

Docket Number: 2700

**AXXON CORP. D/B/A INTERNATIONAL WASTE INDUSTRIES**

~~C. Grainger Bowman, Esquire~~  
~~Mehran Etemad, President~~  
~~Michael D. Reed, Esquire~~

VS.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES**

~~Gregory Santoro, Chief Counsel~~  
~~Jose Morales, Assistant Counsel~~  
~~Stephen J. Busterna, Assistant Counsel~~  
~~Alice Miller, Assistant Counsel~~  
~~David L. Narkiewicz, Assistant Chief Counsel~~  
~~Tanya C. Leshko, Esquire~~  
~~Harry R. Walter, Assistant Counsel~~

**July 7, 1998**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$100,000.00.

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**July 9, 1998**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT AUGUST 10, 1998.**

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**July 15, 1998**

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 10, 1998.

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**July 15, 1998**

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General July 13, 1998.

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**August 10, 1998**

Preliminary Objections and Brief in Support filed by attorney for Defendant.

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**September 1, 1998**

Plaintiff's Answer to Defendant's Preliminary Objections filed by attorney for Plaintiff.

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**September 18, 1998**

Plaintiff's Brief Opposing Defendant's Preliminary Objections filed by attorney for Plaintiff.

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**April 22, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 22nd day of April, 1999, upon review of the Plaintiff's, Axxon Corporation d/b/a International Waste Industries, Complaint and due consideration of the Defendant's, Commonwealth of Pennsylvania, Department of General Services, Preliminary Objections and other submissions, it is hereby **ORDERED** and **DECREED** that the Defendant's Preliminary Objections are **DENIED**. The Defendant is **DIRECTED** to file, with the Board of Claims, an Answer or other pleading within thirty (30) days from the exit date of this Order." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**April 27, 1999**

Acceptance of Service of Opinion and Order dated April 22, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 23, 1999.

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**May 5, 1999**

Acceptance of Service of Opinion and Order dated April 22, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 26, 1999.

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**June 17, 1999**

Answer with New Matter and Counterclaim filed by attorney for Defendant.

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**June 18, 1999**

Letter forwarded to Plaintiff requesting response to Defendant's New Matter and Counterclaim. Response due July 20, 1999.

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**December 8, 1999**

Plaintiff's Reply to New Matter, Answer to Counterclaim and New Matter filed by attorney for Plaintiff.

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**December 9, 1999**

Letter forwarded to parties directing parties to commence with discovery.

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**December 15, 1999**

Defendant's Answer to Plaintiff's New Matter filed by attorney for Defendant.

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**April 3, 2000**

Letter forwarded to parties requesting status. Response due from parties May 3, 2000.

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**May 18, 2000**

Letter forwarded to parties requesting status. Response due from parties June 19, 2000.

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**July 6, 2000**

Status letter received from attorney for Plaintiff advising that the parties are in the process of establishing a comprehensive discovery schedule which shall be forwarded to the Board by July 31, 2000.

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**July 31, 2000**

Status letter received from attorney for Plaintiff advising that the parties are in discovery.

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**March 23, 2001**

Letter forwarded to parties requesting a status. Response due from parties 4/23/01.

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**April 19, 2001**

Status letter received from attorney for Plaintiff advising that they are in discovery.

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**January 28, 2002**

Letter forwarded to parties requesting a Status Report. Status Report due on or before 2/27/02.

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**February 27, 2002**

Letter received from attorney for Plaintiff advising that Plaintiff expects to complete discovery by August 31, 2002 and expects that this case will be ready for trial by October 31, 2002.

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**January 16, 2003**

Letter forwarded to parties requesting a Status Report. Status Report due on or before **2/18/03**.

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**February 13, 2003**

Letter received from attorney for Defendant advising that neither party has completed discovery in this matter.

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**February 26, 2003**

Praecipe to withdraw appearance of Jose E. Morales, Assistant Counsel, on behalf of Defendant and entry of appearance of Stephen J. Busterna, Assistant Counsel, on behalf of Defendant filed by attorney for Defendant.

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**March 5, 2003**

Letter received from attorney for Plaintiff advising that discovery must be completed by the parties and the case will be listed for trial upon completion.

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**September 30, 2003**

Board forwarded letter to parties requesting a Status Report.

