

**FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN**

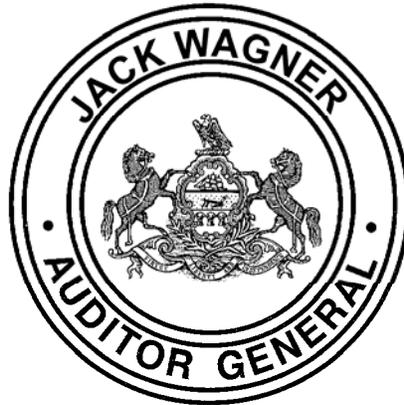
**SCHUYLKILL COUNTY**

**COMPLIANCE AUDIT REPORT**

**FOR THE PERIOD**

**JANUARY 1, 2004, TO DECEMBER 31, 2006**





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**SCHUYLKILL COUNTY**

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### ABBREVIATION

PSABMRT – Pennsylvania State Association of Boroughs Municipal Retirement Trust



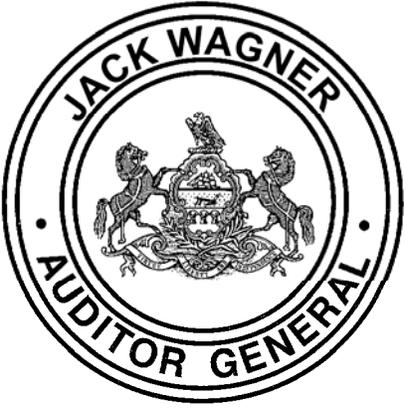
## **BACKGROUND**

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

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

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

The Frackville Borough Nonuniformed Pension Plan is a single-employer defined contribution pension plan locally controlled by the provisions of Ordinance No. 91-9, as amended. Active members are not required to contribute to the plan. The municipality is required to contribute 8 percent of each member's payroll.



The Honorable Mayor and Borough Council  
Frackville Borough  
Schuylkill County  
Frackville, PA 17931

We have conducted a compliance audit of the Frackville Borough Nonuniformed Pension Plan for the period January 1, 2004, to December 31, 2006. The audit was conducted pursuant to authority derived from Section 402(j) of Act 205 and in accordance with *Government Auditing Standards* applicable to performance audits issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of the audit were:

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

Our audit was limited to the areas related to the objectives identified above.

Borough officials are responsible for establishing and maintaining an internal control structure to provide reasonable assurance that the Frackville Borough Nonuniformed Pension Plan is administered in compliance with applicable state laws, regulations, contracts, administrative procedures, and local ordinances and policies. To assist us in planning and performing our audit, we obtained an understanding of the borough's internal control structure as it relates to the borough's compliance with those requirements. Additionally, we tested transactions, assessed official actions, performed analytical procedures and interviewed selected officials to the extent necessary to satisfy the audit objectives.

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

Finding No. 1 – Noncompliance With Prior Audit Recommendation – Failure To  
Timely Pay The Minimum Municipal Obligations Of The Plan

Finding No. 2 – Unauthorized Funding Mechanism

Finding No. 3 – Related Party Situation

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

The contents of this report were discussed with officials of Frackville Borough and, where appropriate, their responses have been included in the report.

March 6, 2008

JACK WAGNER  
Auditor General

FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN  
STATUS OF PRIOR FINDINGS

Compliance With Prior Audit Recommendation

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

- Failure To Maintain An Adequate Record-Keeping System

Plan officials have established record-keeping procedures which meet the minimum accounting requirements of this department.

Noncompliance With Prior Audit Recommendation

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

- Failure To Timely Pay The Minimum Municipal Obligations Of The Plan

FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Noncompliance With Prior Audit Recommendation – Failure To Timely Pay  
The Minimum Municipal Obligations Of The Plan

Condition: As disclosed in our prior audit report, the municipality did not pay the minimum municipal obligations (MMOs) that were due to the nonuniformed pension plan for the years 2001 and 2003, until January 2002 and June 2004, respectively. Due to the municipality's failure to pay the 2001 and 2003 MMOs by the respective December 31 deadlines, the municipality must add interest, as required by Act 205.

Criteria: With regard to the MMO, Section 303(c) of Act 205 states, in part:

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

Section 303(d) of Act 205 states, in part:

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

Furthermore, Section 303(e) of Act 205 states, in part:

Any amount of the minimum obligation of the municipality which remains unpaid as of December 31 of the year in which the minimum obligation is due shall be added to the minimum obligation of the municipality for the following year, with interest from January 1 of the year in which the minimum obligation was first due until the date the payment is paid. . . .

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

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

Recommendation: We again recommend that the municipality pay the interest due on the late payments of the MMOs for the years 2001 and 2003, in accordance with Section 303(e) of Act 205. A copy of the interest calculation must be maintained by the borough for examination during our next audit of the plan.

FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 1 – (Continued)

Management’s Response: Municipal officials agreed with the finding without exception.

Finding No. 2 – Unauthorized Funding Mechanism

Condition: On March 14, 2006, a member of the borough’s nonuniformed union pension plan transferred to the nonuniformed pension plan. The member’s account balance was not deposited to the proper pension plan account maintained with PSABMRT. Instead, the municipality improperly deposited the member’s account balance and municipal contributions due to the member for the years 2006 and 2007 into Individual Retirement Accounts (IRAs) in the name of the member.

Criteria: A resolution dated March 14, 2006, at Section 7, states:

As to retirement, the Director will be enrolled in the Borough’s pension plan administered by the Pa. Municipal Retirement System (sic) and presently provided to the Borough’s administrative staff.

Section 102 of Act 205 defines a pension plan as follows:

The various aspects of the relationship between a municipality and its employees with respect to the retirement coverage provided by a municipality to the employees.

In addition, Section 201.2 of Part IV of Title 16 of the Pennsylvania Code further elaborates on the definition included in Act 205, stating in part:

The term does not include a plan, program, or arrangement that is funded solely by municipal employee earnings or compensation reported as municipal employee earnings or compensation to the Internal Revenue Service on the Form W-2 Wage and Tax Statement or established under sections 8.1-8.3 of the act of March 30, 1811 (P.L. 145 Sm.L. 228) (72 P.S. 4521.1-4521.3) or Section 408 of the Internal Revenue Code (26 U.S.C.A. 408).

FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 2 – (Continued)

Cause: Municipal officials failed to establish adequate internal control procedures to ensure the member's account balance was transferred to the nonuniformed pension plan. In addition, municipal officials were not aware that IRAs were not eligible funding vehicles for pension plans participating in the state aid program.

Effect: Since the funding mechanism does not meet the definition of a pension plan per the Pennsylvania Code as previously cited, it is not eligible for participation in the state aid program. In addition, since the individual employee rather than the municipality owns these types of contracts, the municipality cannot ensure the integrity of these pension assets and the related benefits funded through state aid allocations.

Recommendation: We recommend that municipal officials either transfer plan assets to an eligible funding mechanism or return all state aid allocated to the unauthorized funding mechanism for the audit period, in the amount of \$5,999, to the Commonwealth. In the latter case, a check in this amount, with interest at a rate earned by the pension plan, should be made payable to Commonwealth of Pennsylvania, and mailed to: Department of the Auditor General, Municipal Pension & Fire Relief Programs Unit, 1205 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222. A copy of the interest calculation must be submitted along with the check.

In addition, we recommend that municipal officials no longer deposit municipal contributions into the previously mentioned unauthorized funding mechanism and begin depositing municipal contributions for the plan member into the nonuniformed pension plan account with PSABMRT.

Management's Response: Municipal officials agreed with the finding without exception. Borough officials are in the process of transferring the monies from the ineligible IRA accounts to PSABMRT.

Auditor's Conclusion: Based on the management response, it appears municipal officials intend to comply with the finding recommendation. Compliance will be evaluated during our next audit of the plan.

FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN  
FINDINGS AND RECOMMENDATIONS

Finding No. 3 – Related Party Situation

Condition: Borough officials failed to disclose a related party situation. On May 31, 2006, an account was opened with EquiTrust Life Insurance Company for the deposit of certain nonuniformed pension plan funds. The broker/dealer representative is the Frackville Borough Council President.

A related party situation occurs when borough officials deal with a business which employs or is owned by a borough official or a member of a borough official's immediate family. Such a situation may provide a financial benefit to the related party through a commission or a profit from a sale.

Criteria: A related party situation should be disclosed and recorded in the minutes of borough council meetings. In addition, the individual involved should abstain from all votes concerning his or her involvement in the related party situation.

Cause: Borough officials failed to establish adequate internal control procedures to ensure that the related party situation was adequately disclosed.

Effect: The failure to properly disclose a related party situation could result in plan members or interested citizens not being aware of a potential conflict of interest involving a borough official.

Recommendation: Borough officials should take those actions necessary to eliminate the appearance of a conflict of interest. Actions should include, but are not limited to, a written notification to the borough of each related party situation, and the abstention of the borough official from decisions and voting rights which pertain to the related party situation. These actions should be documented in the minutes of the borough council meetings. Furthermore, borough officials should closely review all related party situations to ensure that the cost of the services rendered by the firm are competitive.

Management's Response: Municipal officials agreed with the finding without exception. Borough officials intend on eliminating the appearance of the conflict of interest at its earliest opportunity to do so.

Auditor's Conclusion: Based on the management response, it appears municipal officials intend to comply with the finding recommendation. Compliance will be evaluated during our next audit of the plan.

FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN  
 SUPPLEMENTARY INFORMATION  
 (UNAUDITED)

SCHEDULE OF STATE AID  
 AND EMPLOYER CONTRIBUTIONS

Year Ended December 31	State Aid Deposited	Employer Contributions
2001	\$ 2,582	None
2002	2,674	None
2003	4,338	None
2004	905	\$ 3,746
2005	None	4,586
2006	None	4,734

FRACKVILLE BOROUGH NONUNIFORMED PENSION PLAN  
REPORT DISTRIBUTION LIST

This report was initially distributed to the following:

The Honorable Edward G. Rendell  
Governor  
Commonwealth of Pennsylvania

Frackville Borough Nonuniformed Pension Plan  
Schuylkill County  
219 South Balliet Street  
Frackville, PA 17931

The Honorable Delmar Phillips	Mayor
Mr. Stephen Bobiak	Council President
Ms. Brenda Deeter	Secretary

This report is a matter of public record. Copies of this report may be obtained from the Pennsylvania Department of the Auditor General, Office of Communications, Room 318 Finance Building, Harrisburg, PA 17120. If you have any questions regarding this report or any other matter, you may contact the Department of the Auditor General by accessing our website at [www.auditorgen.state.pa.us](http://www.auditorgen.state.pa.us).