

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

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IN RE:	:	REQUEST FOR RESCISSION OF
	:	STATUS UNDER SECTION 253 OF THE
TOWNSHIP OF WESTFALL	:	MUNICIPALITIES FINANCIAL
	:	RECOVERY ACT
	:	

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REQUESTING PARTY:

The Westfall Township, Board of Supervisors, in cooperation with the Recovery Coordinator, Commonwealth of Pennsylvania, Department of Community and Economic Development, Governor's Center for Local Government Services.

**DEPARTMENTAL ORDER**

AND NOW, this the 21<sup>st</sup> day of October, 2014, upon review of the record of the hearing held on June 9, 2014, the recommendations of the departmental staff and other considerations, the above-captioned request is granted.

IT IS ORDERED that the status of Township of Westfall, Pike County as a distressed municipality under the Municipalities Financial Recovery Act, Act 47 of 1987, as amended, is rescinded.

By: C. Alan Walker  
C. Alan Walker,  
Secretary

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**REPORT OF THE HEARING OFFICER**

## **Findings of Fact**

### ***Evidence associated with the Hearing:***

1. On February 11, 2014, the Board of Supervisors of the Township of Westfall ("Township"), Pike County, unanimously resolved "that the Township be removed from Act 47," the Municipalities Financial Recovery Act ("Act 47"), 53 P.S. §§ 11701.101 – 11701.501. Exhibit E, Request for Determination of Rescission from Distress Status.
2. The Township's resolution stated that "the Township is no longer a distressed municipality and has been continuously able to meet Township expenses and provide essential services to Township residents."
3. Following the Township's resolution, and in accordance with 53 P.S. § 1701.253, the Governor's Center for Local Government Services (Center), acting as Coordinator in Westfall's recovery process, conducted an analysis to determine whether the Township's financial recovery is complete, the conditions which led to the earlier determination of municipal financial distress are no longer present and rescission from financially distressed status is appropriate. Exhibit A, Financial Analysis.
4. On June 9, 2014, a public hearing was held to hear testimony regarding the Township's request for rescission of municipal financial distress status.
5. The June 9, 2014 public hearing was conducted by Local Government Policy Manager Ms. Marita Kelley, the Hearing Officer.
6. At the June 9, 2014 public hearing, Robert Bernathy, Esq., the Township's Solicitor, testified that the Township is at the end of its financial recovery and that the Township continues to meet its financial obligations and provide essential services.

7. Additionally, Mr. Bernathy testified that all past litigation in the Township has been settled and addressed and that the one matter of pending litigation has no great merit.
8. At the June 9, 2014 public hearing, Scott Myer, the Township's Treasurer, testified that the Township entered Act 47 as a result of filing for bankruptcy protection in April of 2009 due to a \$21 million against it as a result of a lawsuit with David Katz.
9. Mr. Myer further testified that prior to the bankruptcy in 2009, Westfall was financially sound and had no significant financial issues, with an average annual budget of approximately \$1 million and operational reserves generally between \$300,000 and \$350,000 annually on approximately 24 mills in real estate taxes.
10. Additionally, Mr. Myer testified that as a result of the legal proceedings with Mr. Katz, the Township spent approximately \$1.15 million in legal fees and infrastructure improvements and as a result of the settlement, was require to pay Mr. Katz \$6 million over 20 years, or \$300,000 annually.
11. Mr. Myer testified that despite these costs and the settlement resulting in a 30 percent increase of real estate taxes, from 24 mills to 31.2 mills, and significant spending cuts in all areas not related to the legal settlement, Westfall remained relatively financially stable.
12. Mr. Myer testified that Westfall's cash reserves were further depleted due to a 2012 legal settlement against it for approximately \$700,000, with the Township paying \$175,000 in both 2012 and 2013 and then \$35,000 plus interest to be paid each subsequent year for nine years.

13. Mr. Myer testified that despite these financial setbacks, he considers Westfall to be a financially sound township that has always met its financial obligation, never missing any payments on loans, payrolls, or payables.
14. Lastly, Mr. Myer testified that Westfall is financially stable and no longer needs the assistance provided by the Department of Community & Economic Development (DCED) and Act 47.
15. At the June 9, 2014 public hearing, Jonathan Hendrickson, Local Government Policy Specialist and Coordinator for Westfall Township, testified regarding Westfall's financial recovery.
16. Specifically, Mr. Hendrickson provided an extensive history on the Township's involvement with the Municipalities Financial Recovery Act and stated that the only issue driving the Township into municipal distress, bankruptcy and Act 47 is its obligations to Mr. Katz resulting from the litigation and settlement because the Township has historically balanced its operating budget and met its obligations to vendors and creditors on an annual basis.
17. Mr. Hendrickson testified that the only issue the Township must resolve in order for the Secretary of DCED (Secretary) to rescind Westfall's financially distressed status is its bankruptcy filing, which would involve confirmation and implementation of the Chapter 9 Plan and ultimately, discharge from bankruptcy.
18. Mr. Hendrickson testified that on October 29, 2009, Westfall proposed a Chapter 9 Plan to the Court and began implementing that plan immediately, and on March 2, 2010, the United States Bankruptcy Court for the Middle District of Pennsylvania issued an order confirming the Township's Chapter 9 Plan.

19. Mr. Hendrickson testified that implementation of the Chapter 9 Plan mirrored implementation of the Act 47 Recovery Plan initiatives, and that his analysis revealed that the Township has fully implemented all nine (9) initiatives.
20. Mr. Hendrickson testified that on June 4, 2010, Judge Thomas of the United States Bankruptcy Court for the Middle District of Pennsylvania issued a Final Decree Closing Chapter 9 and discharging Westfall from bankruptcy.
21. Mr. Hendrickson testified that all conditions which led to the earlier determination of municipal financial distress are no longer present in the Township of Westfall.
22. Mr. Hendrickson testified that he further considered the four (4) factors from Section 253(c) of Act 47 that the Secretary of DCED must consider "in determining whether the conditions which led to the earlier determination of municipal financial distress are no longer present." 53 P.S. § 11701.253(c).
23. Mr. Hendrickson testified that indeed "monthly reports submitted by the coordinator to the department under section 247(a)(3) indicate that termination of the status of municipal financial distress is appropriate."
24. Mr. Hendrickson testified that "accrued deficits in the municipality have been eliminated" because Westfall did not have any accrued deficits outside of those accounted for in the Chapter 9 Plan.
25. Mr. Hendrickson testified that "obligations issued to finance all or part of the municipality's deficit have been retired" because DCED did not issue Westfall any loans or grants in relationship to its financially distressed status.
26. Mr. Hendrickson testified that the fourth factor, that "the municipality has operated, for a period of at least one year, under a positive current operating fund balance or equity, as

evidenced by the municipality's audited financial statements prepared in accordance with generally accepted accounting principles,” was the most difficult component of his analysis, stating that Westfall did operate with a positive fund balance in 2010 and 2011 (and has, therefore, met the letter of the law), but failed to do so in 2012 and 2013. He stated that while it is his belief that these two years were merely brief hiccups within a larger stable pattern, without additional years of data, this is very difficult to prove.

27. Mr. Hendrickson testified that Westfall’s financial distress is not due to persistent structural distress, but rather to “Managerial Distress” which occurred long before the current Board of Supervisors took office or the current Treasurer and Secretary were hired. Having overcome its past administrative difficulties, he stated that Westfall is in a much more stable position, despite two years with a negative fund balance.
28. Mr. Hendrickson testified that his conclusion after reviewing and analyzing all of the pertinent information available is that the conditions that led to Westfall’s earlier determination of municipal financial distress are no longer present and that while the fourth factor to consider is a concern, the Township’s ability to increase revenue through unutilized taxation options alleviates this concern.
29. Mr. Hendrickson testified that he recommends that the Secretary of DCED rescind Westfall’s distressed status.
30. Lastly, Mr. Hendrickson testified regarding several recommendations he had for Westfall to help the Township maintain a strong fiscal position and continue to provide services in the most effective manner possible.



### *Evidence Associated with the Coordinator's Financial Analysis*

Section 253(a) of Act 47 requires "that the conditions which led to the earlier determination of municipal financial distress are no longer present." According to Westfall Township's Recovery Plan, "the only issue driving the Township into municipal distress, bankruptcy and Act 47 is its obligations to the Katzes resulting from the litigation and settlement" because "the Township has historically balanced its operating budget and met its obligations to vendors and creditors on an annual basis."

Section 102(a) of the Act states general conditions municipalities must meet to avoid distress determination, which are the ability to "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." As of the Confirmation of the Chapter 9 Plan and Westfall's subsequent discharge from bankruptcy, the Township has successfully met all of these general conditions, and projections show that it is not in danger of failing to meet any of these conditions.

Section 201 of the Act lists several specific conditions a municipality might experience that could lead to a distress determination. Of these specific conditions, only the tenth condition led to the determination of municipal financial distress in Westfall Township:

(10) A municipality has filed a municipal debt readjustment plan pursuant to Chapter 9 of the Bankruptcy Code (11 U.S.C. § 901 et seq.).

As such, this condition must be resolved in order to rescind Westfall's financially distressed status. Resolving this condition involves confirmation and implementation of the Chapter 9 Plan and ultimately, discharge from bankruptcy.

On October 29, 2009, Westfall proposed a Chapter 9 Plan to the Court and began implementing that plan immediately. On March 2, 2010, the United States Bankruptcy Court for the Middle District of Pennsylvania issued an order confirming the Township's Chapter 9 Plan. Throughout the latter part of 2009 and the first half of 2010, Westfall implemented the Chapter 9 Plan concurrent with its implementation of the Act 47 Recovery Plan. It has since completed implemented both plans.

On June 4, 2010, Judge Thomas of the United States Bankruptcy Court for the Middle District of Pennsylvania issued a Final Decree Closing Chapter 9 and discharging Westfall from bankruptcy. Exhibit B, Final Decree Closing Chapter 9.

Accordingly, all conditions which led to the earlier determination of municipal financial distress are no longer present in the Township of Westfall.

However, in determining whether the conditions which led to the earlier determination of municipal financial distress are no longer present, Section 253(c) of the Act also requires the Secretary of DCED to consider the following factors:

1. Monthly reports submitted by the coordinator to the department under section 247(a)(3) indicate that termination of the status of municipal financial distress is appropriate.
2. Accrued deficits in the municipality have been eliminated.
3. Obligations issued to finance all or part of the municipality's deficit have been retired.
4. The municipality has operated, for a period of at least one year, under a positive current operating fund balance or equity, as evidenced by the municipality's audited financial statements prepared in accordance with generally accepted accounting principles.

The following financial review will consider each of these factors in detail.

**1. Monthly Reports Indicate Termination of Distress Status is Appropriate**

Westfall's monthly reports indicate several important things:

1. Westfall has been fully discharged from Chapter 9 Bankruptcy, thus eliminating the one and only condition which led to Westfall's determination of municipal financial distress.
2. Westfall has successfully completed all nine of its Recovery Plan initiatives.
3. Each month, the Township treasurer submits very accurate and detailed financials for the Township. Within this submission is the Treasurer's Cash Flow analysis with projections for the next twelve months. These projections are always very accurate. The latest projections suggest that without raising taxes, Westfall will increase its General Fund fund balance by approximately \$37,000 and will increase its Katz Settlement Fund fund balance by approximately \$11,500 within the next twelve months. This is an indicator of stability within the Township's finances.
4. Westfall passed a resolution requesting DCED rescind its distressed status.
5. Westfall is not receiving any significant benefit from remaining a distressed municipality that it could not receive outside of Act 47 (that is, the Township currently receives technical assistance that it could just as easily receive if were not considered distressed).

In consideration of these five points, it is the opinion of the Coordinator that Westfall's monthly reports do indeed indicate that termination of distress status is appropriate.

## **2. Accrued Deficits have been Eliminated**

As described in Exhibit A, Financial Analysis, when Westfall entered the Financially Distressed Municipalities Program, it had filed for Chapter 9 Bankruptcy because it was unable to pay the accumulation of one very large accrued deficit. However, prior to distress determination, Westfall did not have any significant deficits and its General Fund fund balance was more than half of its annual revenue. Despite Westfall already being at its maximum real estate limit, the Township had plenty of available funds and additional revenue streams available to it (see Exhibit C, Berkheimer EIT Analysis). The Township was not experiencing a structural deficit.

As such, there are not actually any accrued deficits to consider beyond those created by the Katz judgment. As described in the Financial Analysis, the Township was able to utilize Chapter 9 Bankruptcy to settle with Mr. Katz and has created a dedicated tax to pay this liability.

The only other deficits to consider are the result of the two large one-time Dombrosky payments. These payments were made from the General Fund fund balance and while they caused a 2012 deficit (and a projected 2013 deficit), this deficit will not accrue beyond 2013 because the large payment requirements have already been fulfilled.

## **3. Obligations issued to finance deficit have been retired**

DCED did not issue Westfall any loans or grants in relationship to its financially distressed status. As such, this factor should not reflect negatively on any rescission of Westfall's distressed status.

#### 4. Operated, for at least one year, under a positive current operating fund balance

The Township's most recent available audited financial statements show that Westfall operated under a positive operating fund balance in 2010 and 2011.

TABLE 4, General Fund

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013*</u>
Total Revenue	\$1,037,545	\$1,486,522	\$1,042,329	\$1,065,425	\$1,046,375
Total Expenditures	\$1,542,103	\$1,284,045	\$902,633	\$1,165,732	\$1,228,213
Net change in fund balance	(\$504,558)	\$202,477	\$139,696	(\$100,307)	(\$181,838)
Fund balance, beginning of year	\$530,901	\$26,343	\$228,822	\$368,518	\$268,211
Fund balance, end of year	\$26,343	\$228,820	\$368,518	\$268,211	\$86,373

\*2013 Data is based on DCED's Annual Audit and Financial Report, not on GAAS Audited Financial data.

TABLE 5, Government-Wide, All Funds

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013*</u>
Total Revenue	\$1,536,170	\$2,228,689	\$1,788,415	\$1,810,954	\$1,820,943
Total Expenditure	\$2,146,468	\$2,051,211	\$1,700,075	\$1,850,298	\$1,999,273
Net change in fund balance	(\$610,298)	\$177,478	\$88,340	(\$39,344)	(\$178,330)
Fund balance, beginning of year	\$929,295	\$318,997	\$496,478	\$584,819	\$545,475
Fund balance, end of year	\$318,997	\$496,475	\$584,818	\$545,475	\$367,145

\*2013 Data is based on DCED's Annual Audit and Financial Report, not on GAAS Audited Financial data.

The deficits in 2012 and 2013 were almost entirely caused by the \$175,000 Dombrosky settlement payments. As these were two one-time payments, this expenditure will not exist past 2013, providing the Township with a more stable position than is initially evident from the 2012 and 2013 financials.

The Secretary of DCED is required to consider each of these four factors in considering a rescission of Westfall's distressed status and of the four, this one is the most difficult. Westfall did operate with a positive fund balance in 2010 and 2011 (and has, therefore, met the letter of the law), but failed to do so in 2012 and 2013. While it is the Coordinator's belief that these two years were merely brief hiccups within a larger stable pattern, without additional years of consideration, this is very difficult to prove. Likewise, the Coordinator does not foresee any

further difficulties within the Township; yet, these negative fund balances should not be taken lightly and should be the Secretary's chief concern as he considers rescission.

However, it is still important to note that Westfall does not have persistent structural distress. It does not have extraordinary expenditures which cannot be funded through basic taxation (see Exhibit C, Berkheimer EIT Analysis). It does not have a deteriorating tax base, an underfunded pension system, unwieldy contractual obligations or a failing infrastructure.

Instead, Westfall's distress fell into the category of "Managerial Distress," which is often the result of inadequate or poor management practices. In Westfall's case, poor administration occurred long before the current Board of Supervisors took office and long before the current Treasurer and Secretary were hired. The recovery team was able to assist Westfall as it recovered from prior poor decisions and now, having overcome its past administrative deficiencies, Westfall is in a much more stable position, despite two years with a negative fund balance.

Therefore, after reviewing and analyzing all of the pertinent information available, the coordinator concludes that the conditions that led to Westfall's earlier determination of municipal financial distress are no longer present, and because none of the factors to consider reflect negatively on Westfall's financial condition, the **Coordinator recommends that the Secretary of DCED rescind Westfall's distressed status.**

## Conclusions

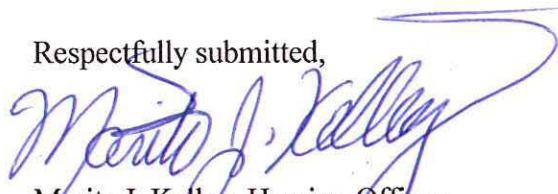
The Township of Westfall's financial condition has significantly improved during the recovery period and the Township is no longer protected under Chapter 9 Bankruptcy. The analysis of the Township's financial and legal positions reflects the improvements that have occurred and form the basis for the recommendation by the Recovery Coordinator that the Township of Westfall should be rescinded from the distressed municipalities program.

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 the financial obligations to their employees, vendors and suppliers; and provide for proper accounting procedures, budgeting and taxing practices."

Based on the testimony presented at the public hearing and evidence gathered through the financial analysis, it is clear that the conditions that initially led to the Township's distress status no longer exist; the Township meets the criteria for rescission of distress status; and the Township's Board of Supervisors is in full agreement that the Township of Westfall shall exit Act 47, the Municipalities Financial Recovery Program at this time.

Therefore, I recommend that for the above reasons the status of the Township of Westfall as a distressed municipality under the provisions of the Municipalities Financial Recovery Act, Act 47 of 1987 be rescinded.

Respectfully submitted,



Marita J. Kelley, Hearing Officer  
Governor's Center for Local Government Services

## **EXHIBIT A: FINANCIAL ANALYSIS**



**EXHIBIT B: FINAL DECREE CLOSING CHAPTER 9**

**EXHIBIT C: BERKHEIMER EIT ANALYSIS**

**EXHIBIT D: NOTICE OF HEARING**

**EXHIBIT E: REQUEST FOR DETERMINATION OF RESCISSION**  
**FROM DISTRESS STATUS**

**EXHIBIT F: STENOGRAPHIC RECORD**

**EXHIBIT G: ATTENDANCE LIST FROM PUBLIC HEARING**