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**October 14, 2003**

Plaintiff filed Motion of Counsel C. Grainger Bowman and Powell, Trachtman, Logan, Carrle, Bowman & Lombardo to Withdraw as Counsel for Plaintiff.

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**October 23, 2003**

Defendant filed a letter advising that the Department assents to counsel for Plaintiff's Motion to Withdraw.

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**October 31, 2003**

Plaintiff filed a letter (via fax) requesting to proceed pro se and also requesting an extension of time to file a status report.

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**November 5, 2003**

Plaintiff filed a letter (via U.S. mail) requesting to proceed pro se and also requesting an extension of time to file a status report.

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**November 6, 2003**

Board issued an Opinion and Order. Order as follows: "**AND NOW**, this 6th day of November, 2003, it is **ORDERED** and **DECREED** that Plaintiff, Axxon Corp. d/b/a International Waste Industries does not need to be represented by an attorney for the purposes of proceeding with the litigation. It is further **ORDERED** that the Motion for Withdrawal of Plaintiff's counsel is hereby **GRANTED** and that the parties shall prepare for trial in this matter and advise the Board as to the status of the case by letter no later than six (6) months from the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

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**November 12, 2003**

Plaintiff (Bowman) filed Acceptance of Service of Opinion and Order dated November 6, 2003. Receipt of same acknowledged November 10, 2003.

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**November 21, 2003**

Plaintiff (Etemad) filed Acceptance of Service of Opinion and Order dated November 6, 2003. Receipt of same acknowledged November 14, 2003.

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**February 4, 2004**

Defendant filed a Praecipe to withdraw appearance of Stephen J. Busterna and enter appearance of Alice Miller on behalf of Defendant.

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**March 19, 2004**

Plaintiff filed Notice of Service of first request of interrogatories and production of documents.

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**May 11, 2004**

Plaintiff filed a letter-type motion to compel production of documents and answers to interrogatories.

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**May 20, 2004**

Defendant filed a letter advising that Defendant is unopposed to Plaintiff's Motion to Compel.

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**May 20, 2004**

Defendant filed Certificate of Service for Defendant's Answers to Interrogatories.

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**June 2, 2004**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 2nd day of June, 2004, it is hereby **ORDERED** and **DECREED** that Plaintiff's motion to compel production of documents is granted and Defendant is **ORDERED** to produce all documents set forth in Plaintiff's motion within twenty (20) days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

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**June 4, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated June 2, 2004. Receipt of same acknowledged June 4, 2004.

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**June 22, 2004**

Defendant filed a letter advising that Defendant has been unsuccessful in contacting Plaintiff and that all documents are available for Plaintiff to review.

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**March 21, 2005**

Board forwarded letter to parties requesting a status report.

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**April 19, 2005**

Plaintiff filed letter, via facsimile, advising that he is trying to contact Defendant's counsel to make arrangements to review the documents and depose some individuals.

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**April 20, 2005**

Defendant filed Status Report advising that their last correspondence with Plaintiff was in June, 2004 and that they plan to send Plaintiff Interrogatories in the near future.

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**April 27, 2005**

Plaintiff filed letter, via U.S. Mail, advising that he is trying to contact Defendant's counsel to make arrangements to review the documents and depose some individuals.

**July 28, 2005**

Defendant filed Praecipe to Withdraw appearance of Alice Miller, Esquire, on behalf of Defendant.

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**July 28, 2005**

Defendant filed Praecipe to Enter Appearance of David L. Narkiewicz, Assistant Chief Counsel and Tanya C. Leshko, Senior Counsel, on behalf of Defendant.

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**September 26, 2008**

Defendant filed letter requesting the Board enter an order dismissing this case for failure to prosecute.

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**October 30, 2008**

Board forwarded Notice of Proposed Termination of Case for Lack of Activity Pursuant to Pa. Rule of Civil Procedure 230.2 to Plaintiff, with copy to Defendant.

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**December 31, 2008**

Plaintiff filed Response to the Notice of Proposed Termination advising Plaintiff has every intension to proceed with above docket number.

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**February 4, 2010**

Defendant filed Entry of Appearance of Harry R. Walter, III, Assistant Counsel of behalf of DGS.

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**February 4, 2010**

Defendant filed Motion for Judgment of Non Pros as well as Brief in Support.

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**February 5, 2010**

Defendant filed Praecipe to Attach Exhibit to Motion for Judgment of Non Pros.

