

08-744-CD

Patrick Reilly vs Comm of PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY and
P. J. REILLY CO.

PETITIONER

vs.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,

RESPONDENT

NO. 08-744 - C.D.

Type of Case: CIVIL

Type of Pleading: PETITION OF
APPEAL FROM
DEPARTMENTAL
ORDER OF SUSPENSION OF
CERTIFICATE OF
APPOINTMENT AS AN
OFFICIAL SAFETY INSPECTION
STATION ISSUED BY
DEPARTMENT OF
TRANSPORTATION

Filed on Behalf of:
PETITIONER

Counsel of Record:
CHRISTOPHER E. MOHNEY,
ESQUIRE

Supreme Court No. 63494

25 EAST PARK AVENUE
SUITE 6
DUBOIS, PA 15801
(814) 375-1044

FILED
04/30/2008 \$95.00
APR 24 2008
3CC Atty

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY and : NO. 08-744-C.D.
P. J. REILLY CO.

PETITIONER : Type of Case: CIVIL
vs.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,

RESPONDENT

FILED 3cc
04/09/2008 Atty
APR 29 2008 Mohney
William A. Shaw
Prothonotary/Clerk of Courts
CK

ORDER SETTING HEARING AND ORDER FOR SUPERSEDEAS

AND NOW, this 24 day of April, 2008, upon consideration of the Petition of PATRICK J. REILLY and P.J. REILLY CO. for review of an Order of the Department of Transportation suspending Petitioner's Certificate of Appointment as an Official Safety Inspection Station, it is hereby **ORDERED AND DECREED** that a hearing is granted to determine whether the action of the Department of Transportation in suspending Petitioner's Certificate of Appointment as an Official Safety Inspection Station should be set aside.

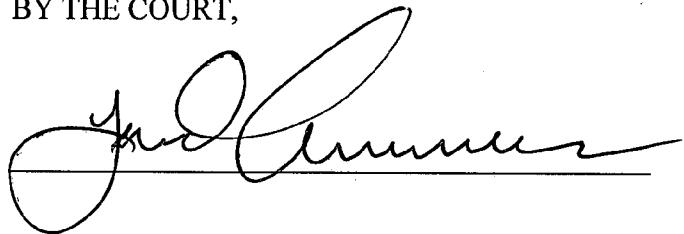
Hearing on the above matter is fixed for the 5th day of August, 2008 at 1:30 o'clock P.M. in Courtroom No. 1 of the Clearfield County Courthouse.

The Petitioners are directed forthwith to serve notice of this appeal by serving a certified true and correct copy of this Order and Petitioner's Petition of Appeal from

Departmental Order of Suspension of Certificate of Appointment as an Official Safety Inspection Station Issued by the Department of Transportation on the Respondent Commonwealth of Pennsylvania, Department of Transportation at the address shown in the Department's official notice of the suspension letter, by certified mail, return receipt requested.

It is further hereby **ORDERED AND DECREED** that this Order shall act as a supersedesas of the action of the Pennsylvania Department of Transportation seeking to suspend Petitioner's Certificate of Appointment as an Official Safety Inspection Station, and the Commonwealth of Pennsylvania, Department of Transportation is further directed to stay said suspension pending final adjudication of Petitioners appeal.

BY THE COURT,

A handwritten signature in black ink, appearing to read "James J. Cawley", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'J' at the beginning.

DATE: 4/20/08

You are responsible for serving all appropriate parties.

The Prothonotary's Office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

APR 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY and : NO. 08 - - C.D.
P. J. REILLY,

PETITIONER : Type of Case: CIVIL
vs.

COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,

RESPONDENT :

**PETITION OF APPEAL FROM DEPARTMENTAL ORDER OF SUSPENSION
OF CERTIFICATE OF APPOINTMENT AS AN OFFICIAL SAFETY
INSPECTION STATION ISSUED BY THE DEPARTMENT OF
TRANSPORTATION**

AND NOW, comes the Petitioners, ***PATRICK J. REILLY and P. J. REILLY CO.***, by and through his attorney, ***CHRISTOPHER E. MOHNEY, ESQUIRE***, who files the within Petition against the above-captioned respondent pursuant to 75 Pa. C.S.A. §4724(b) for review of Order of Suspension of Official Inspection Station issued by the Respondent, Commonwealth of Pennsylvania, Department of Transportation suspending Petitioner's Certificate of Appointment as an Official Safety Inspection Station, and in support thereof avers the following:

1. Petitioners are PATRICK J. REILLY and P. J. REILLY CO., having mailing addresses at 227 Hamor Street, DuBois, Pennsylvania 15801.
2. Petitioners hold a Certificate of Appointment as an Official Safety Inspection Station, designated by the Commonwealth of Pennsylvania, Department of Transportation as Station E47.

