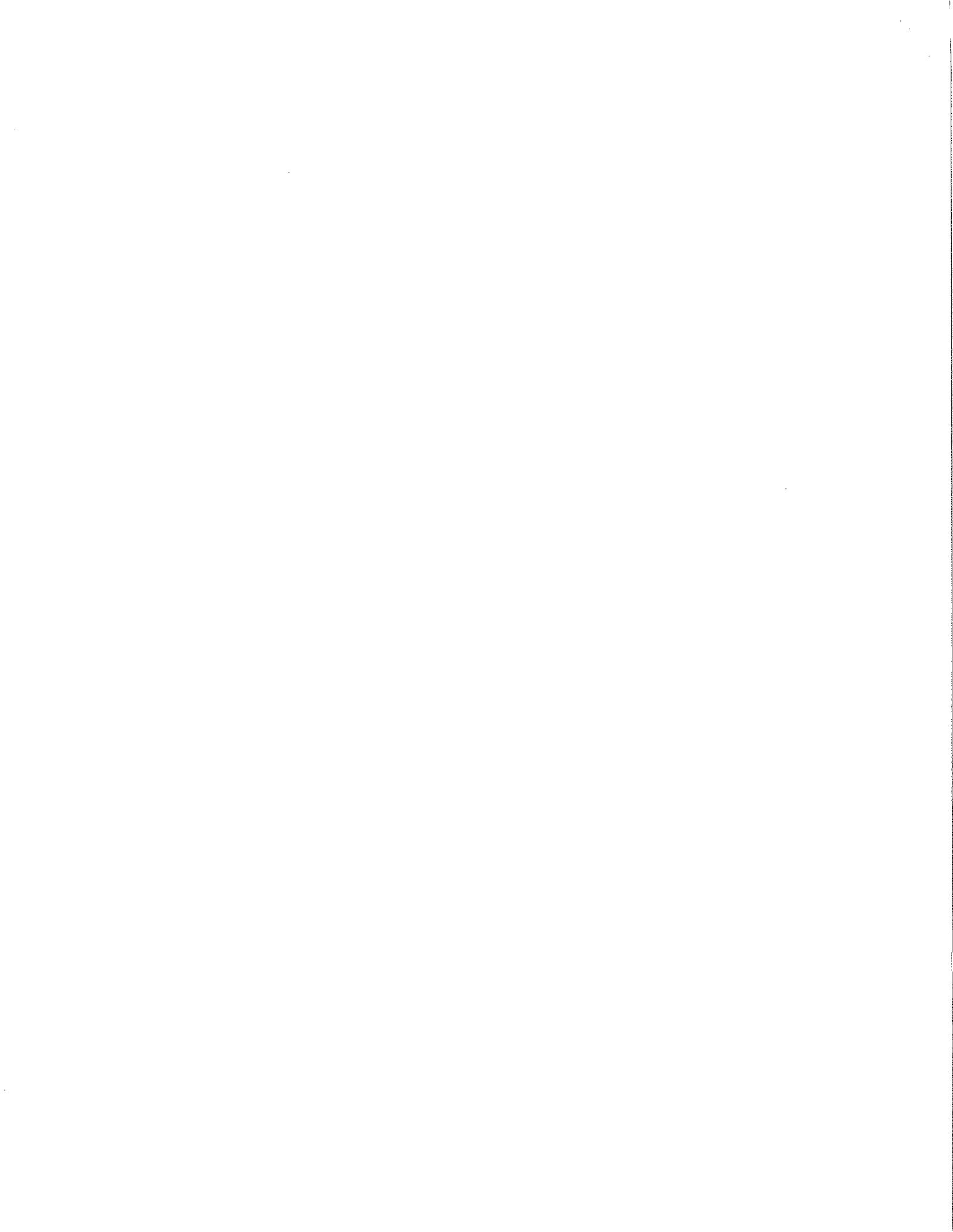
**2014  
 ACT 205 RECOVERY PROGRAM  
 ELECTION FORM  
 LEVEL III**

**INSTRUCTIONS:** Indicate which remedies were elected and their effective actuarial valuation report (AVR) date and submit the completed and signed election form to the Commission at the address indicated above, on or before December 1, 2014. If the Effective AVR Date is not filled in, the next Effective AVR Date is 1/1/2015, based on the 2014 distress score.