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**February 9, 2010**

Board forwarded letter to Plaintiff requesting a Response to Defendants Motion for Judgment of Non Pros.

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**February 9, 2010**

Board rendered Order. Order as follows: "**AND NOW**, this 9<sup>th</sup> day of February, 2010, upon receipt of a Praecipe to Attach Exhibit executed by Harry R. Walter, III, Assistant Counsel, on behalf of Defendant, Commonwealth of Pennsylvania, Department of General Services, requesting that the Board attach a document identified in said praecipe as "Exhibit A" (consisting of a copy of the Board's docket sheet containing entries from July 7, 1998 to December 31, 2008) to Defendant's Motion for Judgment of Non Pros, Defendant's request to attach "Exhibit A" to Defendant's Motion for Judgment of Non Pros is hereby **GRANTED**."

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**March 31, 2010**

Plaintiff filed Acceptance of Service of Order dated February 9, 2010. Receipt of same acknowledged March 29, 2010.

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**March 31, 2010**

Plaintiff filed letter requesting 90 days to respond to Order dated February 9, 2010.

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**April 1, 2010**

Board rendered Order. Order as follows: "**AND NOW**, this 1<sup>st</sup> day of April, 2010, as a result of a letter filed by Plaintiff requesting a 90 day extension of time in which to file its Response to Defendant's Motion for Judgment of Non Pros, it is hereby **ORDERED** and **DECREED** that a 90 day enlargement of time is hereby **GRANTED**. Plaintiff's Response to Defendant's Motion for Judgment of Non Pros must be filed with this Board on or before June 29, 2010." Copy forwarded to Plaintiff and Defendant.

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**April 5, 2010**

Defendant filed Acceptance of Service of Order dated April 1, 2010. Receipt of same acknowledged April 2, 2010.

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**June 24, 2010**

Plaintiff filed letter requesting an additional 90 days to respond to Order dated February 9, 2010.

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**June 28, 2010**

Defendant filed letter advising that Plaintiff did not seek Defendant's consent to an extension of time for Plaintiff to respond to Order dated February 9, 2010 and requests that any interest potentially awarded to Plaintiff be tolled until Motion for Non Pros is decided.

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**June 28, 2010**

Board rendered Order. Order as follows: "**AND NOW**, this 28th day of June, 2010, as a result of a letter filed by Plaintiff requesting an additional 90 day extension of time in which to file its Response to Defendant's Motion for Judgment of Non Pros due to serious health issues affecting Plaintiff, it is hereby **ORDERED** and **DECREED** over objection by Defendant that an additional enlargement of time is hereby **GRANTED**. Plaintiff's Response to Defendant's Motion for Judgment of Non Pros must now be filed with this Board on or before September 29, 2010.

It is further **ORDERED** that a fact hearing before the Board on Defendant's motion for judgment of non pros is set for 9:30 a.m. on Tuesday, November 9, 2010 and will continue thereafter as necessary. Said hearing shall be held at 200 North 3<sup>rd</sup> Street, Fulton Building, 6<sup>th</sup> Floor, Harrisburg, Pennsylvania 17101. Each party shall be expected to present competent evidence in support of its position with regard to said motion at this hearing. See Tri-State Asphalt Corporation v. Dept. of Transportation, 875 A.2d 1199 (Pa. Cmwlth. 2005)." Copy forwarded to Plaintiff and Defendant.

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**June 28, 2010**

Defendant filed Notice of Service of First Set of Requests for Admissions.

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**June 30, 2010**

Defendant filed Acceptance of Service of Order dated June 28, 2010. Receipt of same acknowledged June 29, 2010.

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**September 7, 2010**

Defendant filed Motion for Sanctions and Brief.

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**September 21, 2010**

Defendant filed a Praecipe to Withdraw Motion for Judgment of Non Pros and Cancel Hearing.

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**September 23, 2010**

Plaintiff filed Reply to First Set of Requests for Admissions Addressed to Plaintiff

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**September 23, 2010**

Plaintiff filed Response in Support of Denying DGS's Motion for Sanctions.

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**September 23, 2010**

Board rendered Order. Order as follows: "Pursuant to a praecipe from the Department of General Services filed with the Board on September 21, 2010, it is hereby **ORDERED** that DGS's Motion for Judgment of Non Pros is **WITHDRAWN** and the hearing for same set for November 9, 2010 is **CANCELED**." Copy forwarded to Plaintiff and Defendant.