3. Respondent COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION has a mailing address at Department of Transportation, Chief Counsel's Office, Riverfront Office Center, 1101 S. Front Street, 3rd Floor, Harrisburg, PA 17104-2416.

4. By letter from Respondent mailed April 1, 2008, Petitioners were notified in writing by the Department of Transportation of the entry of an Order suspending its Certificate of Appointment as an Official Safety Inspection Station for the following reasons:

- a. for a period of two (2) months, effective May 7, 2008 as a result of an alleged faulty inspection of equipment or parts; and
- b. for a consecutive period of two (2) months for alleged improper record keeping.

A copy of the Order of Suspension of Official Inspection Station is attached hereto and marked Exhibit "A".

5. The suspension is improper and unlawful for the following reasons:
 - a. Petitioners believe, and therefore aver, that Respondent cannot meet its burden of proof as to the allegations of faulty inspection of equipment or parts and/or improper record keeping for at least the reason that the alleged deficiencies with the inspection may have manifested themselves between the date of Petitioner's inspection and the date of the Respondent's representative's roadside inspection;
 - b. the Respondent failed to consider the volume of inspections conducted by Petitioner and provide the owner or operator of the inspection center the opportunity to correct any inaccurate records;

c. Respondent is seeking to likewise suspend the mechanic whom performed the inspection in question's PATRICK J. REILLY's mechanic's certification as a safety inspector for the same alleged transactions and occurrences, the mechanic being PATRICK J. REILLY, JR. and whom is filing a contemporaneous appeal;

d. Respondent has failed to permit the station owner to consent to the acceptance of a point assessment in lieu of a suspension pursuant to 67 Pa. Code § 175.51.

d. such other reasons that the Court deems just.

WHEREFORE, Petitioners PATRICK J. REILLY and P. J. REILLY CO. respectfully requests that this honorable Court set this matter down forthwith for a hearing pursuant to 75 Pa. C.S.A. §4724(b), and that the Order of Suspension of Official Inspection Station of the Commonwealth of Pennsylvania, Department of Transportation be set aside.

Respectfully submitted,

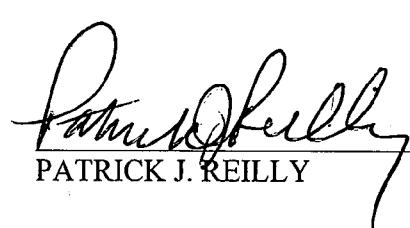
Christopher E. Mohney, Esquire
Attorney for Petitioners

VERIFICATION

I, PATRICK J. REILLY, being duly authorized to make this Verification, have read the foregoing Petition of Appeal from Departmental Order of Suspension of Certificate of Appointment as an Official Safety Inspection Station Issued by Department of Transportation. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides if I make knowingly false averments I may be subject to criminal penalties.

Date: 14 April 2008



Patrick J. Reilly
PATRICK J. REILLY



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG, PA 17104

Patrick J. Reilly
P J Reilly Co-OIS#E47
227 Hamor Street
Dubois, PA 15801

Vehicle Inspection Division
Post Office Box 69003
Harrisburg, PA 17106-9003
Phone: (717) 787-2895
STATION: E47
CERTIFIED MAIL: 7004 2510 0001 4164 0791
MAIL DATE: April 1, 2008

ORDER OF SUSPENSION OF OFFICIAL INSPECTION STATION

You are hereby notified that your Certificate of Appointment as an Official Safety Inspection Station is suspended, pursuant to Section 4724 of the Vehicle Code. No vehicle safety inspections may be performed at your station during the suspension. Pursuant to Departmental regulations, your Certificate of Appointment will be suspended for two (2) months for faulty inspection of equipment or parts (on a 1986 GMC, VIN-1GD6D1F1GV535208, sticker#SI7-0227086) by you and two (2) months for improper record keeping. Further, the Department is including in this offense, the lesser included offense of careless record keeping.