**Remedies with an "M" are mandatory and must be elected and implemented by the Effective AVR Date. Remedies with a "V" are voluntary or were mandatory in a previous filing period. You may choose to opt out of any of these remedies after consultation with the municipality's actuary or third-party administrator.**

**Election of Remedies Under Severely Distressed Recovery Program**

ELECT	OPT OUT		
<input checked="" type="checkbox"/>		<b>AGGREGATION OF TRUST FUNDS:</b> Aggregation of the assets to the credit of the various pension funds established or maintained by the municipality into a single pension trust fund pursuant to the provisions of Section 607(b) of Act 205 of 1984. Effective AVR Date: <u>1/1/2011</u>	(1)
<input checked="" type="checkbox"/>		<b>PLAN FOR ADMINISTRATIVE IMPROVEMENT:</b> Preparation, submission and implementation of a plan for the improvement of the administration of the pension plan pursuant to the provisions of Section 607(i) of Act 205 of 1984. Effective AVR Date: <u>1/1/2011</u>	(2)
<input checked="" type="checkbox"/>		<b>ESTABLISHMENT OF A REVISED BENEFIT PLAN FOR NEWLY HIRED MUNICIPAL EMPLOYEES:</b> Establishment of a revised benefit plan for newly hired municipal employees pursuant to the provisions of Section 607(e) of Act 205 of 1984. Effective AVR Date: <u>1/1/2015</u>	(3)
<input type="checkbox"/>	<input type="checkbox"/>	<b>TOTAL MEMBER CONTRIBUTIONS:</b> Specification of total member contributions pursuant to the provisions of Section 607(c) of Act 205 of 1984. Effective AVR date:	(4)
<input type="checkbox"/>	<input type="checkbox"/>	<b>DEVIATION FROM MUNICIPAL CONTRIBUTION LIMITATIONS:</b> Utilization of authority to exceed otherwise applicable limitations on municipal contributions to municipal pension plans pursuant to the provisions of Section 607(d) of Act 205 of 1984. Effective AVR Date:	(5)
<input type="checkbox"/>	<input type="checkbox"/>	<b>SPECIAL MUNICIPAL TAXING AUTHORITY:</b> Utilization of special municipal taxing authority pursuant to the provisions of Section 607(f) of Act 205 of 1984. Not applicable to entities that cannot assess taxes. Effective AVR Date:	(6)



**Appendix J, Colwyn Boro, AG Audit, 2014-04-16, Liquid Fuels**



**BOROUGH OF COLWYN  
DELAWARE COUNTY  
23-406**

**LIQUID FUELS TAX FUND  
EXAMINATION REPORT**

**FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012**

**COMMONWEALTH OF PENNSYLVANIA**

**EUGENE A. DEPASQUALE - AUDITOR GENERAL**

**DEPARTMENT OF THE AUDITOR GENERAL**





Commonwealth of Pennsylvania  
Department of the Auditor General  
Harrisburg, PA 17120-0018  
Facebook: Pennsylvania Auditor General  
Twitter: @PAAuditorGen

**EUGENE A. DePASQUALE**  
**AUDITOR GENERAL**

### Independent Auditor's Report

The Honorable Barry J. Schoch, P.E.  
Secretary  
Department of Transportation  
Harrisburg, PA 17120

We examined the accompanying Forms MS-965 With Adjustments for the Liquid Fuels Tax Fund of the Borough of Colwyn, Delaware County, for the period January 1, 2010 to December 31, 2012. The municipality's management is responsible for the Forms MS-965. Our responsibility is to express an opinion on the Forms MS-965 With Adjustments based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. An examination includes examining, on a test basis, evidence supporting the Borough of Colwyn, Delaware County's Forms MS-965 for the period January 1, 2010 to December 31, 2012 and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

We are mandated by Section 403 of *The Fiscal Code*, 72 P.S. § 403, to audit each municipality's Liquid Fuels Tax Fund to ensure that funds received are expended in accordance with applicable laws and regulations. *Government Auditing Standards* issued by the Comptroller General of the United States include attestation engagements as a separate type of audit. An attestation engagement performed pursuant to *Government Auditing Standards* involves additional standards that exceed the standards provided by the American Institute of Certified Public Accountants. Accordingly, this attestation engagement complies with both *Government Auditing Standards* and Section 403 of *The Fiscal Code*.

As described in Note 4, the adjustments included on the Forms MS-965 With Adjustments are made by the Department of the Auditor General.

## Independent Auditor's Report (Continued)

As discussed in the Findings and Recommendations section of this report:

- The municipality expended \$8,070.30 during 2011 from the Liquid Fuels Tax Fund for payroll. However, the municipality did not maintain daily payroll time sheets identifying the nature of work performed and the location of work assignments (Finding No. 1).
- The borough loaned \$49,000.00 during 2011 and \$49,350.00 during 2012 from the Liquid Fuels Tax Fund to the General Fund. A total of \$48,000.00 was reimbursed during our examination period, leaving a balance of \$50,350.00 due to the Liquid Fuels Tax Fund (Finding No. 2).
- The municipality expended \$23,000.00 during 2010 from the Liquid Fuels Tax Fund for engineering services not related to roads, which are nonpermissible expenditures (Finding No. 3).

In our opinion, except for the bulleted items discussed above, the Forms MS-965 With Adjustments present, in all material respects, the information required by the Pennsylvania Department of Transportation for the Liquid Fuels Tax Fund of the Borough of Colwyn, Delaware County, for the period January 1, 2010 to December 31, 2012, in conformity with the criteria set forth in Note 1.

In accordance with *Government Auditing Standards*, we are required to report findings of significant deficiencies in internal control, violations of provisions of contracts or grant agreements, and abuse that are material to the Forms MS-965 and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Forms MS-965 are presented in accordance with the criteria described above and not for the purpose of expressing an opinion on the internal control over reporting on the Forms MS-965 or on compliance and other matters; accordingly, we express no such opinions.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the Borough of Colwyn, Delaware County's ability

Independent Auditor's Report (Continued)

to initiate, authorize, record, process, or report data reliably in accordance with the applicable criteria such that there is more than a remote likelihood that a misstatement of the Borough of Colwyn, Delaware County's Forms MS-965 that is more than inconsequential will not be prevented or detected by the Borough of Colwyn, Delaware County's internal control. We consider the deficiency described in the finding below to be a significant deficiency in internal control over reporting on the Forms MS-965:

- Documentation Supporting Payroll Expenditures Was Not Available For Examination.

A material weakness is a significant deficiency or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement of the Forms MS-965 will not be prevented or detected by the Borough of Colwyn, Delaware County's internal control. Our consideration of the internal control over reporting on the Forms MS-965 would not necessarily disclose all matters in the internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. We consider the significant deficiency described above to be material weaknesses.

The results of our tests disclosed the following instances of noncompliance that are required to be reported under *Government Auditing Standards*:

- Liquid Fuels Money Loaned To General Fund - Recurring.
- Nonpermissible Expenditure.
- Liquid Fuels Money Overexpended On Project.

We also noted an other matter that, while not required to be included in this report by *Government Auditing Standards*, has been included in the finding below:

- Late Receipt Of Allocation.

This report is intended solely for the information and use of the Pennsylvania Department of Transportation and the management of the Borough of Colwyn, Delaware County, and is not intended to be and should not be used by anyone other than these specified parties.



**EUGENE A. DEPASQUALE**  
Auditor General

May 20, 2013

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BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
BACKGROUND  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Background

The Liquid Fuels Tax Municipal Allocation Law, Title 72 P.S. § 2615.5, provides municipalities other than counties (townships, boroughs, cities, towns, home rule, and optional plan governments) with an annual allocation of liquid fuels taxes from the state's Motor License Fund to be used for the maintenance and repair of streets, roads, and bridges for which the municipality is responsible. The allocation of these funds to municipalities is based: (1) 50 percent on the municipality's proportion of local road mileage to the total local road mileage in the state, and (2) 50 percent on the proportion of a municipality's population to the total population in the state.

*The Vehicle Code*, Title 75 P.S. § 9511, provides municipalities with annual maintenance payments to be received from the Motor License Fund for functionally local highways that were transferred to a municipality from the Commonwealth of Pennsylvania.

Each municipality must deposit the Liquid Fuels Tax Fund money and annual maintenance payments that it receives into a special fund called the Municipal Liquid Fuels Tax Fund or State Fund. A municipality may not deposit any other monies into this fund except when the municipality does not have enough money in the special fund to meet the payments called for by its current annual budget for road and bridge purposes. In this case, the municipality may borrow money or transfer money from its General Fund to its Liquid Fuels Tax Fund.

The Department of Transportation has been given the regulatory authority for the administration of these funds. To qualify for its annual allocation, each municipality shall submit the following documents and information to the Department of Transportation:

1. Evidence that the treasurer is bonded in accordance with the law, or that its treasurer is a bank requiring no bond by January 31 of each year.
2. A report indicating the manner in which its liquid fuels tax allocation was expended in the previous year (Form MS-965) by January 31 of each year.
3. A report of elected and appointed officials by January 31 of each year.
4. A Survey of Financial Condition by March 15 of each year.

Department of Transportation *Publication 9* contains the policies and procedures that govern the use of Liquid Fuels Tax Fund money. However, if there is a difference between *Publication 9* and any legislation, the legislation shall govern.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2010 FORM MS-965 – SECTION 1  
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ -	\$ -	\$ -
Minor equipment purchases	-	-	-
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	801.88	(801.88)	-
Winter maintenance services	23,879.74	(7,129.74)	16,750.00
Traffic control devices	556.49	(556.49)	-
Street lighting	16,599.51	(6,986.10)	9,613.41
Storm sewers and drains	511.56	(511.56)	-
Repairs of tools and machinery	4,374.79	(3,479.79)	895.00
Maintenance and repair of roads and bridges	370.44	658.96	1,029.40
Highway construction and rebuilding projects	29,217.60	(569.60)	28,648.00
Miscellaneous (Note 6)	-	23,000.00	23,000.00
	<u>-</u>	<u>23,000.00</u>	<u>23,000.00</u>
 Total (To Section 2, Line 5)	 <u>\$ 76,312.01</u>	 <u>\$ 3,623.80</u>	 <u>\$ 79,935.81</u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2010 FORM MS-965 – SECTION 2  
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2010	\$ 1,558.24	\$ -	\$ 1,558.24
Receipts:			
2. State allocation	38,863.54	-	38,863.54
2a. Turnback allocation	-	-	-
2b. Interest on investments (Note 3)	15.63	-	15.63
2c. Miscellaneous (Note 5)	<u>73,555.00</u>	<u>-</u>	<u>73,555.00</u>
3. Total receipts	<u>112,434.17</u>	<u>-</u>	<u>112,434.17</u>
4. Total funds available	<u>113,992.41</u>	<u>-</u>	<u>113,992.41</u>
5. Expenditures (Section 1)	<u>76,312.01</u>	<u>3,623.80</u>	<u>79,935.81</u>
6. Balance, December 31, 2010	<u>\$ 37,680.40</u>	<u>\$ (3,623.80)</u>	<u>\$ 34,056.60</u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2010 FORM MS-965 – SECTION 3  
 WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 1,558.24	\$ -	\$ 1,558.24
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	7,772.71	-	7,772.71
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	9,330.95	-	9,330.95
5. Less: Major equipment expenditures	-	-	-
6. Remainder	<u>9,330.95</u>	<u>-</u>	<u>9,330.95</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 9,330.95</u>	<u>\$ -</u>	<u>\$ 9,330.95</u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2011 FORM MS-965 – SECTION 1  
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ -	\$ -	\$ -
Minor equipment purchases	675.00	-	675.00
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	2,443.25	-	2,443.25
Traffic control devices	-	-	-
Street lighting	11,359.71	-	11,359.71
Storm sewers and drains	-	-	-
Repairs of tools and machinery	1,197.00	-	1,197.00
Maintenance and repair of roads and bridges	209.86	1,019.20	1,229.06
Highway construction and rebuilding projects	-	-	-
Miscellaneous (Note 6)	<u>66,589.50</u>	<u>(1,019.20)</u>	<u>65,570.30</u>
 Total (To Section 2, Line 5)	 <u><u>\$ 82,474.32</u></u>	 <u><u>\$ -</u></u>	 <u><u>\$ 82,474.32</u></u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2011 FORM MS-965 – SECTION 2  
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments (Note 4)</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2011	\$ 37,680.40	\$ (3,623.80)	\$ 34,056.60
Receipts:			
2. State allocation	40,132.73	-	40,132.73
2a. Turnback allocation	-	-	-
2b. Interest on investments (Note 3)	9.40	-	9.40
2c. Miscellaneous (Note 5)	<u>8,500.00</u>	<u>-</u>	<u>8,500.00</u>
3. Total receipts	<u>48,642.13</u>	<u>-</u>	<u>48,642.13</u>
4. Total funds available	<u>86,322.53</u>	<u>(3,623.80)</u>	<u>82,698.73</u>
5. Expenditures (Section 1)	<u>82,474.32</u>	<u>-</u>	<u>82,474.32</u>
6. Balance, December 31, 2011	<u><u>\$ 3,848.21</u></u>	<u><u>\$ (3,623.80)</u></u>	<u><u>\$ 224.41</u></u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2011 FORM MS-965 – SECTION 3  
 WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 9,330.95	\$ -	\$ 9,330.95
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	8,026.55	-	8,026.55
3. PENNDOT approved adjustments	-	-	-
4. Total funds available for equipment acquisition	17,357.50	-	17,357.50
5. Less: Major equipment expenditures	-	-	-
6. Remainder	<u>17,357.50</u>	<u>-</u>	<u>17,357.50</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 3,848.21</u>	<u>\$ (3,623.80)</u>	<u>\$ 224.41</u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2012 FORM MS-965 – SECTION 1  
 WITH ADJUSTMENTS

<u>Expenditure Summary</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
Major equipment purchases	\$ -	\$ -	\$ -
Minor equipment purchases	-	-	-
Computer/Computer related training	-	-	-
Agility projects	-	-	-
Cleaning streets and gutters	-	-	-
Winter maintenance services	1,795.59	-	1,795.59
Traffic control devices	-	-	-
Street lighting	37,122.17	-	37,122.17
Storm sewers and drains	-	-	-
Repairs of tools and machinery	1,040.50	-	1,040.50
Maintenance and repair of roads and bridges	-	-	-
Highway construction and rebuilding projects	-	-	-
Miscellaneous (Note 6)	49,350.00	-	49,350.00
 Total (To Section 2, Line 5)	 <u>\$ 89,308.26</u>	 <u>\$ -</u>	 <u>\$ 89,308.26</u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2012 FORM MS-965 – SECTION 2  
 WITH ADJUSTMENTS

<u>Fund Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Balance, January 1, 2012	\$ 224.41	\$ -	\$ 224.41
Receipts:			
2. State allocation	41,102.89	-	41,102.89
2a. Turnback allocation	-	-	-
2b. Interest on investments (Note 3)	8.71	-	8.71
2c. Miscellaneous (Note 5)	<u>48,000.00</u>	<u>-</u>	<u>48,000.00</u>
3. Total receipts	<u>89,111.60</u>	<u>-</u>	<u>89,111.60</u>
4. Total funds available	<u>89,336.01</u>	<u>-</u>	<u>89,336.01</u>
5. Expenditures (Section 1)	<u>89,308.26</u>	<u>-</u>	<u>89,308.26</u>
6. Balance, December 31, 2012	<u>\$ 27.75</u>	<u>\$ -</u>	<u>\$ 27.75</u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 2012 FORM MS-965 – SECTION 3  
 WITH ADJUSTMENTS

<u>Equipment Balance</u>	<u>Reported</u>	<u>Adjustments</u>	<u>Adjusted Amount</u>
1. Prior year equipment balance	\$ 224.41	\$ -	\$ 224.41
2. Add: Current year equipment allocation (20% of Lines 2 + 2a, Section 2)	8,220.58	-	8,220.58
3. PENNDOT approved adjustments	<u>-</u>	<u>-</u>	<u>-</u>
4. Total funds available for equipment acquisition	8,444.99	-	8,444.99
5. Less: Major equipment expenditures	<u>-</u>	<u>-</u>	<u>-</u>
6. Remainder	<u>8,444.99</u>	<u>-</u>	<u>8,444.99</u>
7. Equipment balance available for subsequent year (Lesser of Line 6 or Section 2 balance, but not less than zero)	<u>\$ 27.75</u>	<u>\$ -</u>	<u>\$ 27.75</u>

Notes to Forms MS-965 With Adjustments are an integral part of this report.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

1. Criteria

Section 1

This section of Form MS-965 With Adjustments provides a summary of Liquid Fuels Tax Fund expenditures by category. Categories requiring explanation include:

- Major equipment purchases are purchases of road machinery and road equipment that cost in excess of \$4,000.00 prior to 2012 and in excess of \$10,000.00 during 2012 and subsequent years.
- Minor equipment purchases are purchases of road machinery and road equipment that cost \$4,000.00 or less prior to 2012 and \$10,000.00 or less during 2012 and subsequent years.
- Agility projects are exchanges of services with the Department of Transportation.

Section 2

This section of Form MS-965 With Adjustments provides information on the fund balance. Categories requiring explanation include:

- The state allocation is generally received from the Department of Transportation during the first week in April of each year. The amount the municipality receives is based half on its population and half on its road mileage.
- The turnback allocation is generally received from the Department of Transportation during the first week in April of each year. A municipality receives a yearly turnback allocation based on road mileage for all roads that were transferred to the municipality from the Commonwealth of Pennsylvania through the Highway Transfer Program.
- Expenditures include the total transferred from Section 1.

Section 3

This section of Form MS-965 With Adjustments determines if the municipality expended Liquid Fuels Tax Fund money in excess of the permissible amount for equipment and the

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

1. Criteria (Continued)

Section 3 (Continued)

balance that the municipality may carry forward for the purchase of equipment to the subsequent year.

Department of Transportation *Publication 9* requires that the amount expended for equipment purchases in a given year not exceed the sum of the equipment balance carried forward from the previous year and 20 percent of the current year's Liquid Fuels Tax Fund allocation and, if applicable, 20 percent of the turnback allocation plus other Department of Transportation approved adjustments.

If the municipality spent in excess of the amount listed on Line 4, the excess must be reimbursed to the Liquid Fuels Tax Fund.

The equipment balance to be carried forward for the subsequent year is the lesser of the amount on Line 6 or the ending fund balance on Line 6 of Section 2, but not less than zero.

Basis Of Presentation

The financial activities of the municipality are accounted for in separate funds. The Liquid Fuels Tax Fund is used to account for state aid revenues from the Pennsylvania Department of Transportation used primarily for building and improving local roads and bridges. The Forms MS-965 have been prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation as a result of the Fuels Tax Act 655, dated 1956 and as amended, which does not constitute a complete presentation of the entity's assets, liabilities, expenses, and fund balance. Accordingly, the presentation of Forms MS-965 With Adjustments is restricted to the Liquid Fuels Tax Fund, which represents a segment of the entity.

Basis Of Accounting

The accompanying Forms MS-965 With Adjustments are prepared in accordance with reporting requirements prescribed by the Pennsylvania Department of Transportation. Under this method, revenues are recognized when received and expenditures are recorded when paid.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

1. Criteria (Continued)

General Fixed Assets

General fixed assets are recognized as expenditures at the time of purchase. No depreciation has been provided on the heavy equipment used to maintain and repair roads and bridges.

2. Deposits

*The Borough Code*, Title 53 P.S § 46316, authorizes the borough to deposit its funds in the following:

- Deposits in savings accounts or time deposits, other than certificates of deposit or share accounts of institutions having their principal place of business in the Commonwealth of Pennsylvania and insured by the Federal Deposit Insurance Corporation (FDIC) or other like insurance. For any amount above the insured maximum, the depository shall pledge approved collateral.
- Certificates of deposit purchased from institutions insured by the FDIC or other like insurance to the extent that such accounts are so insured. For any amounts in excess of the insured maximum, such deposits shall be collateralized by a pledge or assignment of assets. Certificates of deposit may not exceed 20 percent of a bank's total capital surplus or 20 percent of a savings and loan's or savings bank's assets minus liabilities.

Deposits consist of receipts and deposits in a financial institution. Pennsylvania statutes require all deposits to be insured and, for any amount above the insured maximum, to be secured with approved collateral as defined.

There were no deposits exposed to custodial credit risk as of December 31, 2012. Custodial credit risk, as defined by GASB No. 40, includes deposits that are not covered by depository insurance and the deposits are uncollateralized, collateralized with securities held by the pledging financial institution, or collateralized with securities held by the pledging financial institution's trust department or agent but not in the municipality's name.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

2. Deposits (Continued)

Fund Balance

The fund balance as of December 31, 2012 consists of the following:

Cash	<u>\$27.75</u>
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3. Interest On Investments

Our examination disclosed that the municipality deposited idle liquid fuels tax money in an interest-bearing account which earned \$15.63 during 2010, \$9.40 during 2011, and \$8.71 during 2012, thus providing additional funds for road maintenance and repairs.

4. Adjustments

2010 - Section 1

An adjustment of \$(801.88) was made to "Cleaning streets and gutters" because these expenditures were overstated.

An adjustment of \$(7,129.74) was made to "Winter maintenance services" because these expenditures were overstated.

An adjustment of \$(556.49) was made to "Traffic control devices" because these expenditures were overstated.

An adjustment of \$(6,986.10) was made to "Street lighting" because these expenditures were overstated.

An adjustment of \$(511.56) was made to "Storm sewers and drains" because these expenditures were overstated.

An adjustment of \$(3,479.79) was made to "Repairs of tools and machinery" because these expenditures were overstated.

An adjustment of \$658.96 was made to "Maintenance and repair of roads and bridges" because these expenditures were understated.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
 FOR THE PERIOD  
 JANUARY 1, 2010 TO DECEMBER 31, 2012

4. Adjustments (Continued)

2010 - Section 1 (Continued)

An adjustment of \$(569.60) was made to “Highway construction and rebuilding projects” because these expenditures were overstated.

An adjustment of \$23,000.00 was made to “Miscellaneous” because a payment for a nonpermissible expenditure was not reported.

2011 - Section 1

Adjustments made to “Maintenance and repair of roads and bridges” and “Miscellaneous” because expenditures of \$1,019.20 were misclassified.

2011 - Section 2

An adjustment of \$(3,623.80) was made to “Balance, January 1, 2011” to reflect the adjustment made to the fund balance in 2010 - Section 2.

5. Miscellaneous Receipts

The following miscellaneous receipts were deposited into the Liquid Fuels Tax Fund during the examination period:

<u>Source</u>	<u>Description</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
General Fund	Reimbursement (Comment)	\$56,395.00	\$ -	\$ -
General Fund	Grant	2,750.00	-	-
Delaware County	County aid (Finding No. 4)	14,410.00	-	-
General Fund	Correction of transfer in error (Note 7)	-	8,500.00	-
General Fund	Repayment of loans (Finding No. 2)	-	-	48,000.00
Total		<u>\$73,555.00</u>	<u>\$8,500.00</u>	<u>\$48,000.00</u>

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 NOTES TO FORMS MS-965 WITH ADJUSTMENTS  
 FOR THE PERIOD  
 JANUARY 1, 2010 TO DECEMBER 31, 2012

6. Miscellaneous Expenditures

The following miscellaneous expenditures were paid from the Liquid Fuels Tax Fund during the examination period:

<u>Payee</u>	<u>Description</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Vendor	Nonpermissible expenditure (Finding No. 3)	\$23,000.00	\$ -	\$ -
General Fund	Loans (Finding No. 2)	-	49,000.00	49,350.00
General Fund	Unsupported payroll (Finding No. 1)	-	8,070.30	-
General Fund	Transfer in error (Note 7)	<u>-</u>	<u>8,500.00</u>	<u>-</u>
Total		<u>\$23,000.00</u>	<u>\$65,570.30</u>	<u>\$49,350.00</u>

7. Transfer In Error

On February 4, 2011, the municipality transferred \$8,500.00 from its Liquid Fuels Tax Fund to its General Fund in error. On April 27, 2011, the municipality transferred \$8,500.00 from its General Fund to its Liquid Fuels Tax Fund to correct the error.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 1 - Documentation Supporting Payroll Expenditures Was Not Available For Examination

Our examination disclosed that the municipality expended \$8,070.30 during 2011 from the Liquid Fuels Tax Fund for payroll. However, the municipality did not maintain daily payroll time sheets identifying the nature of work performed and the location of work assignments.

Good internal control procedures over payroll ensure that there is documentation identifying the nature of the work performed and location of work assignments.

The Liquid Fuels Tax Municipal Allocation Law, 72 P.S. § 2615.4, provides, in part, that monies herein allocated may be used only for construction, reconstruction, maintenance and repairs of such public roads or streets, including bridges, culverts and drainage structures, for which they are legally responsible. Also permitted are expenditures involving acquisition, maintenance, repairs and operation of street signs, traffic signs, traffic signal control systems, road equipment, and snow fences.

The Department of Transportation has been statutorily authorized to promulgate regulations concerning the administration of Liquid Fuels Tax Fund money and has determined that certain items, including expenditures made without supporting documentation, are outside the scope of permissible expenditures.

Without payroll documentation that includes daily time sheets that identify the nature of work performed and the location of work assignments, we could not determine if the payroll expenditures were permissible according to the Liquid Fuels Tax Municipal Allocation Law.

The failure to maintain documentation for payroll expenditures as noted above could result in the municipality having to reimburse \$8,070.30 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse \$8,070.30 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that the municipality ensure good internal control over payroll by maintaining daily time sheets that identify the nature of work performed and the location of work assignments.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 1 - Documentation Supporting Payroll Expenditures Was Not Available For  
Examination (Continued)

Management's Response

The municipal officials offered no formal response at this time.

Auditor's Conclusion

The findings in this report create an environment conducive to Liquid Fuels Tax Fund money being misused. We strongly recommend that the borough take corrective action to comply with all of the recommendations in this report.

BOROUGH OF COLWYN  
 DELAWARE COUNTY  
 LIQUID FUELS TAX FUND  
 FINDINGS AND RECOMMENDATIONS  
 FOR THE PERIOD  
 JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 2 - Liquid Fuels Money Loaned To General Fund - Recurring

We cited the municipality for loaning Liquid Fuels Tax Fund money to the General Fund in our prior examination report for the period ending December 31, 2009. However, our current examination again disclosed that the municipality loaned \$49,000.00 during 2011 and \$49,350.00 during 2012 from the Liquid Fuels Tax Fund to the General Fund. The loans were as follows:

<u>Date Loaned</u>	<u>Amount</u>
June 24, 2011	\$10,000.00
August 26, 2011	10,000.00
September 6, 2011	13,800.00
September 9, 2011	15,000.00
December 2, 2011	200.00
October 1, 2012	5,000.00
October 9, 2012	18,000.00
November 1, 2012	20,000.00
November 29, 2012	6,000.00
December 13, 2012	<u>350.00</u>
Total	<u>\$98,350.00</u>

Liquid Fuels Tax Fund money appropriated to the municipality in accordance with 72 P.S. § 2615.4 of the Liquid Fuels Tax Municipal Allocation Law can only be expended for purposes authorized by 72 P.S. § 2615.4. The authorized purposes described by 72 P.S. § 2615.4 do not include loaning money from the municipality's Liquid Fuels Tax Fund to the General Fund or any other fund.

If the liquid fuels tax money was maintained in the Liquid Fuels Tax Fund during the entire examination period, money may have been available for investment purposes, potentially earning additional interest which could have been used for road maintenance and repairs. Additionally, the risk that Liquid Fuels Tax Fund money may be used for unauthorized purposes increases when liquid fuels money is commingled with other funds.

On April 4, 2012, the municipality reimbursed \$48,000.00 to its Liquid Fuels Tax Fund.

The failure to follow the Liquid Fuels Tax Municipal Allocation Law as noted above could result in the municipality having to reimburse \$50,350.00 to its Liquid Fuels Tax Fund.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 2 - Liquid Fuels Money Loaned To General Fund - Recurring (Continued)

This condition existed because the municipality failed to comply with our prior examination recommendation to discontinue the practice of loaning liquid fuels money to other funds or accounts.

Recommendations

We recommend that the municipality reimburse \$50,350.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further strongly recommend that, in the future, the municipality discontinue the practice of loaning liquid fuels money to other funds or accounts.

Management's Response

The municipal official offered no formal response at this time.

Auditor's Conclusion

The findings in this report create an environment conducive to Liquid Fuels Tax Fund money being misused. We strongly recommend that the borough take corrective action to comply with all of the recommendations in this report.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 3 - Nonpermissible Expenditure

Our examination disclosed that the municipality expended \$23,000.00 during 2010 from the Liquid Fuels Tax Fund for engineering services not related to roads, which are nonpermissible expenditures.

The Liquid Fuels Tax Municipal Allocation Law, 72 P.S. § 2615.4, provides, in part, that monies herein allocated may be used only for construction, reconstruction, maintenance, and repairs of such public roads or streets, including bridges, culverts and drainage structures, for which they are legally responsible. Also permitted are expenditures involving acquisition, maintenance, repairs and operation of street signs, traffic signs, traffic signal control systems, road equipment, and snow fences.

The Department of Transportation has been statutorily authorized to promulgate regulations concerning the administration of Liquid Fuels Tax Fund money and has determined that certain items, including engineering services not related to roads, are outside the scope of permissible expenditures.

The failure to follow the Liquid Fuels Tax Municipal Allocation Law and the Department of Transportation's Regulations as noted above could result in the municipality having to reimburse \$23,000.00 to its Liquid Fuels Tax Fund.

Recommendations

We recommend that the municipality reimburse \$23,000.00 to its Liquid Fuels Tax Fund upon official notification by the Department of Transportation.

We further recommend that, in the future, the municipality comply with the Liquid Fuels Tax Municipal Allocation Law and the Department of Transportation's Regulations regarding permissible expenditures.

Management's Response

The municipal official offered no formal response at this time.

Auditor's Conclusion

The findings in this report create an environment conducive to Liquid Fuels Tax Fund money being misused. We strongly recommend that the borough take corrective action to comply with all of the recommendations in this report.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 4 - Liquid Fuels Money Overexpended On Project

Our examination disclosed that the municipality expended \$28,648.00 of Liquid Fuels Tax Fund money on construction project No. 10-23406-1CA. However, the amount approved to be expended from the Liquid Fuels Tax Fund for this project was \$14,238.00. The difference of \$14,410.00 should have been paid directly from the General Fund.

The Department of Transportation's Regulations do not permit a municipality to expend Liquid Fuels Tax Fund money in excess of the amount approved on Municipal Services Completion Report Form MS-999.

On December 31, 2010, the municipality reimbursed \$14,410.00 to the Liquid Fuels Tax Fund.

Recommendation

We recommend that, in the future, the municipality expend only the approved amount of Liquid Fuels Tax Fund money on road construction projects.

Management's Response

The municipal officials offered no formal response at this time.

Auditor's Conclusion

The findings in this report create an environment conducive to Liquid Fuels Tax Fund money being misused. We strongly recommend that the borough take corrective action to comply with all of the recommendations in this report.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 5 - Late Receipt Of Allocation

Our examination disclosed that the 2010 Liquid Fuels Tax Fund allocation of \$38,863.54, which should have been distributed from the Department of Transportation to the municipality during the first week of April of that year, was not received until November 19, 2010, because the municipality failed to comply with the Department of Transportation's *Publication 9*, Chapter Two, Section 2.4, which states:

To qualify for the annual liquid fuels tax allocation, a municipality shall:

- Submit annual reports (MS-965, Actual Use Report, MS-965P, Project and Miscellaneous Receipts, and MS-965S, Record of Checks).
- Make deposits and payments or expenditures in compliance with the Act 655. Failure to do so may result in not receiving allocations from PENNDOT until all discrepancies are resolved.
- Submit the Pennsylvania Department of Community and Economic Development's (DCED) Report of Elected and Appointed Officials by January 31<sup>st</sup> and the Survey of Financial Condition by March 15<sup>th</sup>.
- Ensure resolution of all Contractor Responsibility Program (CRP) holds and blocks imposed by the Department of Revenue and the Department of Labor and Industry.

Because the municipality failed to file documents and information timely as noted above, the municipality did not have use of the 2010 allocation for more than seven months. Furthermore, had the allocation been received timely, money may have been available for investment purposes, potentially earning interest income which could have been used for road maintenance and repairs.

A similar finding was also written in our prior report. However, we noted that the 2011 and 2012 allocations were received timely.

Recommendation

We recommend that, in the future, the municipality continue to comply with the Department of Transportation's *Publication 9* to ensure that the allocations are received during the first week in April as outlined above.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
FINDINGS AND RECOMMENDATIONS  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Finding No. 5 - Late Receipt Of Allocation (Continued)

Management's Response

The municipal official offered no formal response at this time.

Auditor's Conclusion

The findings in this report create an environment conducive to Liquid Fuels Tax Fund money being misused. We strongly recommend that the borough take corrective action to comply with all of the recommendations in this report.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
COMMENT  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

Comment - Summary Of Prior Examination Recommendations

In our prior examination the municipality loaned \$56,395.00 from its Liquid Fuels Tax Fund to its General Fund. This amount was reimbursed to its Liquid Fuels Tax Fund on April 20, 2010. A similar finding was also written in our current report (see Finding No. 2).

Additionally, in our prior report we recommended that the municipality ensure that its Forms MS-965 are complete and accurate.

During our current examination we noted that the municipality complied with our recommendation

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BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
SUMMARY OF EXIT CONFERENCE  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

An exit conference was held May 20, 2013. Those participating were:

BOROUGH OF COLWYN

The Honorable Tonette Pray, President of Council

DEPARTMENT OF THE AUDITOR GENERAL

Mr. Fred Casella, Auditor

The results of the examination were presented and discussed in their entirety.

BOROUGH OF COLWYN  
DELAWARE COUNTY  
LIQUID FUELS TAX FUND  
REPORT DISTRIBUTION  
FOR THE PERIOD  
JANUARY 1, 2010 TO DECEMBER 31, 2012

This report was initially distributed to:

The Honorable Barry J. Schoch, P.E.  
Secretary  
Department of Transportation

Borough of Colwyn  
Delaware County  
221 Spruce Street  
Colwyn, PA 19023

Mrs. Martha Van Auken

Finance Chair

The Honorable Tonette Pray

President of Council

This report is a matter of public record and is available online at <http://www.auditorgen.state.pa.us>. Media questions about the report can be directed to the Pennsylvania Department of the Auditor General, Office of Communications, 231 Finance Building, Harrisburg, PA 17120; via email to: [news@auditorgen.state.pa.us](mailto:news@auditorgen.state.pa.us).