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**September 23, 2010**

Board forwarded letter to parties requesting scheduling information.

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**September 24, 2010**

Defendant filed Motion to Strike off Pleadings and Brief in Support.

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**September 27, 2010**

Defendant filed a proposed scheduling Order.

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**September 28, 2010**

Defendant filed a Motion for Leave to File Amended Counterclaim and Brief in Support. [06A102810]

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**September 29, 2010**

Board forwarded letter to Plaintiff requesting a response to Defendant's Motion for Leave to File Amended Counterclaim.

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**September 30, 2010**

Plaintiff filed a Praecipe for Entry of Appearance of Michael D. Reed, Esquire on behalf of Plaintiff.

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**October 7, 2010**

Plaintiff filed Proposed Scheduling Dates.

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**October 13, 2010**

Board rendered Scheduling Order. Order as follows: **"AND NOW**, this 13<sup>th</sup> day of October, 2010, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is December 15, 2010;<sup>1</sup> 2. The last day for defendant's expert report, if any, to be provided to plaintiff is January 17, 2011;<sup>1</sup> 3. All discovery, including exchange of expert rebuttal reports, shall be completed by February 28, 2011;<sup>2</sup> 4. The last day for filing pre-trial motions is March 15, 2011;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than April 15, 2011 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, May 25, 2011 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Monday, July 18, 2011 and running through Friday, July 22, 2011, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Unless otherwise noted, the first day of all hearings begins at 9:30 a.m., and subsequent hearing days begin at 9:00 a.m." Copy forwarded to Plaintiff and Defendant.

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**October 14, 2010**

Plaintiff filed Response to Motion to Strike Off Pleadings and Brief in Opposition.

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**October 19, 2010**

Board rendered Amended Scheduling Order. Order as follows: **"AND NOW**, this 19<sup>th</sup> day of October, 2010, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is December 15, 2010;<sup>1</sup> 2. The last day for defendant's expert report, if any, to be provided to plaintiff is January 17, 2011;<sup>1</sup> 3. All discovery, including exchange of expert rebuttal reports, shall be completed by February 28, 2011;<sup>2</sup> 4. The last day for filing pre-trial motions is March 15, 2011;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than April 15, 2011 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, May 25, 2011 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Monday, July 11, 2011 and running through Friday, July 15, 2011, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Unless otherwise noted, the first day of all hearings begins at 9:30 a.m., and subsequent hearing days begin at 9:00 a.m." Copy forwarded to Plaintiff and Defendant.

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**October 15, 2010**

Defendant filed Acceptance of Service of Scheduling Order dated October 13, 2010. Receipt of same acknowledged October 14, 2010.

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**October 20, 2010**

Plaintiff filed Acceptance of Service of Scheduling Order dated October 13, 2010. Receipt of same acknowledged October 19, 2010.

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**October 21, 2010**

Plaintiff filed Acceptance of Service of Amended Scheduling Order dated October 19, 2010. Receipt of same acknowledged October 20, 2010.

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**October 20, 2010**

Defendant filed Acceptance of Service of Amended Scheduling Order dated October 19, 2010. Receipt of same acknowledged October 20, 2010.

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**October 28, 2010**

Plaintiff filed Response to Defendant's Motion for Leave to File Amended Counterclaim and Brief in Opposition.

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**November 1, 2010**

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 1<sup>st</sup> day of November, 2010, upon consideration of Defendant's Motion for Sanctions and Motion to Strike Off Pleadings, it is **ORDERED** that Defendant's Motion for Sanctions is **DENIED** and Plaintiff given 10 days leave from the exit date of this Order to file a motion to withdraw and amend its answers to Defendant's requests for admissions.

It is further **ORDERED** that Defendant's Motion to Strike Off Pleadings is **GRANTED IN PART** and **DENIED IN PART**. In Plaintiff's pleading titled "Response in Support of Denying DGS's Motion for Sanctions," the language of Section III shall be stricken (excepting the closing clause beginning with "WHEREFORE") as well as Exhibits I and II as identified in the above Opinion." Copy forwarded to Plaintiff and Defendant.

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**November 8, 2010**

Plaintiff filed Acceptance of Service of Opinion and Order dated November 1, 2010. Receipt of same acknowledged November 4, 2010.

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**November 12, 2010**

Plaintiff filed Motion to Withdraw and Amend Claimant's Answers to Respondent's Request for Admissions.

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**November 23, 2010**

Defendant filed Response to Motion to Withdraw and Amend Claimant's Answers to Respondent's Request for Admissions.

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**December 1, 2010**

Defendant filed Notice of Service of First Set of Interrogatories and First Set of Request for Production of Documents.

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**December 3, 2010**

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 3<sup>rd</sup> day of December, 2010, it is **ORDERED** and **DECREED** that Plaintiff's Motion to Withdraw and Amend Claimant's Answers to Defendant's Request for Admissions is **GRANTED**. Axxon is given leave to serve the Department with its amended answers to DGS's current requests for admissions within 10 days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

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**December 3, 2010**

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 3<sup>rd</sup> day of December, 2010, it is **ORDERED** and **DECREED** that the Commonwealth of Pennsylvania, Department of General Services' motion for leave to amend counterclaim is **GRANTED**. The Commonwealth of Pennsylvania, Department of General Services has 30 days from the exit date of this Order to file its amended counterclaim." Copy forwarded to Plaintiff and Defendant.

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**December 6, 2010**

Defendant filed Praecipe to File Amended Counterclaim attaching Amended Counterclaim as Exhibit "A".

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**December 7, 2010**

Board forwarded letter to parties directing Plaintiff to file response to Defendant's Amended Counterclaim.

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**December 13, 2010**

Defendant requested 234.1 - to attend with duces tecum and 4009.21 - to produce documents subpoenas.

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**December 13, 2010**

Board forwarded 234.1 - to attend with duces tecum and 4009.21 - to produce documents subpoenas dated December 13, 2010 to Defendant.

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**December 16, 2010**

Defendant filed a Petition for Rule to Show Cause and Brief in Support.

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**December 27, 2010**

Plaintiff filed Preliminary Objections to Amended Counterclaim.

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**December 28, 2010**

Board forwarded letter to Plaintiff requesting Brief in Support.

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**December 28, 2010**

Board forwarded letter to Defendant requesting a response to Plaintiff's preliminary objections.

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**December 29, 2010**

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 29<sup>th</sup> day of December, 2010, it is **ORDERED** and **DECREED** that the Petition for Rule to Show Cause filed by the Department of General Services is hereby **DENIED.**" Copy forwarded to Plaintiff and Defendant.

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**January 3, 2011**

Defendant filed Acceptance of Service of Opinion and Order dated December 29, 2010. Receipt of same acknowledged December 30, 2010.

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**January 4, 2011**

Defendant filed Answer to Preliminary Objections to Amended Counterclaim and Brief.

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**January 4, 2011**

Plaintiff filed Acceptance of Service of Opinion and Order dated December 29, 2010. Receipt of same acknowledged December 30, 2010.

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**January 6, 2011**

Plaintiff filed Brief in Support of Preliminary Objections.



**January 13, 2011**

Defendant filed Notice of Service of Notice of Deposition of Mehran Etemad.

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**February 3, 2011**

Defendant filed Motion in Limine and Brief in Support.

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**February 4, 2011**

Board forwarded letter to Plaintiff requesting response to Motion in Limine.

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**February 9, 2011**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 9<sup>th</sup> day of February, 2011, it is **ORDERED** and **DECREED** that the preliminary objections of Axxon Corp. d/b/a International Waste Industries to the amended counterclaim of Pennsylvania Department of General Service are hereby **OVERRULED**." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**February 11, 2011**

Plaintiff filed Acceptance of Service of Opinion and Order dated February 9, 2011. Receipt of same acknowledged February 11, 2011.

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**February 11, 2011**

Defendant filed Acceptance of Service of Opinion and Order dated February 9, 2011. Receipt of same acknowledged February 10, 2011.

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**February 15, 2011**

Defendant filed Notice of Service of Subpoena to Attend and Testify.

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**February 17, 2011**

Defendant filed Second Motion in Limine and Brief in Support.

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**February 17, 2011**

Board forwarded letter to Plaintiff requesting response to Second Motion in Limine.

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**February 18, 2011**

Plaintiff filed Response to Respondent's Motion in Limine and Brief in Opposition.

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**February 23, 2011**

Defendant filed Notice of Service of Notice of Deposition of Jim Mann.

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**February 23, 2011**

Defendant filed Notice of Service of a Notice of Rescheduled Deposition of Mehran Etemad.

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**February 28, 2010**

Plaintiff filed Answer With New Matter to Respondent's Amended Counterclaim.

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**March 1, 2011**

Board forwarded letter to Defendant requesting response to New Matter.

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**March 2, 2011**

Board forwarded letter to parties scheduling status/settlement conference for March 22, 2011 in the offices of the Board of Claims, 200 North Third Street, Suite 700, Harrisburg, PA 17101 at 1:00 PM.

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**March 2, 2011**

Defendant filed Answer to New Matter.

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**March 4, 2011**

Plaintiff filed Reply to Second Motion in Limine and Brief.

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**March 15, 2011**

Plaintiff filed Motion for Extension of Discovery Deadline.

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**March 16, 2011**

Defendant filed Motion to Strike and Brief in Support.

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**March 21, 2011**

Letter filed by attorney for Defendant to Chief Counsel enclosing a timeline and supporting documentation regarding the discovery issue.

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**March 23, 2011**

Board rendered Order. Order as follows: "**AND NOW**, this 23<sup>rd</sup> day of March 2011, pursuant to a request from counsel for Defendant, Commonwealth of Pennsylvania, Department of General Services ("DGS") made at the March 22, 2011 status conference, Defendant's Motion in Limine filed with this Board on February 3, 2011 is hereby deemed **WITHDRAWN**." Copy forwarded to Plaintiff and Defendant.

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**March 23, 2011**

(Facsimile) Letter received from attorney for Plaintiff forwarding the revised document requests which Plaintiff respectfully requests to be permitted to serve upon the Defendant along with a request for entry upon property to inspect the incinerator pursuant to Pa.R.C.P. 4009.31.

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**March 23, 2011**

Defendant filed letter (via facsimile) advising that DGS has no objection to Request No. 1 in Plaintiff's Request for Production of Documents but does object to the remaining requests.

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**March 24, 2011**

(U.S. Mail) Letter received from attorney for Plaintiff forwarding the revised document requests which Plaintiff respectfully requests to be permitted to serve upon the Defendant along with a request for entry upon property to inspect the incinerator pursuant to Pa.R.C.P. 4009.31.

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**March 25, 2011**

Defendant filed Acceptance of Service of Order dated March 23, 2011. Receipt of same acknowledged March 24, 2011.

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**March 25, 2011**

Plaintiff transmitted via facsimile letter agreeing to the proposal stated in the March 24, 2011 teleconference regarding extension of discovery deadlines.

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**March 25, 2011**

Defendant transmitted via facsimile letter accepting the proposal discussed during the March 24, 2011 teleconference.

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**March 28, 2011**

Plaintiff filed letter agreeing to the proposal stated in the March 24, 2011 teleconference regarding extension of discovery deadlines.

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**March 28, 2011**

Plaintiff filed Acceptance of Service of Order dated March 23, 2011. Receipt of same acknowledged March 25, 2011.

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**March 28, 2011**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 28th day of March 2011, it is hereby **ORDERED** and **DECREED** that the Department of General Services' Second Motion in Limine (asking the Board to exclude evidence of damages related to the "Cashed Bond Claim" and "Delay Caused by DEP Claim") is hereby **DENIED."** Copy forwarded to Plaintiff and Defendant.

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**March 29, 2011**

Defendant filed proposed scheduling order.

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**March 29, 2011**

Plaintiff filed Stipulation to waive any claim for pre-judgment interest beyond the date of July 7, 2002.

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**March 30, 2011**

Defendant filed Acceptance of Service of Orders dated March 28, 2011. Receipt of same acknowledged March 29, 2011.

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**April 1, 2011**

Plaintiff filed proposed revised scheduling order deadlines.

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**April 1, 2011**

Plaintiff filed Acceptance of Service of Opinion and Order dated March 28, 2011. Receipt of same acknowledged March 31, 2011.