The suspension(s) will run consecutively, for a total suspension of four (4) months. This suspension is to run consecutively with any other suspension(s) imposed by the Department for any violation considered separately. **THE SUSPENSION WILL BE EFFECTIVE May 7, 2008.** At this time, you are ordered to surrender to the Quality Assurance Officer, who is a representative of the Department of Transportation, your Certificate(s) of Appointment, and all safety inspection stickers. Two (2) weeks prior to the expiration of your suspension, you may contact your Quality Assurance Officer for reappointment. A complete and thorough investigation may be conducted to determine if you are qualified for reappointment.

You have the right to appeal this Departmental Order of Suspension to the Court of Common Pleas of the County in which the above referenced inspection station is located, **WITHIN THIRTY (30) DAYS OF THE MAIL DATE OF THIS ORDER.** If you do file an appeal, a signed and time-stamped copy of the appeal must be served upon the Department at the mailing address listed below. **FILING OF AN APPEAL DOES NOT AUTOMATICALLY STAY THE SUSPENSION.** In order for your privileges to be restored pending appeal, a signed Order of Supersedeas from the Court directing the Department to stay the suspension must be served upon the Department at the mailing address listed below.

MAILING ADDRESS:
Department of Transportation
Chief Counsel's Office
Riverfront Office Center
1101 S. Front Street, 3rd Floor
Harrisburg, PA 17104-2416

Sincerely,

Anita M. Wasko, Director
Bureau of Motor Vehicles

EXHIBIT A.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY and
P.J. REILLY CO. : NO. 08 -744-C.D.
PETITIONER : TYPE OF CASE: CIVIL
VS. : TYPE OF PLEADING: AFFIDAVIT
COMMONWEALTH OF : OF SERVICE
PENNSYLVANIA, : FILED ON BEHALF OF: PETITIONER
DEPARTMENT OF : COUNSEL OF RECORD:
TRANSPORTATION : CHRISTOPHER E. MOHNEY, ESQUIRE
RESPONDENT : SUPREME COURT NO.: 63494
: 25 EAST PARK AVENUE, SUITE 6
: DUBOIS, PA 15801
: (814) 375-1044

FILED
07/14/08
MAY 15 2008
UP
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY and : NO. 08 - 744- C.D.
P.J. REILLY CO. :
PETITIONER : TYPE OF CASE: CIVIL
VS. :
COMMONWEALTH OF :
PENNSYLVANIA, DEPARTMENT :
OF TRANSPORTATION :
RESPONDENT :

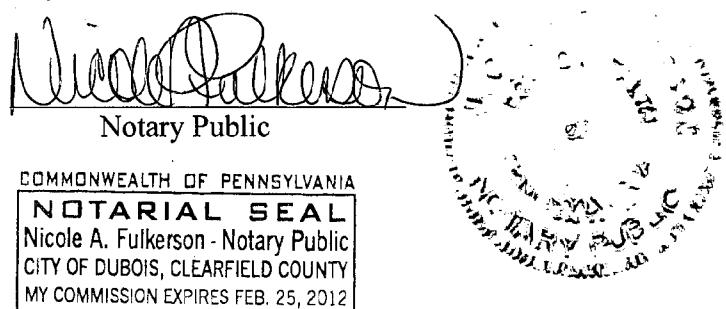
AFFIDAVIT OF SERVICE

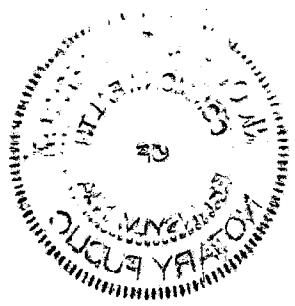
COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :

I, **CHRISTOPHER E. MOHNEY, ESQUIRE**, being duly sworn according to law, deposes and says that as attorney for Petitioner in the above-captioned action, did on May 2, 2008, serve Respondent with a certified true and correct copy of Petition of Appeal from Departmental Order of Suspension of Certificate of Appointment as an Official Safety Inspection Station Issued by Department of Transportation by certified mail, return receipt requested, said returned receipt is attached hereto.

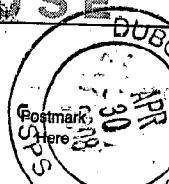

Christopher E. Mohney, Esquire

SWORN TO and SUBSCRIBED
before me this 10th day of
May, 2008.





SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY											
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature </p> <p>B. Received by (Printed Name) MAY 02 2004 Date of Delivery</p> <p>C. Article Addressed to:</p> <p>Department of Transportation Chief Counsel's Office Riverfront Office Center 1101 S. Front Street, 3 Floor Harrisburg, PA 17104-2416</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>E. Service Type</p> <table> <tr> <td><input checked="" type="checkbox"/> Certified Mail</td> <td><input type="checkbox"/> Express Mail</td> </tr> <tr> <td><input type="checkbox"/> Registered</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td><input type="checkbox"/> C.O.D.</td> </tr> </table> <p>F. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <tr> <td colspan="2">2. Article Number (Transfer from service label)</td> <td colspan="2">7006 0810 0001 0127 3282</td> </tr>		<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail	<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.	2. Article Number (Transfer from service label)		7006 0810 0001 0127 3282	
<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail												
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise												
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.												
2. Article Number (Transfer from service label)		7006 0810 0001 0127 3282											

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 5.38
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 5.38
 Postmark APR 30 2008 DUBON PA	
04/30/2008	
Sent To Department of Transportation, Chief Counsel's Office Street, Apt No., Riverfront Office Center or PO Box No. 1101 S. Front Street, 3rd Floor City, State, ZIP+4 Harrisburg, PA 17104-2416	
<small>PS Form 3800, June 2002</small> See Reverse for Instructions	

FILED

MAY 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

COPIED
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY,
Plaintiff

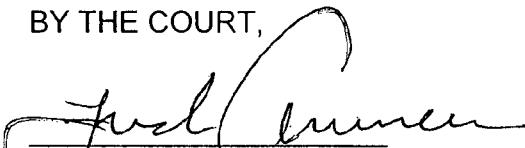
vs.
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendant

*
*
* 08-743-CD
* 08-744-CD
*
*

ORDER

NOW, this 4th day of August, 2008, the Court being in receipt of the Defendant's Motions to Continue Hearing (submitted via facsimile by William A. Kuhar, Jr., Esquire) in the above-captioned cases, with the Court noting that the hearing was scheduled by this Court's Order of April 23, 2008 and all parties were given more than adequate time to prepare; it is the ORDER of this Court that said Motions for Continuance be and are hereby DENIED. Hearing will proceed as scheduled on August 5, 2008 at 1:30 p.m.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

08-04-08
AUG 04 2008

RE: William A. Shaw
Prothonotary/Clerk of Courts
JCC Atty's. Mohney
Kuhar

Forced by Doris 814108 to
Atty's. Kuhar & Mohney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**PATRICK J. REILLY
AND P. J. REILLY, CO.
Petitioner,**

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent.**

CIVIL ACTION - LAW

No. 744- CD-2008

MOTION TO CONTINUE

Filed on Behalf of:

**COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
TRANSPORTATION**

Counsel of Record for this Party:

William A. Kuhar, Jr.
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
1209 State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222
(412) 565-7555

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Civil Division

PATRICK J. REILLY
AND P. J. REILLY, CO.
Plaintiff,

CIVIL ACTION - LAW

v.

No. 744-CD-2008

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendant.

MOTION TO CONTINUE

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Motor Vehicles (hereinafter "Bureau"), by its attorney, William A. Kuhar, Jr., Esquire, and files this Motion to Continue and, in support thereof, avers the following:

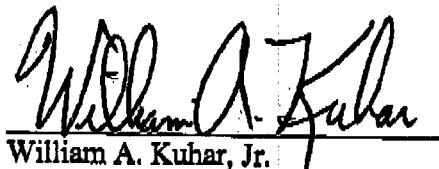
1. This is an appeal by the petitioner, Patrick J. Reilly d/b/a P.J. Reilly, Co., from suspensions of P.J. Reilly Co.'s certificate of appointment as an official safety inspection station.
2. The hearing on this appeal is currently scheduled for August 5, 2008, before the Honorable Fredric J. Ammerman of this Court.
3. The appealed suspensions of the petitioner's certificate of appointment as an official safety station was imposed based on determinations by the Bureau that the petitioner had committed faulty inspection and improper recordkeeping violations.
4. The Bureau's witness, Trooper Kenneth Hofer of the Clearfield barracks of the Pennsylvania State Police, is unavailable for the August 5, 2008 hearing on this appeal.