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**April 5, 2011**

Board rendered Amended Scheduling Order. Order as follows: **"AND NOW**, this 5<sup>th</sup> day of April, 2011, it is **ORDERED** and **DECREED** the Order of October 19, 2010 of the Board of Claims, is hereby amended as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is May 9, 2011;<sup>1</sup> 2. The last day for defendant's expert report, if any, to be provided to plaintiff is June 8, 2011;<sup>1</sup> 4. With the exception of discovery motions, no further pre-trial motions shall be filed. The last day for filing any discovery motions is July 1, 2011; 3. All discovery, including exchange of expert rebuttal reports, shall be completed by July 22,

2011; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than August 17, 2011 (Please note BOC R.P. 501(b) and (c)(3));6. A pre-trial conference is scheduled for Wednesday, August 24, 2011 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Monday, October 3, 2011 and running through Friday, October 7, 2011, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Unless otherwise noted, the first day of all hearings begins at 9:30 a.m., and subsequent hearing days begin at 9:00 a.m." Copy forwarded to Plaintiff and Defendant.

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**April 5, 2011**

Board rendered Order. Order as follows: "**AND NOW**, this 5<sup>th</sup> day of April, 2011, it is hereby **ORDERED** and **DECREED** that the motion to strike filed by the Pennsylvania, Department of General Services on March 16, 2011 is **DENIED** as moot." Copy forwarded to Plaintiff and Defendant.

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**April 5, 2011**

Board rendered Order. Order as follows: "**AND NOW**, this 5<sup>th</sup> day of April, 2011, it is hereby **ORDERED** and **DECREED** that Claimant's motion for extension of discovery deadline filed by Axxon Corp. on March 15, 2011 is **DENIED** as moot." Copy forwarded to Plaintiff and Defendant.

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**April 7, 2011**

Plaintiff filed Acceptance of Service of Orders dated April 5, 2011. Receipt of same acknowledged April 6, 2011.

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**April 7, 2011**

Defendant filed Acceptance of Service of Orders dated April 5, 2011. Receipt of same acknowledged April 6, 2011.

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**April 29, 2011**

Defendant requested 4009.21 - to produce documents subpoena.

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**April 29, 2011**

Board forwarded 4009.21 - to produce documents subpoena dated April 29, 2011 to Defendant.

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**April 29, 2011**

Defendant filed Notice of Service of Subpoena to Produce Documents.

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**May 11, 2011**

Defendant filed Notice of Service of Second Set of Interrogatories.

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**June 16, 2011**

Plaintiff filed Notice of Service of Claimant's Interrogatories Directed to Respondent.

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**June 21, 2011**

Board rendered Amending Scheduling Order. Order as follows: "**AND NOW**, this 21<sup>st</sup> day of June, 2011, it is **ORDERED** and **DECREED** the Amended Scheduling Order of April 5, 2011 of the Board of Claims, is hereby amended as follows: 1. This matter is set for hearing beginning on Monday, September 19, 2011 and running through Friday, September 23, 2011, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Unless otherwise noted, the first day of all hearings begins at 9:30 a.m., and subsequent hearing days begin at 9:00 a.m." Copy forwarded to Plaintiff and Defendant.

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**June 24, 2011**

Defendant filed Acceptance of Service of Order dated June 21, 2011. Receipt of same acknowledged June 22, 2011.

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**June 27, 2011**

Plaintiff filed Acceptance of Service of Order dated June 21, 2011. Receipt of same acknowledged June 24, 2011.

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**July 14, 2011**

Plaintiff filed letter requesting a brief conference on July 18, 2011.

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**July 15, 2011**

Board forwarded letter to parties scheduling status conference for July 18, 2011 at 11:00 a.m.

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**July 18, 2011**

Board held status conference on July 18, 2011 at 11:00 a.m.

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**July 18, 2011**

Board rendered Order. Order as follows: "**AND NOW**, this 18<sup>th</sup> day of July, 2011, in recognition that a discovery dispute has arisen between the parties as to whether or not Plaintiff should be allowed to take photographs of the incinerator (which is the subject of this case) and its surroundings during a site visit requested by Plaintiff pursuant to Rule 4009.32, and pursuant to the discussions and arguments heard during a status conference held on this same date, the Board hereby **ORDERS** as follows: 1. Plaintiff shall be allowed to take photographs of the incinerator and attachments thereto to document the incinerator's final setup and configuration; 2. All photographs (which term as used hereinafter includes all copies, negatives and/or electronic versions thereof) taken by Plaintiff shall be retained by, and remain in the sole custody of, Plaintiff's counsel, Michael D. Reed, at all times; 3. All photographs taken during this site visit may be used only for evidence at the Board hearing and for no other purpose; 4. If and when any such photographs are submitted into evidence at the Board hearing either party shall have the opportunity to request that such photographs be treated as confidential and sealed for Board use only; and 5. All photographs (including copies, negatives and electronic versions thereof) shall be destroyed promptly by Attorney Reed after conclusion of the Board hearing or discontinuance of the case." Copy forwarded to Plaintiff and Defendant.

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**July 19, 2011**

Plaintiff filed Acceptance of Service of Order dated July 18, 2011.  
Receipt of same acknowledged July 18, 2011.

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**July 21, 2011**

Defendant filed Acceptance of Service of Order dated July 18, 2011.  
Receipt of same acknowledged July 19, 2011.

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**August 17, 2011**

Defendant filed Pre-trial Statement.

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**August 17, 2011**

Plaintiff filed Pre-trial Statement.

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**August 24, 2011**

Defendant filed Stipulation.

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**August 24, 2011**

Board pre-trial conference held at 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 1:00 p.m.

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**August 29, 2011**

Defendant filed cases that deal with attorney-client privilege as discussed in the Pre-trial Conference.

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**September 1, 2011**

Plaintiff requested via telephone 234.1 - to attend with duces tecum subpoenas.

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**September 1, 2011**

Board forwarded 234.1 - to attend with duces tecum subpoenas dated September 1, 2011 to Plaintiff.

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**September 1, 2011**

Defendant filed Exhibit List.

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**September 2, 2011**

Plaintiff filed revised exhibit list.

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**September 13, 2011**

Plaintiff requested via telephone 234.1 - to attend with duces tecum subpoena.

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**September 13, 2011**

Board forwarded 234.1 - to attend with duces tecum subpoena dated September 13, 2011 to Plaintiff.

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**September 19, 2011**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:30 a.m.

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**September 20, 2011**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

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**September 21, 2011**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

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**September 22, 2011**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m. CASE COMPLETED.

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**October 4, 2011**

Testimony of Board hearing held September 19, 20, 21 & 22, 2011 filed.

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**October 5, 2011**

Board forwarded copy of testimony of Board hearing held September 19, 20, 21 & 22, 2011, last day.

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**October 12, 2011**

Defendant filed Acceptance of Service of testimony of hearing held September 19, 20, 21 & 22 dated October 5, 2011. Receipt of same acknowledged October 6, 2011.

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**December 5, 2011**

Plaintiff filed Findings of Fact, Conclusions of Law and Post-trial Brief.

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**January 18, 2012**

Defendant transmitted via facsimile a letter requesting an extension of time until January 26, 2012 in which to file its proposed findings of fact, conclusions of law and brief. Plaintiff does not oppose.

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**January 19, 2012**

Board forwarded letter to Defendant granting extension of time request.

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**January 26, 2012**

Defendant filed Findings of Fact, Conclusions of Law and Brief.

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**February 7, 2012**

Plaintiff transmitted via facsimile a letter requesting an extension of time until February 27, 2012 in which to file its reply brief. Defendant does not oppose.

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**February 7, 2012**

Board forwarded letter to Plaintiff granting extension of time request.

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**February 8, 2012**

Plaintiff filed via U.S. Mail a letter requesting an extension of time until February 27, 2012 in which to file its reply brief. Defendant does not oppose.

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**February 27, 2012**

Plaintiff filed Reply Brief.

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**February 27, 2013**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 27<sup>th</sup> day of February, 2013, it is **ORDERED** and **DECREED** that judgment is entered against Axxon Corp. d/b/a International Waste Industries and in favor of the Commonwealth of Pennsylvania, Department of General Services in the amount of \$13,222, comprised of the principal amount of \$6,916 plus prejudgment interest of \$6,306. DGS is further awarded post-judgment interest at the legal rate of 6% per annum on the outstanding amount of this judgment until paid."

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**March 1, 2013**

Defendant filed Acceptance of Service of Opinion and Order dated February 27, 2013. Receipt of same acknowledged February 28, 2013.

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**March 5, 2013**

Plaintiff filed Acceptance of Service of Opinion and Order dated February 27, 2013. Receipt of same acknowledged March 1, 2013.

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**March 6, 2013**

Attorney General filed Acceptance of Service of Opinion and Order dated February 27, 2013. Receipt of same acknowledged March 4, 2013.

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