5. The Bureau is requesting a continuance of the hearing on this appeal due to the unavailability of its aforementioned witness.

7. Counsel for Petitioner, Attorney Christopher F. Mohney, has consented to the granting of the requested continuance.

WHEREFORE, the Commonwealth of Pennsylvania, Department of Transportation, respectfully requests that the hearing on this appeal be continued to the next available list, for statutory appeals in the Court of Common Pleas of Clearfield County.

Respectfully submitted,



William A. Kuhar, Jr.
Assistant Counsel
Commonwealth of Pennsylvania
Department of Transportation
Office of Chief Counsel
1209 State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222
(412) 565-7555

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Civil Division

**PATRICK J. REILLY
AND P. J. REILLY, CO.
Petitioner,**

CIVIL ACTION - LAW

v.

No. 744- CD-2008

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Respondent.**

ORDER OF COURT

**AND NOW, this _____ day of _____, 2008, upon consideration of
the foregoing Motion to Continue, it is hereby ORDERED, ADJUDGED and DECREED
that a hearing on the above captioned statutory appeal shall be continued from the August
5, 2008, to _____, at _____ m., in Courtroom No.
_____ of the Clearfield County Courthouse.**

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
Civil Division

**PATRICK J. REILLY
AND P. J. REILLY, CO.
Plaintiff,**

v.

CIVIL ACTION - LAW

No. 744- CD-2008

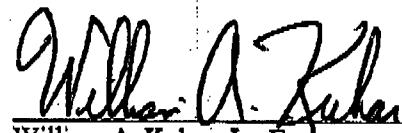
**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Defendant.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on the date set forth below, she served a true and correct copy of the foregoing Motion to Continue upon the Petitioner by regular United States first class mail, postage pre-paid, addressed as follows and via fax:

Christopher F. Mohney, Esquire
25 East Park Avenue, Suite 6
Dubois, PA 15801

Date: August 4, 2008


William A. Kuhar, Jr., Esq.
Assistant Counsel
Attorney for the Commonwealth

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA : :

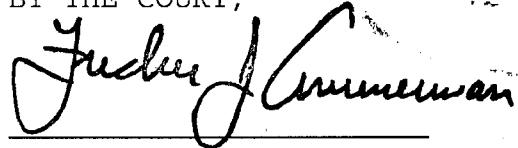
VS. : NO. 08-744-CD

PATRICK J. REILLY : License Suspension Appeal

O R D E R

NOW, this 5th day of August, ²⁰⁰⁸ 2004, this being the day and date set for hearing into the above-captioned Appeal from License Suspension; following hearing upon consideration thereof, it is the ORDER of this Court that counsel for both parties be and is hereby given twenty (20) days within which to submit letter brief to the Court.

BY THE COURT,



President Judge

FILED *cc*
08/06/2008 *Atty Mohney*
AUG 06 2008 *Kuhns*

William A. Shaw
Prothonotary/Clerk of Courts

(60)

FILED

AUG 06 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/10/08

 You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

PATRICK J. REILLY, d/b/a P.J. REILLY CO.,
Petitioner

NO. 08-744-CD

vs.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT
OF TRANSPORTATION,
Respondent

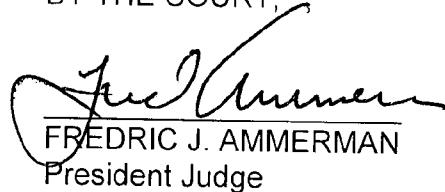
*
*
*
*
*

ORDER

NOW, this 29th day of August, 2008, following hearing on the Petition of Appeal from Departmental Order of Suspension, it is the finding of this Court that the Department of Transportation has met its burden of proof to show an improper inspection by the Petitioner. The Petitioner's Appeal is DISMISSED relative the Order of Suspension of Official Inspection Station of two months for faulty inspection of equipment. The Supersedeas previously issued by the Court is hereby vacated.

Upon agreement of the Commonwealth, the Appeal is granted in regard to the Order of Suspension of Official Inspection Status for two months for improper record keeping.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
014.006
AUG 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

ICCA Atys:
Kuhar
Mohney
(610)

FILED

AUG 29 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/29/08

 You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

 Special Instructions: