

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<p>NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and DELAWARE AND RARITAN CANAL COMMISSION,</p> <p style="text-align:center">Petitioners,</p> <p style="text-align:center">vs.</p> <p>FEDERAL ENERGY REGULATORY COMMISSION,</p> <p style="text-align:center">Respondent.</p>	<p>Case No. 18-1144</p>
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**PETITION FOR REVIEW**

Pursuant to Section 19(b) of the Natural Gas Act, 15 U.S.C. §717r(b) and Rule 15(a) of the Federal Rules of Appellate Procedure (“FRAP”), petitioners New Jersey Department of Environmental Protection and the Delaware and Raritan Canal Commission (collectively “New Jersey”) hereby petition this Court to review the January 19, 2018 final order granting a certificate of public convenience and necessity (“Certificate Order”) to PennEast Pipeline Company, LLC (“PennEast”) issued by the Federal Energy Regulatory Commission (“FERC”) in Docket No. CP15-558.

This Court has jurisdiction over New Jersey's timely petition for review under 15 U.S.C. §717r(a). New Jersey was an intervenor in the FERC proceedings below and brings this action on behalf of itself and its citizens.

New Jersey filed a timely combined request for rehearing and a stay with FERC on February 20, 2018. (Accession number 20180220-5131). On February 22, 2018, FERC's Deputy Secretary signed and issued an Order Granting Rehearings for Further Consideration ("Tolling Order"), which purported to toll the time on all requests for rehearing on FERC's Certificate Order. Pursuant to FERC's own tolling order regulations, FERC's Secretary has not been delegated the authority to toll the time for action on a rehearing request when a request for rehearing is combined with "any other request for Commission action, such as a request to intervene in a proceeding or for a stay of a proceeding." Delegation of Authority to the Secretary, the Director of the Office Electric Power Regulation and the General Counsel, 60 Fed. Reg. 62,326, 62,327 (Dec. 6, 1995); see also 18 C.F.R. 375.302(v) (which grants FERC's Secretary the authority to "toll the time for action on requests for rehearing" but is silent regarding actions requesting both a rehearing and a stay). Because New Jersey's petition sought both rehearing and a stay, FERC's Deputy Secretary lacked authority to toll New Jersey's combined petition.

FERC has not acted on New Jersey's combined petition. Pursuant to 15 U.S.C. §717r(a), if FERC fails to act "upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." Therefore, New Jersey's combined petition is deemed to have been denied by FERC on March 22, 2018 by operation of law. This petition for review is timely filed within sixty days of FERC's March 22, 2018 denial. 15 U.S.C. 717r(b) ("Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order . . . by filing in such court, within sixty days after the order of the Commission upon the application for rehearing . . . .")

As presented to FERC in New Jersey's combined rehearing and stay request, FERC's entire Certificate Order must be set aside as arbitrary and capricious because, among other reasons as more fully set forth in New Jersey's petition for rehearing filed with FERC, it relied on insufficient data about environmental resources, improperly relied on PennEast's contracts with its affiliates to demonstrate public need, improperly conflated mitigation with minimization or avoidance of environmental impacts, failed to conduct an appropriate alternatives

analysis, and improperly attempts to usurp New Jersey's delegated federal-level jurisdiction over Clean Water Act §§ 401 and 404 resources.

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: s/ Jason W. Rockwell  
Jason W. Rockwell  
Assistant Attorney General  
R.J. Hughes Justice Complex  
P.O. Box 093  
Trenton, NJ 08625  
*Counsel for New Jersey Department of  
Environmental Protection*

Dated: May 21, 2018

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and DELAWARE AND RARITAN CANAL COMMISSION,  Petitioners,  vs.  FEDERAL ENERGY REGULATORY COMMISSION,  Respondent.	Case No.  CERTIFICATE OF SERVICE
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I certify that on May 21, 2018 I mailed the original and four copies of the foregoing Petition for Review to the Clerk of the Court, in accordance with Circuit Rule 25(c)(3) and the Handbook of Practice and Internal Procedures for the D.C. Circuit, § III.E.1, with one copy to be served by the Clerk on Robert Solomon, Solicitor, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

I further certify that a copy of the foregoing Petition for Review was served by mail on Cynthia Richards, 84 Delevan Street, Lambertville, NJ 08530 and by email on the following parties, which includes all members of the service list in FERC Docket No. CP15-558-000:

Anthony Cox  
One Meridian Boulevard  
Suite 2C01  
Wyomissing, PA 19610  
acox@ugies.com

Thomas Stinnett  
825 Church Road  
PO Box 344  
Riegelsville, PA 18077  
tstinnett@verizon.net

Irving MacConnell  
PO Box 199  
Baptistown, NJ 08803  
emergency@kingwoodtownship.com

Paul Adezio  
640 S. Broad Street  
Trenton, NJ 08650  
padezio@mercercounty.org

Township of Kingwood  
599 Oak Grove Road  
PO Box 199  
Baptistown, NJ 08803-0199  
mmacconnell@kingwoodtownship.com

Lora Olsen  
150 Rocktown-Lamb. Road  
Lambertville, NJ 08530  
clerk@westamwelltp.org

Brenda Drew  
120 Stable Road  
Leighton, PA 18235  
info@towamensingtownship.com

Roger Keller  
1370 Bridgeton Hill Road  
Upper Black Eddy, PA 18972  
rkeller@bridgetontwp.org

Maeve Cannon  
2 Jake Garzio Drive  
Ewing, NJ 08628  
meca@stevenslee.com

Richard Cushing  
1318 Route 31  
P.O. Box 4001  
Clinton, NJ 08809  
rcushing@gklegal.com

Charles Elliott  
26 N. 3rd Street  
Easton, PA 18042  
charles.elliott@elliott-lawyers.com

Kevin Kuchinski  
201 Washington Crossing - Pennington  
Road, Titusville, NJ 08560  
kuchkd@verizon.net

Shana Taylor  
71 Main Street, Building 1  
Flemington, NJ 08822  
staylor@co.hunterdon.nj.us

Jennifer Smethers  
655 Cider Press Road  
Easton, PA 18020  
jsmethers@williamstwp.org

Salvatore Panto  
123 South Third Street  
Easton, PA 18042  
spanto@easton-pa.gov

Erik Peterson  
178 Center Street  
Clinton, NJ 08809  
asmpeterson@njleg.org

Gary Asteak  
726 Walnut Street  
Easton, PA 18042-4351  
asteak@aol.com

Morgan Parke  
76 South Main Street  
Akron, OH 44308-1890  
mparke@firstenergycorp.com

William Scharfenberg  
1415 Wyckoff Road  
Wall, NJ 07719  
wscharfenberg@njresources.com

Henry Ogden  
140 E. Front Street, fourth floor  
P.O. Box 003  
Trenton, NJ 08625  
hogden@rpa.nj.gov

Megan Brunatti  
401 East State Street  
Trenton, NJ 08050  
Megan.Brunatti@dep.nj.gov

Cortney Madea  
211 Carnegie Center  
Princeton, NJ 08540  
cortney.madea@nrg.com

Patricia Sluhocki  
126 N. Main Street  
Plains, PA 18705  
plainspslu@comcast.net

Stacey Burbure  
801 Pennsylvania Avenue NW  
Suite 310  
Washington, DC 20004  
sburbure@firstenergycorp.com

Wayne Nothstein  
2 Hazard Square  
PO Box 129  
Jim Thorpe, PA 18229  
cccommis@ptd.net

David Backenstoe  
148 Main Street  
Hellertown, PA 18055  
dmbesq@ptd.net

Alice Rehrig  
1069 Municipal Road  
Walnutport, PA 18088  
arehrig@lehightownship.com

Marlen Dooley  
33 Risler Street  
P.O. Box 539  
Stockton, NJ 08559-1615  
marlendooley@comcast.net

Frank Markle  
Box 858  
Valey Forge, PA 19482  
marklef@ugicorp.com

Matthew Schreck  
9525 Katy Freeway  
Suite 420  
Houston, TX 77024  
matt@airmail.net

Kenneth Maloney  
1101 14th Street NW  
Suite 750  
Washington, DC 20005  
kmaloney@cullenanddykman.com

Gina Merritt-Epps  
1 South Jersey Plaza  
Folsom, NJ 08037  
gmerritt@sjindustries.com

Joel Greene  
1350 I Street NW  
Washington, DC 20005  
savagep@coned.com

Samuel Wolfe  
80 Park Plaza, 5th Floor  
Newark, NJ 07102  
Samuel.Wolfe@pseg.com

Berk Donaldson  
5400 Westheimer Court  
Suite WO 6N-63  
Houston, TX 77056  
Berk.Donaldson@enbridge.com

Sharon Dragan  
260 Hwy.202/31N Liberty Court Suit  
Flemington, NJ 08822  
sharondragan@gmail.com

Stephen Pearson  
1875 Eye Street NW, Suite 700  
Washington, DC 20006  
steve.pearson@spiegelmc.com

Cynthia Ege  
18 York Street  
Lambertville, NJ 08530  
cityclerk@lambertvillenj.org

Lauren Williams  
2005 S. Easton Rd, Suite 100  
Doylestown, PA 18901  
lmw@curtinheefner.com

Stephen Harris  
1760 Bristol Road  
P O Box 160  
Warrington, PA 18976-0160  
sharris@harris-palaw.com

Gard Holby  
PO Box 200  
1370 Bridgeton Hill Road  
Upper Black Eddy, PA 18972  
gholby@gmail.com

Roger Keller  
1824 Trails End Lane  
Upper Black Eddy, PA 18972  
rwk2001@gmail.com



Lois Oleksa  
laoleksa@gmail.com

Michael Pressel  
mpressel@rpoinc.com

Elizabeth Balogh  
lizzybalogh@gmail.com

Sondra Wolferman  
jperrin21@hotmail.com

Diana McConkey  
dianamcconkey@gmail.com

Frank McDougald  
fmcDougald@verizon.net

Maya Van Rossum  
keepermaya@delawareriverkeeper.org

Dan Mackey  
carmack1195@gmail.com

Nancy Wilson  
nancyw421@gmail.com

Joan Vanderveen  
joanvanderveen@comcast.net

Neil Curry  
neil@ncurry.com

John Gontarski  
raineyacres@comcast.net

Vincent DiBianca  
dibianca@comcast.net

Alice Orrichio  
aorrichio@gmail.com

Joseph Buchanan  
achyacres@comcast.net

William Davison  
mikedvz@embarqmail.com

Aaron Stemplewicz  
aaron@delawareriverkeeper.org

Alex Hanson  
lakebaldwin@gmail.com

Jeffrey Heehs  
jhbklyn@yahoo.com

Terese Buchanan  
teresebuchanan@gmail.com

David Juall  
djjesq@jualllaw.com

C. Sharyn Magee  
the.magees1@verizon.net

Linda Arcamone  
denarcamone@aol.com

Laura Hanson  
lfh1965@gmail.com

Richard Reid  
richard.reid@basf.com

Emma Switzler  
switzler@mac.com

Patricia Oceanak  
poceanak@hotmail.com

Joseph Pascucci  
jfpascucci@gmail.com

Traci Fleming  
traci.fleming@yahoo.com

Thomas Buchanan  
tjb160b@gmail.com

Ronald Sheetz  
pinedevil@comcast.net

Michele Bernhard  
hancai1997@gmail.com

Rex Parker  
drexparker@aol.com

Scott Sillars  
sgsillars@gmail.com

Bernadette Myers  
thebathouse@gmail.com

Jennifer Fisher, DC  
riderjen77@yahoo.com

Sonya Zuccarelli  
selma412@aol.com

Kaia Elinich  
starway1118@hotmail.com

Karen Hertzog  
karen.hertzog@me.com

Andy Snyder  
andy\_snyder@hotmail.com

Thomas Sommo  
tsommo@aol.com

William Markus  
williamemarkus@gmail.com

Jeff McGuire  
frysrn@gmail.com

Guy Wagner  
gww52@hotmail.com

Rebecca DeDomenico  
rebeccadedomenico@verizon.net

Becca Hoff  
rebeccalpryce@gmail.com

Kristina Spille  
kris.spille.ferc@gmail.com

Michel Maniez  
mjmaniez@gmail.com

Kathleen McAdam  
kathleen.mcadam@sanofi.com

Rich Toth  
richardjtothjr96@yahoo.com

Daniel Elinich  
yatata@hotmail.com

Danielle Wells  
danielle.wells@live.com

Micah Rasmussen  
rasmussenmicah@gmail.com

Laura Blinderman  
blinderlab@gmail.com

Henry Grady  
hg\_grady@yahoo.com

Laney Britten  
mrs.britten@gmail.com

Ray Barson  
RayJBarson@comcast.net

Christina Runkle  
runklec@comcast.net

Martina Venini  
tinavenini@msn.com

Janice Zuzov  
janice.zuzov.ferc@gmail.com

Ralph Porpora  
rporp@hotmail.com

Kathryn Kennedy  
kedk228@comcast.net

Christopher Ely  
chris@ballybog.com

Thomas Kowalczyk  
janertomk@comcast.net

Henry Danilewicz  
PattiDanilewicz@centurylink.net

Lisa Suydam  
lisa.suydam.ferc@gmail.com

Amy Schechter  
amyschecht@gmail.com

Lindsay Knapp  
LindsayNKnapp@gmail.com

Eric Zuccarelli  
e\_zuke@yahoo.com

Timothy Lick  
tjlick@yahoo.com

Lorraine Mineo  
mineoL@enter.net

Claire Taylor  
c.taylor929@gmail.com

John Orrichio  
johnorrichio@gmail.com

Sharyn Barson  
SFBarson@gmail.com

Alex Schechter  
ax.schech@gmail.com

William Saylor  
pyromantix@hotmail.com

Durham Township  
info@durhamtownship.org

Kathleen Gentner  
kgentner1@gmail.com

Rachel Schechter  
rayschek@gmail.com

Alex Cole  
zinc.white@hotmail.com

Gustav Schumacher  
schuiegus70@gmail.com

Fred Leach  
fjleach@gmail.com

Carol Bertone  
cbert96@aol.com

Debra Johnson  
Dobey429@gmail.com

William Spears  
SpearsWm15@gmail.com

Cathy Linsk  
eastendbooks@gmail.com

Megan Adams  
adamsm@princeton.edu

Sean Lawrence  
seanlawrence82@gmail.com

Peter Jackson  
pojack436@gmail.com

Lois Voronin  
lois\_voronin@yahoo.com

Bill Buglovsky  
bowmanb16@aol.com

Beth Goldberg  
beth.s.goldberg@gmail.com

Lee Errico  
erricolc66@gmail.com

Kyle Runkle  
Krunkle73@gmail.com

Steve Peterson  
Steven.peterson@comcast.net

Marion Misero  
mmisero@ptd.net

Frank Gibson  
frankgibson@verizon.net

Anna Kawalec  
annakawalec@comcast.net

Donna Weeast  
Donna.Weeast@gmail.com

Noreen Kemether  
kemethern@comcast.net

Christina Hawley  
chawley.ch@gmail.com

Sandra Buglovsky  
sbugs0801@aol.com

Debra Bradley  
dbradley@njpsa.org

Richard Herbe  
rherbe3@yahoo.com

Lisa Aron  
sunyata9@hotmail.com

Georgi Tolstiakov  
legal101@yahoo.com

Sue Ann Lewine  
drsueann@aol.com

Joyce Sherman  
jodacres@hotmail.com

Kathleen Connally  
countryroad36@gmail.com

Sean Nejman  
seannejman@gmail.com

Frank Wahl  
frankwahl123@yahoo.com

Anne McNaron  
mcnarona2707@gmail.com

Jill Trainor  
trainorj@ptd.net

Steven Stern  
smstern@gmail.com

Lesley Dedufour  
ldedufour@comcast.net

Diane Dotsko  
dsdotsko@ptd.net

Norman Torkelson  
ntorkelson@hotmail.com

Dennis Kager  
kagerdj@embarqmail.com

Nancy Small  
nancyosmall@gmail.com

Stephen Willey  
slwilley@gmail.com

Scott Simon  
scottsimon824@gmail.com

Andrea Bonette  
a.bonette@aol.com

Bernice Wahl  
bernicewahl@gmail.com

Vaughana Feary  
vaughanafeary@gmail.com

Marylou Ferrara  
mamountford@aol.com

Mary Mountford  
mamountford@aol.com

Beth O'Brien  
obrien.beth@comcast.net

June Vester  
bestvester@gmail.com

David Dedufour  
linesider9@comcast.net

Kathleen Lore  
birdsnblooms@hotmail.com

Lynda Farrell  
lynda@pscoalition.org

Susan Meacham  
themeachams@ptd.net

Ray King  
rayking@rayking.nu

Judith Paulus  
Waynepaulus@rcn.com

Franklin Fenner  
frankf2@live.com

Katherine Mathews  
katherinemathews@comcast.net

Leslie Sauer  
smithnjones@comcast.net

Kierstyn Toth  
kierstynd@gmail.com

Judith Sullivan  
judithjoansullivan@gmail.com

MaryAnn Faethe  
mfaethe@gmail.com

Joe DeSevo  
joed56@ptd.net

Debra Orben  
jkorben@aol.com

Doug Smith  
lynnws66@gmail.com

Kathleen Sciarello  
ksciarello@aol.com

Beatrice Gahman  
bgahman@hotmail.com

Robert Rader  
nonerader@gmail.com

Jacquelyn Lawrence  
jacquelyn.m.lawrence@gmail.com

Ralph DeCesare  
Decesra@yahoo.com

Diana Dell  
dianadell420@gmail.com

Carol Tistan  
Caroltistan@yahoo.com

Philip Rainford  
vanessa.rainford@gmail.com

Melissa Bivona  
melissa\_bivona@ml.com

Susan D'Amour  
susan.damour@comcast.net

Michael Spille  
michael.spille@gmail.com

Susan Shapiro  
ne85610@gmail.com

Judy Louis  
judylouis@comcast.net

Jennifer Sarullo  
jlsqms08@gmail.com

Suzanne Knudsen  
marknsuzie@comcast.net

Richard Dodds  
rdodds@kingwoodtownship.com

Lisa Frank  
lisafrank2058@gmail.com

Daniel Auslander  
dhauslander@gmail.com

John Mathews  
jackmathews@comcast.net

Fred Nanni  
fredjnanni@gmail.com

Bernadette Hunsicker  
brndtthunsicker2@gmail.com

Sally Herb Moses  
sallyherb11@gmail.com

William Harbin  
tomharbin580@gmail.com

Mary Lou Haring  
Mharing7@aol.com

Shawn Baran  
smkyle@embarqmail.com

Audrey Frankowski  
audreyfrnk@aol.com

George Leap  
gleapjr@gmail.com

Judith Ann Roggie  
judiroggie@gmail.com

Laura Wilson  
lossenre@yahoo.com

Travis Gale  
tgale9829@gmail.com

David Augustine  
daugustine9@icloud.com

Susan Wells  
Susankw215@gmail.com

Brina Sedar  
brinasedar@gmail.com

Tamie Zygiel  
Tamzygiel@embarqmail.com

Darcy Taylor  
darcy2save@yahoo.com

Patricia Cirigliano  
pcbkc@ptd.net

Michael Ghiggeri  
mjghiggeri@yahoo.com

John Kika  
john\_kika@hotmail.com

Adam Darling  
hrridegti@yahoo.com

Eleanor Plummer  
lplummer@sidekicksolutions.net

Claire Chontofalsky  
Claireferc@gmail.com

Jennifer Hirsh  
mrs.h.andfamily@mac.com

Liz Schmid  
eschmid9@centurylink.net

Beth Pandy  
bethpandy@gmail.com

Nancy Lehman  
nancy\_lehman@hotmail.com

Tara Zrinski  
taramichele75@gmail.com

Debbie Cifelli  
wannabeisabelle@hotmail.com

David Bornheimer  
david.bornheimer@gmail.com

Roy Christman  
Hiramc@ptd.net

Jill Dodds  
jillsdodds@gmail.com

Linda Stockinger  
lstockinger@icloud.com

Irving MacConnell  
shamus317@yahoo.com

S. A. Tuzik  
stacy\_4\_1@hotmail.com

Kim Vanderwende  
securely2165@aol.com

Thomas Michalenko  
michalenkofarms@gmail.com

Sarah Seier  
Smseier@outlook.com

Edward Chontofalsky  
Edwardferc@gmail.com

John Sedar  
jsedar@ptd.net

Jennifer Griffith  
jenpec1@comcast.net

Jody Williams  
mrwilliams08559@gmail.com

Anthony Wiseman  
jinglestone@attglobal.net

Kevin Brown  
brownkep@gmail.com

Joseph Walsh  
joseph.h.walsh@att.net

Alan Kirby  
alan\_kirby\_jr@yahoo.com

Heather Haberle  
hezz72@hotmail.com



Deborah Kratzer  
kratzerenv@gmail.com

Bruce Beffa  
bbeffa@msn.com

Robert Schmid  
rschmid9@centurylink.net

Christopher Kratzer  
ckratzer.ferc@gmail.com

Victoria Opthof-Cordaro  
vo@ssslawoffice.com

Stephen Santanello  
black-tom@msn.com

Shirley Albright  
conulariida65@gmail.com

David Griffith  
d.griffith@emerson.com

Jim Drake  
kingwoodfirecompany.ferc@gmail.com

Charles King  
clkingmd@embarqmail.com

Catherine Warneski  
popsfinal@gmail.com

Kim Robinson  
kbrobinson1@hotmail.com

Chrstina Spolar  
christina.spolar.ferc@gmail.com

David Christiansen  
fleetfoxfarms@gmail.com

Deborah Kratzer  
kingwoodec.ferc@gmail.com

Dean Escue  
resq4@msn.com

Ruth Bowers  
linnaeadesign@gmail.com

Lori Fleischman  
loaf111@verizon.net

Mary Georgiew  
marygeorgiew@gmail.com

Victoria Hinde  
vickyhinde4@gmail.com

Nancy Ponter  
kingwoodfirstaid.ferc@gmail.com

Patricia Spaziani  
pattyspaziani@yahoo.com

Gayle Conover  
gmconover@comcast.net

Amber Gale  
ambergale.ferc@gmail.com

Pamela Bordwick  
pamela.bordwick.ferc@gmail.com

Gloria Fulham  
teddyg58@aol.com

Charlize Katzenbach  
charlize.katzenbach.ferc@gmail.com

Suzanne Zukowski  
theitalianbee@gmail.com

John Koches  
jkoches@gmail.com

Dawn Koches  
dkoches@gmail.com

Julia Crislip  
crislipj@hotmail.com

Cynthia Butler  
cyn.butler8@gmail.com

Gary Woodward  
woodward@tcnj.edu

Denise Nardi  
deenardi@yahoo.com

Annalisa Traina  
annalisa.traina@outlook.com

Janine Nichols  
jazzpaperscissors@gmail.com

Robert Gildea  
reg0211sbb@gmail.com

Roberta Gildea  
rbbsg@embarqmail.com

John Dupuis  
1zitao+9jfg2w8gd8pzs@sharklasers.com

Timpson Seggerman  
timseggerman@mac.com

Mary Anne Cohen  
thecostofthepipeline@gmail.com

Sarah Ayers  
sarevegar@me.com

Shelby Koches  
smkoches@gmail.com

Daren Leeper  
daren@leepergroup.com

Deborah King  
debbking@gmail.com

Anita Brosky  
lilmtlady@hotmail.com

Rob Geoghan  
rgeoghan@gmail.com

Beverly Pryce  
beverlydpryce@gmail.com

Ashley Fleming  
ashleycompton1524@gmail.com

Donna Compton  
punkinsparent@gmail.com

Joseph Straub  
JoeStraub15@gmail.com

Dave Milewski  
daverain.dm@gmail.com

Harold Ryan  
haroldlaura@embarqmail.com

David Clapp  
daveclapp@gmail.com

Patty Greaves  
pagorey1@aol.com

Blanche Ellis  
blancheellis@verizon.net

Dan Schwartz  
das18014@gmail.com

Brian Moore  
bdmoore12771@yahoo.com

Martha Geissler  
Muffie2139@comcast.net

Daniel Haddle  
dhaddle@gmail.com

Russell Poles  
wormansgrovetoo@gmail.com

Karen Baldino  
karen.baldino.ferc@rox.org

Carol Lipson  
carol.lipson.ferc@rox.org

Martin Wissig  
Silvanuswrath@gmail.com

John Schucker  
john.schucker.ferc@rox.org

Cynthia Trstensky  
Trstenskys@embarqmail.com

Franklin Trstensky  
Bluewaterfrank@gmail.com

Timm Ayers  
timm2you@yahoo.com

Veronica Cole  
rrrus@ptd.net

Jeffrey McGuire  
mcguirejm@rcn.com

John Koches  
jkoches@koches-repairs.com

Peter McCrohan  
nopenneast@gmail.com

Thomas Kenny  
thomas.kenny.ferc@rox.org

Adele Gugliotta  
gugliottadele@gmail.com

Cara Laitusis  
cara.laitusis.ferc@rox.org

Janet Poles  
wormansgrove@gmail.com

Robert Mountford  
robert.mountford.ferc@rox.org

Andrew Juleff  
andrew.juleff.ferc@rox.org

Theodore Spiro  
TheodoreESpiro@gmail.com

Laura Nicholson  
laura.nicholson.ferc@rox.org

Laurie Hoffman  
laurie.hoffman.ferc@rox.org

David LaMotte  
david.lamotte.ferc@rox.org

Kristin Lauersen  
kesseyelolodeye8@yahoo.com

Scott Cannon  
videoinnovation@epix.net

John Markowski  
jmarkowski0@yahoo.com

Deirdre Ely  
dee@ballybog.com

David Beaumont  
dwbmail@comcast.net

Hannah Suthers  
hsuthers@princeton.edu

Frederick Lesko  
fharryl@ptd.net

Thomas Karkas  
Netreeexpert@gmail.com

Gregory Frick  
drfrick@drgregoryfrick.com

Dolores Schuster  
Dodiemay908@gmail.com

Elizabeth Schmitt  
elizabeth.schmitt.ferc@rox.org

Amy Roman  
amy.roman.ferc@rox.org

Ruth Jourjine  
ruth.jourjine.ferc@rox.org

Karen Egidio  
kegidio@comcast.net

Lloyd Evans  
evansltb@gmail.com

Viola Markus  
violam98@hotmail.com

Marie Wheaton  
twofamilykid@embarqmail.com

Lisa Secretario  
lisasec@me.com

Kevin D Leslie  
kleslie@mac.com

Vincent Degrado  
vinamoco@aol.com

Jeffrey Shafer  
jrshafer01@gmail.com

Hannah Poles  
wormansgrove3@gmail.com

Jacqueline Evans  
hautfarm@gmail.com

Nicolo Messina  
nic113@comcast.net

Mary Tolmie  
stocktonvillagefarm@gmail.com

Jacqueline Strigl  
jjstrigl@yahoo.com

David Donnelly  
ddonnelly@gmail.com

Harvey Lester  
harveylestor.ferc@yahoo.com

Earle Dodds  
dodd2673@gmail.com

Suzann Chenery  
celticorganicfarmsuzann@gmail.com

Scott Bubbenmoyer  
kabubbe@ptd.net

Kimberly Bubbenmoyer  
kabubbe@gmail.com

Carl Molter  
browzr1066@gmail.com

Beth Merkle  
bdmerkle@yahoo.com

Grace Pandy  
Roadgpandy90@gmail.com

James Apffel  
jamesapffel@hotmail.com

Charles Slonsky  
nopepipeline@gmail.com

Charles Napravnik  
penneastgosolar@gmail.com

Erica Sommer  
ericassommer@outlook.com

Stephen Garofalini  
sgarofalini@gmail.com

Adam Howell  
rhah57@gmail.com

Brendan Lee  
brendanjosephlee@gmail.com

William Beidelman  
wbeidelman@gmail.com

Patricia Cronheim  
pcronheim@comcast.net

John Newman  
jnewman687@gmail.com

Jayne Howell  
gohowell@comcast.net

Abigail Bialer  
abbybialer@mac.com

Lisa Finzi  
lfinzi@verizon.net

James Cally  
jjcncc@netzero.com

Tara Kulas  
dobeadee1@aol.com

David Siwulec  
d.siwulec@gmail.com

Madalyn Kulas  
madalyn.e.kulas@gmail.com

Daniel Carducci  
danielcarducci@kings.edu

Jeanne Colalillo  
jeannicolalillo@gmail.com

Arthur Hallinger  
arthallinger@icloud.com

Samuel Thompson  
samstopPENNEAST@gmail.com

Robert Trippeda  
seventripps@yahoo.com

Nancy Kautsky  
jgm4224@gmail.com

James Dowd  
jmdowd@comcast.net

Geri Siwulec  
geewiz13@gmail.com

Cara Macy  
MacyRedmond@msn.com

Karen Garofalini  
skkc@comcast.net

Richard Kulas  
tuna884@aol.com

Charlie Fisher  
springmeadow.cf@gmail.com

Wayne Conover  
wayneconover@comcast.net

Kristen Sundberg  
Sund.hall@yahoo.com

Stephen Kaufman  
skaufman@raritanval.edu

Meredith Elinich  
merelin555@yahoo.com

Nora Anderson  
nora@aaai-ismafitness.com

Georgianna Zgurzynski  
Georgianna.Zgurzynski@gmail.com

Amelia Jones-Starkey  
stephaniemuffjones@gmail.com

Donald Mossman  
kbn8118@gmail.com

Ann Scamuffa  
bowhunter\_2@comcast.net

Virginia Welsh  
welshfarm@gmail.com

Rachel Finkle  
rachelfinkleferc@gmail.com

Robyn Apffel  
robynapffel@hotmail.com

Carina Sayles  
carina@sayleswinnikoff.com

Frank Armocida  
farmocida@aol.com

Talita Ongilio  
talitaongilio@gmail.com

Andrew Victors  
happycpe@att.net

Anne McDouglad  
Almnj8@verizon.net

April Zielinski  
april.zielinski@gmail.com

Raymond Aron  
craron@comcast.net

Valerie Tucci  
valorama21@gmail.com

Douglas Borden  
dborden@bordenperlman.com

Mary Limantour  
mblimantour@gmail.com

Louis Alimi  
laa\_69@msn.com

Nancy Ponter  
ponterpenneast@gmail.com

Mark Moschberger  
mjpep215@gmail.com

Charlotte Esposito  
richard.esposito3@verizon.net

Keith Holdren  
kheeth@ptd.net

Paul Shinsec  
nomad2@ptd.net

Margaret Shinsec  
meshin@ptd.net

Janet Robbins  
janrobbins8@hotmail.com

Raymond Aron  
lafamiliaaron@gmail.com

Christina Borden  
borden101@comcast.net

David Seems  
davidwork@verizon.net

Rick Laduca  
rickladuca@yahoo.com

Stephanie Tade  
stade@stadeagency.com

Cynthia Gale  
cyngale@yahoo.com

Peter Christine  
purslanepete@gmail.com

Susan Michniewski  
vortex986s@verizon.net

Cynthia Niciecki  
ckniciecki@hotmail.com

Elisabeth Kerr  
bk1139@aol.com

Leanne DeTample  
lw.detample@yahoo.com

Jane Zamost  
jane.zamost.ferc@rox.org

Gene Hunter  
genelane33@yahoo.com

Marilyn Cummings  
marilynkaycummings@gmail.com

Mona Patel  
mona.patel.ferc@rox.org

Marc Karlin  
marc.karlin.ferc@rox.org

Margaret Harmsen  
margaret.harmsen.ferc@rox.org

Michael Brogan  
poli.sci.rider@gmail.com

Paul Earnest  
pje593@gmail.com

Karl Darby  
mercer1914@gmail.com

Helen Tai  
htai888@gmail.com

John Niciecki  
janusz.90@hotmail.com

Joan Seguine-LeVine  
hugahuguenot@gmail.com

L Dykas  
ldykas@verizon.net

Gerald Ryan  
ggryan8846@gmail.com

Kevin McVey  
kevin.mcvey.ferc@rox.org

Christine Houghton  
christine.houghton.ferc@rox.org

Gary Karlin  
gary.karlin.ferc@rox.org

Shaina Karlin  
shaina.karlin.ferc@rox.org

William Wallace  
WilliamWallaceFERC-PE@comcast.net

Anthony Treyman  
tonyt410@gmail.com

Joseph Camenzind  
joseph.camenzind.ferc@rox.org



Fiona Scott  
fiona.scott.ferc@rox.org

Patrick Dooley  
patrick@dooleyclan.org

Jani Racehlson  
jani.racehlson.ferc@rox.org

Cathy Bowlby  
cathy.bowlby.ferc@rox.org

Rebecca Camenzind  
rebecca.camenzind.ferc@rox.org

Maureen Santoro  
mosantoro256@gmail.com

David Briede  
wineberry04@gmail.com

Jeff Parros  
Jhparros@gmail.com

Donald Hirsh  
dhirsh6@verizon.net

George Lane  
wolffoote@gmail.com

Jeremy Trach  
dobhouse@gmail.com

Beverly Danese  
danese13@hotmail.com

Jeffrey Farrington  
alaxhaking@gmail.com

Harm Pump  
harm.pump.ferc@rox.org

Mary Lynn Dupuis  
mary.lynn.ferc@rox.org

Andrea Wallace  
AndreaWallaceFERC-PE@comcast.net

Mary Desapio  
mary.desapio.ferc@rox.org

Rudolph Hotz  
rudolph.hotz.ferc@rox.org

Yujen Juan  
yujenjuan@gmail.com

Sven Helmer  
helmer.sven@gmail.com

Colin Stiles  
golfrules97@aol.com

Lori Burger  
loriburgerferc@gmail.com

Sally Kydd  
drsallykydd@gmail.com

Ryan Talbott  
rtalbott@alleghenydefense.org

Donna Anderson  
Alchemy1962@gmail.com

Alan Johnson  
fercedup@comcast.net

Jane Rizzo  
rizzoj50@yahoo.com

Laurie Cameron  
Lauriecameron.dvm@comcast.net

Carla Mau  
carlamau@yahoo.com

Jeanette Mills  
jeanette@dooleyclan.org

Alice Stewart  
Alicelouisestewart@verizon.net

Charles Stewart  
sonnystewart@verizon.net

Mike Ulmes  
mike@ulmes.net

Christine Gomberg  
cgomberg@comcast.net

Patricia Ruby  
pruby@hunterdonlandtrust.org

George Zygiel  
custommotorcucle@embarqmail.com

Mary Massos  
mlmassos@yahoo.com

Ayako Chafey  
ayakcha30@msn.com

DeVoe Martin  
devoeacp@aol.com

Clifford Wilson  
cwilson@hbts.com

Eugene Caffrey  
ecaffrey717@msn.com

Isabel Starkey-Jones  
jonesstarkeyferc@gmail.com

Joseph Parsnik  
pars24@aol.com

Scott Wilhelm  
wilhelms@wwgrlaw.com

George Paley  
jpaley1218@aol.com

Catherine Degrado  
vinnyups@aol.com

Albertine Anthony  
albertinesfarm@gmail.com

Caroline Beidelman  
cbeidelman@gmail.com

Jane Gerhardt  
jgerhardt1964@gmail.com

Angel Martin  
artisangelica@aol.com

Richard Chafey  
rjosh30@verizon.net

Ronald Pristas  
ron.pristas@gmail.com

Friederike Harris  
harrisflip@gmail.com

Jeff Porter  
jeff@rahrentals.com

Olive Coghlan  
ocoghlan@hotmail.com

Gregg Gale  
gegale@comcast.net

Mary Ellen Stevens  
mest1115@aol.com

Mary Anne Hastings  
maryannehastings@gmail.com

Arthur Dent  
arthdenton@gmail.com

Carrie Dyckman  
carriedyckman@mac.com

C Antrosiglio  
antrosiglio@msn.com

Lauren Simpson  
realitydance.laurens@gmail.com

John Kuhlman  
jwkuhlman@comcast.net

Pamela Tauriello  
pamtaur@hotmail.com

Lindsay Napolitano  
oneearthforlife@gmail.com

Thomas Ramsin  
tranquility25225@yahoo.com

Lew Hastings  
LewHastings2@gmail.com

Arthur Sypek  
asypek@murphyorlando.com

Christopher Licciardi  
chris.licciardi@gmail.com

Kenneth Hyman  
Tadyfore@comcast.net

Susan Posen  
susanposen@aol.com

Jay Hoff  
powderhoff2009@gmail.com

R. David Blake  
blake@rdblake.com

Alexa Stewart  
alexastewart97@aol.com

Cheryl Leslie  
clleslie@comcast.net

Robert Chamberlain  
rbchamberlain@comcast.net

David Blackwell  
Blackwellsisland@aol.com

Chet Podpora  
chetty29@embarqmail.com

Johann Rinkens  
fercpenneastmail@gmail.com

Dennis Ockert  
miner309@aol.com

John O'brien  
john.o'brien.ferc@rox.org

Terrance Hendricks  
tjhen8484@gmail.com

Kyle Hochenberger  
kyle.hochenberger.ferc@rox.org

Rich Covert  
RJKMcov@gmail.com

Jeanne Hogan  
jeanne.hogan.ferc@rox.org

Christine Buchanan  
christine.buchanan.ferc@rox.org

Kevin Streeper  
kevin.streeper.ferc@rox.org

Timothy Mcelroy  
timothy.mcelroy.ferc@rox.org

Vincent Mack  
mack\_vincent@yahoo.com

Mary MacConnell  
memaccon569@msn.com

Wendi Lauber  
wlauber@uniquehomes.com

Susan Kurzenberger  
laughmore1691@gmail.com

Kathy Fox  
kathyafox@yahoo.com

James Dunn  
james.dunn.ferc@rox.org

Brian Steeg  
Briansteeg\_1999@yahoo.com

Deborah Levithan  
deborah.levithan.ferc@rox.org

Ruth Kjaer  
ruth.kjaer.ferc@rox.org

Erica Johanson  
erica.johanson.ferc@rox.org

Loyola Schirra  
mrslschirra@hotmail.com

Peter Desch  
peter.desch.ferc@rox.org

Beverly Desch  
beverly.desch.ferc@rox.org

David Hirsch  
dmhirsch@ymail.com

Aurette Sprout  
aurettepainter43@gmail.com

Martin Nemeth  
martin\_nemeth@yahoo.com

Karen Caldwell  
caldwell877@comcast.net

Vincenzo DeSapio  
monteforte@italymail.com

James Regan  
jregan@harbourton.com

Naomi Lonergan  
nglonergan@aol.com

Stephen Chapman  
schapman@monmouth.edu

Diane Laudенbach  
dlaudenbach@hotmail.com

Grace Betts  
grmakebe@hotmail.com

Joseph Plechavy  
plechavy@ptd.net

Ian Bydalek  
ibydalek@yahoo.com

Anna Burk  
annagburk@gmail.com

Mark Bydalek  
bydalekdental@yahoo.com

Madeline Warenecke  
MWarnecke2015@gmail.com

Jeffrey Waldron  
jlwpac@earthlink.net

Jill Spiro  
JillSSpiro@gmail.com

Lisa Oertle  
loertle@embarqmail.com

Edward Shuhart  
eshuhart@me.com

Lisa Martin  
lisa.greatbags@gmail.com

Gaetano De Sapio  
guydesapio@earthlink.net

Thomas Bowman  
mbowman362@aol.com

Glenn Gabai  
gsgesg@gmail.com

Caitlin Haughey  
caitlin01@gmail.com

Lisa Spinelli  
jgspinelli52@gmail.com

Jeremy Hayes  
jhayes1076@gmail.com

Suzanne Perrault  
Suzanne@ragoarts.com

James Spinelli  
llspinelli50@gmail.com

Gary Hinesley  
garyintervenor@gmail.com

Winifred Waldron  
jwar789@earthlink.net

Valerie Ackerman  
ackerman.val@gmail.com

Elizabeth Speicher  
Tespeicher@ptd.net

Dan Piorkowski  
dpiorkowski@mooretownship.org

Anne Berridge  
anneberridge@yahoo.com

Dennis Kager  
dkager3@embarqmail.com

Jack Potts  
jmp744@enter.net

Diana Boller  
grouse0867@gmail.com

Ann Marshall  
ann@durhampress.com

Margaret Schenck  
maschenck@comcast.net

Belinda Ulrich  
blulrich31@comcast.net

Hollis Bauer  
hollis.bauer.ferc@rox.org

Laura Cuth  
lschelter@hotmail.com

Scott Geosits  
scottgeosits@gmail.com

Ann Anderson  
bookspirit@msn.com

Carol Kleis  
loracxer@aol.com

Joy Stocke  
stockey@mac.com

Lewis Lengyel  
lflengyel@rcn.com

Holland Ccap  
hollandccap@yahoo.com

Roger Harris  
skunktown@gmail.com

Michele Potts  
chesley847@gmail.com

Heidi Wilenius  
hswilenius@gmail.com

Lory Bringenberg  
labringenber@gmail.com

Jeffrey Apoian  
jeffrey.apoian.ferc@rox.org

Douglas Bartek  
dougbartek10@gmail.com

Lois Iasiello  
liasiello@enter.net

Chester Bellis  
chesterbellis2015@gmail.com

James Abey  
jlabey@verizon.net

Ray Maroney  
delta\_wing\_2000@yahoo.com

Robert Mountford  
bobbo609@comcast.net

Thomas Kager  
thomas.kager.ferc@rox.org

Marguerite Stiles  
mapastiles@comcast.net

Sherri Karcher  
karcherkrew@ptd.net

Jane Porpora  
janewdolan@yahoo.com

Diane Hartford  
dianehartford@aol.com

Sally Czaja  
czajaowl@gmail.com

Marian Jacobs  
marian.jacobs711@gmail.com

Carol Makuta  
stardustndreams1@gmail.com

Marie Dudbridge  
marie.dudbridge@verizon.net

Pascal Prince  
pascal.prince@rcn.com

Sarah Tracy  
sarah.tracy46@gmail.com

Stephen deDufour  
spdvc@aol.com

Vanessa Sandom  
briangibson3000@gmail.com

Barbara Zapatka  
barbara.zapatka.ferc@rox.org

Daniel Stiles  
danstiles62@aol.com

Robert Myers  
chalkdust218@aol.com

Annette Iasiello  
anetwal@aol.com

Roger Loos  
rhloos@gmail.com

Deborah Nejman  
dgnej@aol.com

Juditha Dowd  
judithadowd@comcast.net

Bradford Van Treuren  
brad59@netzero.net

Cynthia Marx  
cindy1415@verizon.net

Catherine Pike  
catherinepike@yahoo.com

Paul Peaff  
goodsenserecords@juno.com

James Shallenberger  
james.shallenberger.ferc@rox.org

Tiffany Teeter  
tiffanyteeter@aol.com

Mary Bonos  
mbonos@msn.com

Geoffrey Caldwell  
geoffrey.caldwell.ferc@rox.org

Barbara Wingel  
bwingel123@aol.com

Dorina Hippauf  
fbhipauf@gmail.com

Mark Rotenberg  
mlrvnp@gmail.com

Jane Wesby  
janeswesby@gmail.com

Christine Solomon  
runningbears@msn.com

Virginia Mickle  
foxpassgal@yahoo.com

Kimberly Murphy  
irishred42183@gmail.com

Andrea Meyercord  
ameyercord@gmail.com

Kendra DeHaven  
kendra.dehaven@gmail.com

Jeff Tucker  
jeff.tucker.ferc@rox.org

Shirley Kessler  
shirley.kessler@gmail.com

Mark Cuth  
mark\_cuth2003@yahoo.com

Mary Michaels  
mmrg222@yahoo.com

David Berez  
berez@comcast.net

Allison Stiles  
njpetlover93@aol.com

James Secretario  
jsecretario@gmail.com

David Earling  
dee@solecap.com

Gary Salata  
brojamgary@aol.com

Joel Boriek  
frenchtownenvironmentalcom@gmail.com

Tamatha Rettberg  
rettbert@kean.edu



PJ Conway  
pjconway@att.net

Becky Mazzei  
becky.dreibelbis@gmail.com

Thomas Meyers  
tomaforyou@yahoo.com

Adele Meyers  
adele1437@gmail.com

Florence Friedman Hurwitz  
Florenceanne18@gmail.com

Jennifer Ghannam  
jenghannam01@gmail.com

Leslie Dudley  
leslied.dd@gmail.com

Lynn Doria  
lynninnj@yahoo.com

Emily Suzuki  
suezokey@yahoo.com

John Hunt  
john.hunt@bms.com

Darrell DeTample  
ddetampl@hcrhs.org

Julie Blake  
jblake1066@gmail.com

John Norton  
Jnort1028@aol.com

David Morse  
dmorse17@gmail.com

Harry Barnes  
harry@barnes.in

Adam Juncosa  
ajgalt@mac.com

Mary Flory  
marylflory@gmail.com

Ruth Winsor  
rwinsor333@gmail.com

Fernando Villegas  
fervill4@hotmail.com

Scott Hengst  
shquick@gmail.com

Walter Podpora  
wapodpora@verizon.net

Ellen Reichart  
eareichart@live.com

Lorraine Crown  
lorraine.crown@gmail.com

Henry Kiesewetter  
Kiesew264@gmail.com

John Bulger  
bulger.john@gmail.com

Rob Nicolaides  
r.nicolaides@gmail.com

Kyra Padulo  
Nannycay@aol.com

Christine Regan  
Greendba@verizon.net

Paul Qvale  
pqvale@gmail.com

Adam Gibson  
adamgibson74@gmail.com

Katherine Dresdner  
katherine.dresdner@gmail.com

Amy Coss  
amy@milfordoysterhouse.com

Matthew Young  
mvyoung@mac.com

Martha Akers  
martyc.akers@gmail.com

Jennifer Devine  
Jenndevine04@gmail.com

Randy Setzer  
rksetzer@verizon.net

Richard Benioff  
brbenioff@verizon.net

Brant Switler  
brantswitzler@yahoo.com

April Pusczko  
astiles@viiad.com

Eline Andersen  
eandersen235@gmail.com

Landis Eaton  
Hensfoot@aol.com

Horatio Nichols  
HBNich@gmail.com

Nina Qvale  
nqvale@msn.com

Jerry Padulo  
jpadulo@aol.com

Kathryn Korwin  
Katkor@comcast.net

Kevin Kennedy  
k2sys@yahoo.com

Bryan Peterman  
taffy116@comcast.net

David Burnett  
dbbnj1@gmail.com

Frank Maneri  
fcmaneri@gmail.com

Carly DeCesare  
carlydecesareferc@gmail.com

Laurel Kenney  
lkenney52@comcast.net

Valerie Lezan  
Shanezilla13@gmail.com

Nicholas Reynolds  
ntreynold@gmail.com

Mary Felix  
felix1m@aol.com

Ann Kohler  
lttlmanhattan@gmail.com

Karen Kohler  
noelthetaz@gmail.com

Linda Wagner  
lbw61@live.com

Jennifer Gibson  
havercroftinbloom@gmail.com

Jennifer Puglia  
jennyrose0@aim.com

William Wyman  
WTW31@aol.com

Brian Kennedy  
kennedy54@comcast.net

Doris Wood  
doris\_wood@msn.com

John Smith  
drms.director@gmail.com

Judy Zatz  
judyzatz@gmail.com

Kerrie Rolon  
tkerolon@embarqmail.com

Karen Shea  
kfshea124@comcast.net

Sharon Pascucci  
s.pascucci2@gmail.com

Christine Rusticus  
crusticu@gmail.com

Richard Kohler  
rjeakoh40@gmail.com

Maria Marks  
mmarks@ymail.com

Arlene Sundberg  
arlenesundberg@yahoo.com

Michael Briehler  
michaelbriehler@gmail.com

Michael Knapp  
y2knapp@gmail.com

Michael Dawson  
dawsonhope@aol.com

James Orben  
jimferc11@gmail.com

Geralyn Koblis  
Geri@Estren.net

Marfy Goodspeed  
marfy.goodspeed@gmail.com

Craig Puszczko  
craig.puszczko@gmail.com

Lisa Scheier  
liskascheier@yahoo.com

Jane Lick  
Jmlick18042@yahoo.com

Tanya Tuccillo  
tanyaandevans@hotmail.com

Joan Kager  
kagerdj@aol.com

Sandra Desch  
sdesch@comcast.net

Jacqueline Crown  
jacquicrown@yahoo.com

Caroline Katmann  
ckatmann@sourland.org

Peter Hollis  
peter.hollis@att.net

Robin Wedeking  
Robinwedekingemail@gmail.com

Tony Rizzello  
rizzello@ptd.net

Pamela Zuchowski  
zuchowskifamily22@gmail.com

Patrick Rock  
patrickjrock@yahoo.com

Maureen Syrnick  
maureens@ippe.com

Michael Sauers  
msauers50@verizon.net

Jane Hamill  
janelafarge@gmail.com

Carl Baker  
sbaker29@comcast.net

Andrew Pantano  
andrew@culinarycreations.com

D Kager  
tinmanfab@yahoo.com

Scott Desch  
scott@airprofessionalsnj.com

Julie Burkart  
j.a.wagner@wagnerfarms.com

James Griswold  
j.j.griswold@gmail.com

William Murphy  
wkmclm@ptd.net

Steven Nadel  
SMNadel@pplweb.com

Gary Mitchell  
preelec@ptd.net

Noemi de la Puente  
noemidlp@yahoo.com

Kenneth Collins  
worldwiderebel1@gmail.com

Denise Yost  
yostwitch@gmail.com

Gregory Schwartz  
marybeth\_schwartz@yahoo.com

Jarrett Hunt  
jarrettrhunt@gmail.com

Holly Winsor  
hwinsor@yahoo.com

Barbara Conklin  
Lockatongcreek@hotmail.com

Peter Gerhardt  
pgerhardt111@gmail.com

Barbara Brizzee  
bbjhbhlh@aol.com

Leslie Kuchinski  
kuchinskifamily@verizon.net

Peter Dorflinger  
pdorf1@comcast.net

Paul Weckesser  
pmweck68@gmail.com

Jacqueline Nemeth  
jacquenmth@yahoo.com

Scott Deaney  
scottdru79@gmail.com

Samuel Koplinka-Loehr  
skl@cleanair.org

Albert Namey  
mnamey@wbasd.k12.pa.us

Mary Beth Schwartz  
mbschwartzwrites@gmail.com

James Wedeking  
jwedekin@hotmail.com

LeRoy Brown  
blbrown74@embarqmail.com

Brian Monahan  
Brian@MonahanLaw.com

Richard Gerner  
rickgerner@comcast.net

Yke Rusticus  
yrusticus@gmail.com

Ronald Gebhardt  
e.gebhardt@hotmail.com

Patricia Sziber  
SziBird@aol.com

Charlene White  
charliwhite61@gmail.com

Suzanne Todd  
suzannetodd@comcast.net

Kristin McCarthy  
kristinmccarthy66@gmail.com

Daria Karas  
dkaras@praemiagroup.com

Edward Bennett  
chefspa@comcast.net

Sarina DiBianca  
sarina.av@verizon.net

William Kellner  
billyjean18235@yahoo.com

Vinton Freedley  
tfreedley@praemiagroup.com

Angela Karas  
aenvironmental13@gmail.com

Geraldine Hawks  
GBMSH9@gmail.com

Linda Driver  
driver08@comcast.net

Sandi Fisher  
sandifisherferc@gmail.com

James Gamble  
jamesgamble89@gmail.com

Denise Avila  
contactus@highlandmarket.com

Louis Rufino  
lj117@yahoo.com

Samantha Sawh  
samiam119@gmail.com

Neil Rasbury  
soneil123@aim.com

Gloria Stone  
gloria@vdibianca.com

Reid Bryant  
mrdrb3@aol.com

Anthony DiBianca  
tonydibianca@gmail.com

Marie Case  
mcase@praemiagroup.com

James Selman  
jimselman@paracomm.com

Richard Constantine  
rconstantine@comcast.net

Glenn Cantor  
gcantor63@gmail.com

Harriet Fisher  
harrietfisherferc@gmail.com

Janine Carazo  
jan41047@aol.com

Peter Britten  
peter.britten@gmail.com

C Brant Switzler  
Bswitzler@readington.k12.nj.us

Hayley Fahey  
faheyh@rider.edu

James Orben  
lepocoferc@gmail.com

Maude Tatar  
thetatars@yahoo.com

John Tatar  
jack@peopletested.com

Rosemary Litschauer  
rgraham21@verizon.net

Janice Hofreiter  
janicehofreiter@gmail.com

Nicholas Seier  
njseier@hotmail.com

Janet Grillo  
agph@embsrqmail.com

Joann Wagner  
jul.burkart@gmail.com

Moore Township  
rkgable@yahoo.com

Deirdre Alderfer  
deirdrealderfer@hotmail.com

Scott Johnson  
svduende@yahoo.com

Michelle Sandrow  
michellemarie0428@yahoo.com

Edward Dumchus  
ecdumchus@aol.com

Kevin Halpin  
halpinfest@yahoo.com

Mary-Lyn Buckley  
ml96x0@aol.com

Thomas Simonet  
tomfrompa@outlook.com

Lawrence LaFevre  
lofamsterdam@gmail.com

Carmen Rolon Holler  
carment.rolon@gmail.com

Leslie Welsh  
twelsh@hirtlecallaghan.com

Dwight Harris  
dwightkharris@aol.com

Donna M Honigman  
barnyardbudds@yahoo.com

Alfonso Grillo  
agphjg@yahoo.com

R Brent Alderfer  
rbrent.alderfer@comcast.net

Donald Detgen  
dondetgen@gmail.com

Nancy DiSalvi  
disalvi.nancy@gmail.com

Eric Sandrow  
easandrow@yahoo.com

Colleen Skeuse  
cskeuse@hotmail.com

Adam Belle  
adam.belle@bdac.biz

Elizabeth Rogers  
lizrogers297@comcast.net

Roger Byrom  
rogerbyromferc@gmail.com

Joan Durbin  
joandurbinferc@gmail.com

Julian Durbin  
juliandurbinferc@gmail.com

Kevin Oshea  
koshea22x@gmail.com

Janet Pressel  
j.cochoff@verizon.net

Robert Dunn  
yobobdunn@yahoo.com

Edward Groth  
edward.groth.ferc@rox.org

Alan Spotnitz  
alan.spotnitz.ferc@rox.org

Barbara Newbaker  
barbara.newbaker.ferc@rox.org

Catherine Pike  
catherine.pike.ferc@rox.org

Matthew Sharak  
matthew.sharak.ferc@rox.org

Gill Smith  
gillsmithferc@gmail.com

David Metzger  
metzoray@gmail.com

Eric Weisgerber  
cycsdesign@yahoo.com

Wendy Rasmussen  
wendyrasmussenferc@gmail.com

Russell Durbin  
russelldurbinferc@gmail.com

Catherine O'Shea  
bermuda42@aol.com

James O'Shea  
osheaboys@aol.com

Sarah Heidebrink-Bruno  
seb211@lehigh.edu

Richard Tamburo  
richard.tamburo.ferc@rox.org

Alyse Herman  
alyse.herman.ferc@rox.org

Arlene Spotnitz  
arlene.spotnitz.ferc@rox.org

Stephen Bergenfeld  
seb1978@mac.com

Matthew Domurat  
matthew.domurat.ferc@rox.org



Lee Trautman  
leeandpat1@comcast.net

Cheryl Salerno  
cheryl.salerno.ferc@rox.org

Alise Costabel  
alise.costabel.ferc@rox.org

Bradley Sanford  
bradley.sanford.ferc@rox.org

William Nulman  
william.nulman.ferc@rox.org

Mark Gonzalez  
mark.gonzalez.ferc@rox.org

Cheryl Richebacher  
srichebacher@rcn.com

Steven De Paul  
h203kc@aol.com

James McCue  
jfm4@comcast.net

David Baranowski  
barandave@aol.com

Diane Alex  
diane@cloudhands.net

Deb Sherwood  
revolve2031@gmail.com

Adrienne Crombie  
madlavenderfarm@gmail.com

Patti Sportiello  
pattimurraynj@aol.com

Christopher Meyers  
cgm@zprint.cc

Joanna Fiori  
joanna.fiori.ferc@rox.org

Clair Ransom  
clair.ransom.ferc@rox.org

Jill Mandler  
jill.mandler.ferc@rox.org

Philip & Linda Snyder  
Snyderpipe@gmail.com

Craig Richebacher  
crichebacher@rcn.com

Lori Answini  
answini@comcast.net

LuAnn Smith  
smilua@aol.com

Elizabeth Kohler  
snowychloe20@gmail.com

Susan Lockwood  
susanlockwood161@comcast.net

Ann Robideaux  
arobideaux@pds.org

Kathryn Monro  
jessica\_monro@hotmail.com

Brian Rehrig  
brehrig@alum.mit.edu

James Vogt  
woodlake@epix.net

Teresa Ryden  
RydenTM@aol.com

Nicholas Loglisci  
nickloglisci@gmail.com

Michael Sportiesound  
sportiesound@aol.com

Gary Moser  
araguy77@ptd.net

Vivian Ford  
viviantravels@hotmail.com

Rosalind Dunn  
rosalind.dunn.ferc@rox.org

Suzanne DiBinaca-Leiser  
sdibianca@gmail.com

Deborah Kilmer  
deborah.kilmer.ferc@rox.org

Samuel Vassallo  
samuel.vassallo.ferc@rox.org

Jonathan White  
Jonathan@cowsooutside.com

Amy Peterson  
horsedoc11@gmail.com

Sally Potorski  
sap525@hotmail.com

Cleveland Wall  
ubuwren@aim.com

Elizabeth Robinson  
brobinson9446@yahoo.com

David Lilly  
davidpaullilly@gmail.com

John Groch  
jwgroch@gmail.com

Susan Barnes  
sphbarnes@gmail.com

Alex Marshall  
alex.marshall.threads@gmail.com

Jessica Keener  
jesslkeener@gmail.com

John Leiser  
tedlieser@gmail.com

Richard DiBianca  
drpoooh548@aol.com

Sandy Hanna  
sandy.hanna.ferc@rox.org

Justin Mickey  
justin79@hyperservices.net

William Spolar  
william.spolar.ferc@rox.org

Alan Polk  
asp66@cornell.edu

Pamela Kerr  
pammkerr@comcast.net

Rebecca Canright  
rebeccagroovypeace@gmail.com

Lindsay Korwin  
lindsaybkorwin@gmail.com

Ryan Kennedy  
ryan@ryankennedy.com

Susan Toth  
smt0296@yahoo.com

George White  
geojr@ptd.net

Sean Leslie  
seanleslieferc@gmail.com

Devon Hart  
devonhart@gmail.com

Michael Keady  
mfkeadyferc@gmail.com

Cynthia Goldsmith  
longspringfarm@aol.com

Christine Barton  
C3barton@bop.gov

Mitchell Weaver  
mitcheree@yahoo.com

Donald Marks  
donald.marks@gmail.com

Nurit Baron  
Nuritbaron@aol.com

Shannon Pendleton  
sandersondesign@gmail.com

Matthew Little  
matthewr123@yahoo.com

Linda Kane  
lindakane333@gmail.com

Stacy Grady  
slm759397@yahoo.com

Mary Schmidt  
schmidtwwp@gmail.com

Ashleigh Everett  
ashleigheverettferc@gmail.com

Laura Lynch  
njsierraclub@gmail.com

Susan Hullin  
susanhullin@arrowwoodllc.com

Daniel Bush  
Dtbush09@gmail.com

Rene Billings  
scampta@aol.com

Laura Tessieri  
lauratessieri@gmail.com

Brian Hayes  
brjhayes@comcast.net

Laura Belleville  
lbelleville@appalachiantrail.org

Randall Sellers  
randallsellers@gmail.com

Elizabeth Bowman  
compleatgardener@comcast.net

Stephen Posen  
stephenposen@aol.com

James Gill  
jimgill110759@gmail.com

Helen Rigas  
poukit@aol.com

Morgan Styer  
morgan.styer@gmail.com

Maureen Bydalek  
mabydalek@gmail.com

Julie Slattery  
j.slattery51@hotmail.com

Amy Linch  
atlinch@gmail.com

David Winston  
dwherbal@ptd.net

Sharon Mendelson  
smile@epix.net

Chester Siuda  
ChetSiuda@gmail.com

Fredericka Foster Shapiro  
thinkaboutwater@mac.com

Robert Hughes  
rhughes@epcamr.org

Joseph Cooper  
joepy.see@verizon.net

Cindy Tindall  
cindytindall@mac.com

John Tindall  
bentindall1@mac.com

Alexandria Bydalek  
addslvsya@gmail.com

Mark Homicki  
christine.mark@verizon.net

Jennifer Martin  
j\_schwenzer@yahoo.com

Irene Elinich  
ielinichpublic@hotmail.com

Robert Tomaselli  
rtomas45@aol.com

Duane Sadvary  
ddsadvary@yahoo.com

William Washburn  
wnwashburn@gmail.com

Augusta Wilson  
awilson@cleanair.org

Scott Warner  
sco2bgood@gmail.com

Laura Horowitz  
12newmoons@gmail.com

Roblyn Rawlins  
rrawlins@cnr.edu

Deborah Tettermer  
RTettermer212@Comcast.net

Karen Feridun  
karen.feridun@gmail.com

Mark Leone  
mrkleone@gmail.com

Delaware Township  
dtcap2015@gmail.com

Lauren Jarmel  
jarmellauren@gmail.com

Frank Egidio  
fegidio@comcast.net

Mary Leck  
leck@rider.edu

Lisa Silvius  
lisasilvius@yahoo.com

Arianne Elinich  
aaarianne@hotmail.com

Mark Morrow  
morrowm@ugicorp.com

David Lyons  
dave@killerpuppies.com

Kelly Geosits  
kellygeosits@yahoo.com

George Trovato  
g265@epix.net

John Watson  
jwatson@drgreenway.org

Mary Shafer  
info@thewordforge.com

Linda Davis  
lindadavisfamilytree@gmail.com

Donna Sooley  
djssooley@optonline.net

Kelleen Gebler  
kelleengebler@gmail.com

Corinne Mondschein  
corky89@ptd.net

Charles Adonizio  
caatlas@aol.com

Scott Mondschein  
mooney11@ptd.net

Amanda Gillum  
gillumam@verizon.net

Deborah Cusma  
d.cusma@verizon.net

Charles McBride  
cmcbride@dancing-horse.com

Neal Solomon  
nsolomon@pralaw.com

Ruth Nicolich  
ruthnicolich@hotmail.com

Marcia Tucker  
mt08530@gmail.com

Laura Pritchard  
laura@pritcharddesign.com

Jennifer Burrini  
jenburrini@gmail.com

Tullis Onstott  
tullis@princeton.edu

Joanne Marter  
anniemarter@gmail.com

Diana Haywood  
dhaywood@att.net

Attilio Grasso  
a.grasso.ferc@gmail.com

Kimberly Nagy  
knagywrr@gmail.com

Jeanne Faber  
jdf3k@comcast.net

David Oleksa  
info@durhamhistoricalsociety.org

Kenneth Smith  
kssmith1968@gmail.com

Diane Conner  
royalarrival@hotmail.com

Raymond Metzger  
rametzjr@gmail.com

Sari DeCesare  
sari.decesare@nbcuni.com

Pat Covalesky  
pcovalesky.ferc@gmail.com

Jill Sperling  
jvsperling@msn.com

Elizabeth Martin  
lizmartbiz@hotmail.com

Stephen Chuckra  
stevec09705@yahoo.com

Kenneth Klemow  
Klemowkenneth.klemow@wilkes.edu

Edward Kelly  
edwardkelly27@comcast.net

Karin Peklak  
njqh2ride@yahoo.com

Jennifer Hurley  
Jennhurley@comcast.net

Julie Doerr  
julie\_doerr\_824@comcast.net

Timothy Peck  
pectim@gmail.com

Tim Hartman  
timhartman36@comcast.net

Dawn Crivelli  
fscrivelli@comcast.net

Linda Kneller  
ldkneller@gmail.com

Robert Robinson  
habanero@mac.com

Bruce Yellin  
b\_yellin@msn.com

Jodi Mckinney  
penneast@delawaretpnj.org

Carol Patterson  
cpatterson555@yahoo.com

William Buskirk  
wbuzkirk@hotmail.com

Michele Scricco  
Sisscric@aol.com

Illia Barger  
illiabargerpl@gmail.com

Rodney Belgrave  
rlbelgrave@yahoo.com

Michael Bednar  
jkbednar@ptd.net

Louise Hartman  
louise.hartman@comcast.net

Lori Gaul  
rollingpinpastries@hotmail.com

Margaret Kelly  
magkelly@comcast.net

Cathryn Zega  
catherinezegaferc@gmail.com

Laura Petruzzo  
pet23a@gmail.com

Duggan Millard  
dugganmillardpl@gmail.com

Lynda Manna  
heyponylady@gmail.com

Judi Monacelli  
freewheel62@ptd.net

Henry Nykamp  
nykamph@gmail.com

John Crombie  
johnmackcrombie@gmail.com

Aryn Gabai  
aryngabai@gmail.com

Colleen Tracey  
ctracey13@verizon.net

Charles Weber  
cjweber@ptd.net

Catherine Weber  
cgw1tutor@gmail.com

Tricia Hurley  
triciadhurley@gmail.com

Gayle Murray  
gmurray@embarqmail.com

Joseph Manna  
mannasautoelectric@embarqmail.com

Kevin Kelly  
kpkellymac9@gmail.com

Valarie Bachman  
vcuth621@yahoo.com

Richard Rushatz  
kshatz@ptd.net

Erin Cronce  
fcronce@aol.com

Tara Faigle  
taranehf@comcast.net

Glen Warner  
gwarner.ferc@gmail.com

Sharon Goins  
sgoins.ferc@gmail.com

William Zuchowski  
wzuchowski.ferc@gmail.com

Steve Kelleher  
Kelleherclan@comcast.net

James Andrews  
andrews.james.t@gmail.com

Stephanie Marlin  
jemarlin@msn.com

Richard Cox  
rcox@bfs.org

Kathy McGovern  
kathykay@ptd.net

Sandra Prytherch  
sandra.prytherch@gmail.com

Norm Coryell  
normcoryell@gmail.com

Wendy Mager  
wmager@smithstratton.com

Dennis Arcamone  
dlds1733@aol.com

Ralph Bowlby  
rbowlby.ferc@gmail.com

Leonard Goins  
lgoins.ferc@gmail.com

Alexander Keenan  
ajkeenan14@gmail.com

Peter Lishnak  
plishnak@gmail.com



Gary Warner  
garywarner.ferc@gmail.com

Bruce & Sharon Rogora  
brogora@gmail.com

Lucia Huebner  
grassfedbeef@gmail.com

George Ecklemann  
eckelmannbros@aol.com

Natasha Jiovino  
vinjay4@hotmail.com

Chris Keep  
chriskkeepFERC@gmail.com

Karl Nielsen  
knielsen409@gmail.com

Nicole Antoun  
necdiva@gmail.com

Jessica Pierman  
jesspierman@gmail.com

Shannon Monahan  
monahan\_shannon@hotmail.com

Taylor Ravenna  
byzyntia@gmail.com

Jeff Tittel  
Jeff.tittel@sierraclub.org

Laurie Cleveland  
lbcleveland@verizon.net

John Bradley  
jjbiii62@gmail.com

Jennifer Coffey  
jcoffey@anjec.org

Carla Kelly Mackey  
squishyacres59@embarqmail.com

Casey Muench  
casey.muench@yahoo.com

Joseph Martosella  
jmartosella@wispearl.com

Aaron Kleinbaum  
akleinbaum@easternenvironmental.org

Ruth Buskirk  
ruth.buskirk@yahoo.com

Jed Chingery  
Outdoorinnovationsllc@gmail.com

James Borders  
DTOpenSpace@gmail.com

Mark Winsor  
mwinsor333@gmail.com

Dionne Polk  
dionne27law@comcast.net

Nancy Washo  
washofalcon340@gmail.com

Joan McGee  
jkmgiraffe@gmail.com

Timothy Daley  
tdaley@ptd.net

Glenn Cleveland  
njcleveland@verizon.net

John Lamson  
jplamson@embarqmail.com

Teresa Ecker  
tecker1@msn.com

Katherine Cleveland  
katherinecleveland4@gmail.com

Betty Kenny  
tomkenny@embarqmail.com

Katharine Kinsolving  
ktk@baukin.com

Catherine Kavanaugh  
cathy.kavanaugh@verizon.net

Deborah Gainer  
debgainer@gmail.com

Robert Godown  
Rgodownjr@yahoo.com

Marsha Zellner  
mzellner@verizon.net

Leonard Hunt  
ljayhunt@comcast.net

Doug O'Malley  
domalley@environmentnewjersey.org

Roger Thorpe  
rd.thorpe@verizon.net

Susan Gallagher  
cceec@ptd.net

Margaret Lee  
marg22@gmail.com

Sarina Berlow  
sarinaberlow@gmail.com

Margaret Sleeper  
sleeper@vet.upenn.edu

William Hawley  
bill@billhawley.net

Micahel Heffler  
mjheffler52@gmail.com

Jim Clarkeson  
jclarkeson@me.com

Elaine Nigam  
elaine@nigamfamily.org

Lou Umscheid  
jrjy.angl@verizon.net

Nathaniel Bryant  
m.bryant@rcn.com

Cindy Kuenstner  
slick9k@gmail.com

Leah Mormando  
lmormando@aol.com

Bryan Adams  
bsa@alliancearchitecture.biz

Jocellyn Hayes  
Jocellyna@msn.com

Olivia Barone  
97olivia.rose@gmail.com

Eileen Coryell  
eileencoryell@hotmail.com

Sandra Simpson  
sandl820@hotmail.com

David Sanker  
sankerde@gmail.com

George Tavernite  
Tavi345@yahoo.com

Brooke Kohlhofer  
gallopon81@aol.com

Henry Chou  
hchou@hillwallack.com

Maxwell Seeland  
maxwell.seeland@gmail.com

Linda Cummins  
lindac63@mac.com

John McAdam  
kathyandjohn93@gmail.com

Kathryn & Kyle Kullman  
kkullman.ferc@gmail.com

Brian Claus  
brian\_claus@comcast.net

Christine McCormick  
christinemccormick@earthlink.net

Samuel Conti  
sconti@ptd.net

Joann Morlock  
joannyoga2@yahoo.com

Susan Blubaugh  
blubaughsusana@gmail.com

Cynthia Miller  
cindymil1015@gmail.com

Stephen Hannon  
shannongreystone@gmail.com

Jill Seeland  
jill.seeland@yahoo.com

Zanya Gissler  
zanyasalon@aol.com

Mitchelle Drulis  
mdrulis.ferc@gmail.com

Robert Tomenchok  
Rob@alliedelectronics.com

Meredith Moore  
mcmoore321@yahoo.com

Vincent Mazzei  
vjmazzei@hotmail.com

James Martin  
jamesmmartin60@gmail.com

Thomas Kenney  
tkenney5252@gmail.com

Ted Northrop  
ted\_northrop@verizon.net

Carol Higgins  
sbtaadams@verizon.net

John Liskowacki  
johnliskocki@gmail.com

Beverly Parker  
bevpar2@hotmail.com

Kathleen Holdren  
beatlefan@ptd.net

Lisa Sandler  
lmsandler@verizon.net

Jessica Perry  
jessperry330@gmail.com

Patricia Iyer  
patriciaiyer@gmail.com

Rose Yacovone  
gbr335@yahoo.com

Catherine Riggs  
katie.c.riggs@gmail.com

Justine Brancato  
justinebrancato@gmail.com

Benjamin Hatke  
b.r.hatke@gmail.com

Chris Martin  
cmartin1972@icloud.com

Matthew Moran  
mattmoran1221@gmail.com

Lucia Smith  
luciaawsmith@gmail.com

Julia VanOllefen  
j.vanollefen@gmail.com

Phillip Lubitz  
plubitz@verizon.net

Michael Jacewicz  
jacewicz@wmconnect.com

Jared Flesher  
jtflesher@gmail.com

Barbara Fishman  
thebearandthebooks@verizon.net

Nancy Hanhurst  
nppff100@gmail.com

Erika Krzton-Presson  
erika.kp@gmail.com

Jody Ovsiew  
jody.ovsiew@siemens.com

Kathleen DiGrazia  
Kadigrazia@gmail.com

Jacqueline Majorossy  
jemkgza@gmail.com

Carl Miller  
cjm151@embarqmail.com

Tracey Berkowitz  
ZincRocksTRNP@yahoo.com

Celeste Martin  
onecentral@mac.com

Gina Nobile-Liskowacki  
ginanobile@yahoo.com

Brian Villarreal  
bvillarreal3@gmail.com

Jennifer Johnson  
Jhughes86@msn.com

Kenneth Guilmartin  
kguilmartin@musictogether.com

David Hewitt  
hewittdavid123@gmail.com

MaryAnn Nedoszytko  
maryann8428@yahoo.com

Randy Lerch  
thelerches@ptd.net

Anastasia Perris  
anastasiaperris@gmail.com

Martha Gall  
jam210gall@aol.com

Sally Gullette  
salgull@verizon.net

Jean Hewens  
jeanhewens@gmail.com

Adam Frankelli  
afran013@yahoo.com

Craig Norgard  
norgard4@gmail.com

Rebecca Stoneback  
thesugarbee@gmail.com

Eric Indridson  
pplnth@aol.com

Anneke Walsh  
annekehockey96@gmail.com

Nancy Tate  
nopipeline70@gmail.com

Melissa Cookman  
missi40@aol.com

John Derrico  
jackd7@comcast.net

Kathleen Weber  
organicallyk@hotmail.com

Drew Regan  
regan1@ptd.net

Lauren Thoma  
laurenparkthoma@gmail.com

Andrew Fikse  
andrew.fikse@gmail.com

Kate Mulligan  
katerhmulligan@yahoo.com

Karen Nuckols  
robandkaren@embarqmail.com

Diane Ward  
pekin\_2@yahoo.com

Karen Rankin-Baransky  
krbsky@verizon.net

Michael Seiff  
emesco@ptd.net

Elaine Skeuse  
ebinsk@aol.com

Jay DeDomenico  
jaydedomenico@gmail.com

Kelso Brophy  
k15.brophy@gmail.com

Joseph Ciardiello  
joe@joeciardiello.com

Matthew Majorossy  
mattmajferc@gmail.com

Fairfax Hutter  
savoirfairfax@earthlink.net

Jeannine Calhoun  
jeanninecalhoun@yahoo.com

Linda Christman  
lachris@ptd.net

Maryanne Moody  
magm1961@me.com

Barbara Berardo  
Berardo5@gmail.com

Carol Macrini  
carol@carolmacrini.com

Bruce Harrison  
hollerboyz@gmail.com

Rebecca Kutys  
rebeccakutys@gmail.com

Thomas Church  
rawmagic@msn.com

Michael PISAURO  
mpisauro@thewatershed.org

Sharon Willey  
swilley@alumni.lafayette.edu

Tracey Hirner  
gr8day4game@gmail.com

Thomas Niederer  
Tniederer@comcast.net

Isidore Mineo  
Joel@hfjlaw.com

Danielle Monaco  
dmonaco@gmail.com

Maureen Romano  
mroma.321@verizon.net

Osmond Hatke  
oz.hatke@gmail.com

Anne Marie Garti  
annemarie@garti.net

Sheila Gallagher  
gallag.her@live.com

Robert Swiatek  
jrjcr@rcn.com

Roz Dunn  
roz.dunn@yahoo.com

Alice Baker  
baker@pennfuture.org

Vincent McGearry  
notvhs@aol.com

Deborah Bolduc  
deborah\_bolduc@yahoo.com

Leslie Bruhl  
tbruhl@embarqmail.com

Janet Mowder  
jandalefarm50@yahoo.com

Sean Pfeiffer  
seanwpfeiffer@yahoo.com

William Cooper  
coopw@verizon.net

Ryan Ross  
ryross@hotmail.com

Sally Buchanan  
sjsb160@gmail.com

Theresa Tistan  
TishTistan@gmail.com

Megan Waits  
Mwaits@me.com

Gregory Nelson  
Blacktoprx@mail.com

Larry McConkey  
larrymconkey@gmail.com

John Johnson  
jjbiotech@gmail.com

John DiMaio  
asmdimaio@yahoo.com

Sarah Arcamone  
sba71718@aol.com

Augie Matteo  
lamatteo@comcast.net

Brian Ray  
Ray.brian@yahoo.com

Neil Seftor  
nseftor@gmail.com

Carolyn Viola  
cvamuse@yahoo.com

B. Rogolsky  
brwoof@comcast.net

Dennis Bertland  
dnbertland@verizon.net

Debra Nanni  
dsnanni@gmail.com

George Ollwerther  
golo84@embarqmail.com

Jennifer Schaefer  
jennifergschaefer@gmail.com

Edward Panasowich  
edpann@comcast.net

Jason Strauss  
Jaybird1753@yahoo.com

Virginia Banks  
Gregbanks402@gmail.com

Joseph Maurer  
jsmaurer@comcast.net

Harry Salavantis  
hsalavanti@aol.com

Barbara Cochrane  
bcochrane@hotmail.com

Bedrettin Angun  
hakan0605@gmail.com

Charles Taylor  
cstaylor@syneon.com

Michelle Garay  
garaymi@embarqmail.com

Martin Beekman  
mhbkman@aol.com

Louis Arcamone  
arcamonelou@gmail.com

James Duffy  
jduffy@bbmiller.com

Belinda Blazic  
Belinda5183@gmail.com

Dan McDermott  
dnator79@yahoo.com

Lynn Hulme  
lhulme66@gmail.com

Tracy Carluccio  
tracy@delawareriverkeeper.org

Sandra McNicol  
smcnicol@embarqmail.com

Donna Roppelt  
droppelt49@gmail.com

Carol Parenzan  
midsusriver@gmail.com

Wendy Goetz  
wendieswords@yahoo.com

Jane Borbe  
janeborbe@aol.com



Robert Mackie  
tripleddubbel@yahoo.com

Penny Evans  
rp.evans@rcn.com

Mark Kennedy  
m-bjkennedy@comcast.net

Stacy Blake  
stacy3120@gmail.com

Scott Butler  
butlers@coned.com

Aaron Willey  
awilley1@gmail.com

Alfonso Rodriguez  
bigcacique@hotmail.com

Barbara Elezaby  
barb-e@earthlink.net

Michel Lemmerling  
michlem@comcast.net

Dennis Hedrick  
hedrick@ptd.net

Susan Wydick  
swydick@comcast.net

Janice Metz  
jansnoop1@aol.com

David Funk  
dfunk123@verizon.net

Matthew Errico  
matthew.errico@gmail.com

Damon Aherne  
damon@epix.net

D Slatkin  
policy@jbbri.com

Diane Gottardi  
dgottardi@verizon.net

Joanne Kilgour  
joanne.kilgour@sierraclub.org

Wendy Niederer  
wniederer@comcast.net

Priscilla deLeon  
pmdeleon@aol.com

David Gemmill  
gem707@aol.com

Gayani Fernando  
gayani.fernando@gmail.com

Alison Wehringer  
awehringer@gmail.com

Mary Rodriguez  
mercgo74@aol.com

Jefferson Barnes  
jeff@barnesyardbooks.com

Gabrielle Carbone  
gabcarbone@me.com

Marguerite Quinn  
Mquinn@pahousegop.com

Terry Ward  
thewoodscreature@yahoo.com

Michele Byers  
michele.byers@gmail.com

Nancy Bond  
nancygbond@comcast.net

Paul Hoppel  
PapPaul55@GMail.Com

Adrienne Panuski  
purpleabe@hotmail.com

Estelle Tsantes  
royalarrival5@gmail.com

Elizabeth Johnson  
eajohnson@verizon.net

Valerie Vanderborght  
val.vanderborght@gmail.com

Judy Fisher  
jraufisher@yahoo.com

Mary Galioto  
marygalioto@mac.com

Jim Waltman  
jwaltman@thewatershed.org

William Gillum  
wgillum@verizon.net

John Marko  
yoitsmarko@gmail.com

Samantha Siwulec  
dbp.5683@gmail.com

Melissa Doan  
melissacenkerconsulting@gmail.com

Karen Crowell  
kcrowell44@gmail.com

Dania Parkinson  
dsparkinson1@gmail.com

Daria Karas  
dkaras@vdibianca.com

Jillian Hessinger  
jkhess@ptd.net

Mark Blaire  
jtmarkowski572@yahoo.com

Art Suckewer  
asuckewer@knite.com

Jennifer Jannone  
jennjann@embarqmail.com

M Gaffney  
Riverhaus@yahoo.com

Barbara Sherwood  
djs13x@gmail.com

John Martin  
dcfan143@msn.com

Diane Walker-Torkelson  
dianewt123@gmail.com

JoAnn Schaible  
Jschaible3@yahoo.com

Bonnie Phillips  
bgj1630@verizon.net

Marguerite Gargiulo  
Margueritevg@aol.com

Pegi Zajac  
pegizajac@comcast.net

David Mayer  
Mayerssport@yahoo.com

Amanda Mayer  
amandasue11@yahoo.com

Mary Wagner  
marywagner91@gmail.com

Richard Toth  
figment75@embarqmail.com

Robert Romano  
loghome520@verizon.net

Marianne Nelson  
mare1000@aol.com

Vincent Nichnadowicz  
vfn7@hotmail.com

Margaret Huffman  
huffmanart@verizon.net

Carol Buschmann  
fridocarol@hotmail.com

Justin Grgurich  
justin.grgurich@gmail.com

Mark Zakutansky  
mzakutan@gmail.com

Adriana Valente  
adri\_cru@yahoo.com

Donald Miles  
donmiles@rcn.com

Timothy Stoudt  
tsstoudt@verizon.net

Paul Neiber  
Prneiber@hotmail.com

Andrea Cooney  
Andrea512bc@gmail.com

Sandeep Adusumally  
sp5436@gmail.com

Millie Rocktoff  
Dred07@aol.com

Timothy Cahalin  
officialllc@gmail.com

Sophie Guzikowski  
sofia.guzikowski@gmail.com

Alison Mitchell  
alisonemilymitchellferc@gmail.com

Michael Ward  
whereswardo@yahoo.com

Diego Arbelaez  
diego@dnaweb.co

Elizabeth Molter  
molterfam@ptd.net

Laurel Shire  
lshire914@gmail.com

Jean-Paul Russell  
jp@durhampress.com

Kevin Kuchinski  
kuchkdk@aol.com

Frank Wagner  
litlnan@frontier.com

Maths Graham  
mathssw@msn.com

Kathleen Klink  
keklink818@gmail.com

David Thomas  
msthenas5@msn.com

Wendy Badman  
photobywendy@gmail.com

Yelizaveta Dobruskin  
lisa.dobruskin@gmail.com

Steven Pertes  
acuman41@aol.com

Allison Larthey  
allisonlarthey@gmail.com

Corynne Bailey  
b14rynney@aol.com

John McVeigh  
johnmcveigh123@yahoo.com

Alexandra Arbelaez  
alexandq@yahoo.com

Gregg Miller  
nikkigifts@mail.com

Freida Brown  
freejack6466@gmail.com

Lauren Fried  
lfried@ets.org

Thomas Gunia  
tomgcm1@gmail.com

Ronald Martineau  
tempusf2@gmail.com

Lee Clarke  
elkcereal@gmail.com

Cathy Woods  
woods5@comcast.net

Tiffany Robinson  
Rainsis@aol.com

Karen Nyby  
k\_nyby@yahoo.com

William Wesp  
wespj@aol.com

Kimberly Slous  
kdavies007@gmail.com

E Hauss  
deer2house@yahoo.com

Anna Maria Caldaro  
actnow4peace@gmail.com

Norma and Clark Snitker  
normapipeline@gmail.com

Scott Freeman  
s.freeman@cbhearthside.com

Cynthia Cumming  
freemancummings@yahoo.com

Keith Curley  
pipelines@tu.org

Abigail Galardi  
abbychase03@yahoo.com

Donald Yeske  
loriyeske@gmail.com

Edward Potosnak  
edpiii@gmail.com

Carmella Howey  
carmieh@rcn.com

April Kirkpatrick  
aprilkirkpatrick@gmail.com

Roman Rozenblat  
romanr66@gmail.com

Martha Christine  
mrthchristine@gmail.com

Nevin Smith  
ourbarnsale@rcn.com

Thomas Rowe  
rowepipeline@gmail.com

Sarah Snider  
sarahpipeline@gmail.com

Amanda Mayer  
mayerpipeline@gmail.com

Atom Kallen  
atomkallen@gmail.com

Carter Lansing  
Carter.Lansing@rcn.com

Lester Smith  
clairemoorefarm@verizon.net

Helen Frey  
hafrey@embarqmail.com

Al Marcello  
pipelinemarcello@gmail.com

Chad Case  
case1019@ptd.net

Conrad Pecile  
jcpecile@aol.com

Jay Hunter  
Gunnyhunter@me.com

Larry Shoemaker  
larry\_shoemaker@yahoo.com

Debbie Schulkin  
debschulkin33@gmail.com

Laurie Kathiari  
lkathiari@gmail.com

Nicole Voigt  
nicole@legalcounselnj.com

Laura Wilno  
ljera99674@wildcats.wilmu.edu

Rosemarie Jeavettorea  
rjj357@aol.com

Marc Phillips  
marcphillips777@gmail.com

Eugene Pevzner  
eugenepevzner@gmail.com

Davina Lapczynski  
outonthetown1046@aol.com

Steven Richardson  
rsrichardson@wileyrein.com

Laurie Hieb  
lbhieb@gmail.com

Paul Wohltman  
paul.wohltman@gmail.com

Debora Murgatroyd  
dmurgatroyd@murgatroydlaw.com

Chris Baczewski  
landcbaczewski@gmail.com

Jean Spector  
Jeanspector62@gmail.com

Daniela Botterbusch  
dasiba@gmail.com

James Cole  
james@expandtheroom.com

Dennis Wilno  
librarian1975@gmail.com

Brian Rydstrom  
brianryd@yahoo.com

Katharine Martin  
squawkstoo@earthlink.net

Leanna Rolappe  
liebbie@gmail.com

David Levine  
dlevine@asbcouncil.org

Carolyn McCormick  
Carolyn.McCormick@williams.com

Donald Hieb  
Donal dhieb@gmail.com

Mark Pfenning  
mark@pfenningzone.com

Dianna Muzaurieta  
lunamadre13@gmail.com

David Sowden  
dsowden57@gmail.com

Donna Wohltman  
donna.wohltman@gmail.com

Linda Pfenning  
lparis@embarqmail.com

Sandra Matuska  
sjdd2112@embarqmail.com

Jeff Spota  
jeffspota@macelroy.com

Diane Schenck  
dhenneschenck@gmail.com

Matt Renner  
matt@worldbusiness.org

Michael Caulfield  
Corky012428@yahoo.com

Dalia Hoffman  
ailad40@gmail.com

Joyce McGowan  
mcgowanjoyce519@yahoo.com

Paul Steinbeiser  
paulsteinbeiserferc@gmail.com

Jackie Freedman  
atenvcom@gmail.com

Lisa Sowden  
mossow@embarqmail.com

Karen Pilone  
kpilone@yahoo.com

Joseph Calise  
jocal12@embarqmail.com

Jacquelyn Freedman  
freedman24601@gmail.com

Mark Fennelly  
mfennelly@embarqmail.com

Jill Kastenschmidt  
erinjack21@gmail.com

Catherine Priester  
catecelt@gmail.com

Christine Murray  
murray532@embarqmail.com

Fancis Hoffman  
frankhoffman3rd@yahoo.com

Joseph Picardo  
giants561121@aol.com

Abigail Fisher  
abigailfisherferc@gmail.com

Kristin Sowden  
ksowden@gmail.com

Laura Mirsky  
lamirsky@gmail.com

Joseph Caparoso  
jscaparoso@gmail.com

Stephen Croce  
stephen.l.croce@gmail.com

James Meade  
jmmug@msn.com

Susan Begent  
sdbegent@gmail.com

Lucy Freck  
Valentin@ptd.net

Gay Ely  
grely1@verizon.net

Denis Goldman  
Denis.Goldman@gmail.com

Karen Mitchell  
karengmitchell@gmail.com

Deborah Vari  
Debvari@gmail.com

Billie Sola Fries  
billiesolafries@gmail.com

Lynn Trinchera  
lntemail@comcast.net

Jacqueline Romero  
romerojac@yahoo.com

Mary Laskow  
mary.laskow@gmail.com

Theodore Johnson  
trihard33@mac.com

Catherine Urbanski  
caturbanski@comcast.net

Ronald Schechter  
exttraspecial@gmail.com

Julie Howard  
Juliday@yahoo.com

Daniel Freedman  
cartoondan@yahoo.com

Mary Borge  
maborge@yahoo.com

Mia Wong  
mwong98@icloud.com

Jay Douglas  
amwjsd@gmail.com

Lisa Meehan  
lisaverse@gmail.com

Sue Elkind  
snyoga@mac.com

Christopher Plummer  
cplummer@crusoe.net

Jennifer Jakubowski  
jenjak@hotmail.com

Abigail Boehm  
abigailboehm@me.com



Joshua Motto  
jmotto28@yahoo.com

Margaret Mitchell  
pmitch9020@gmail.com

Judy Detrano  
judybrklyn@gmail.com

Michael Schulze  
michael.schulze@comcast.net

Christopher Sloboda  
Chsloboda@yahoo.com

Erin McManus-Keyes  
erin@hunterdonbucksrealty.com

Carol Hoffman  
hoffy1023@gmail.com

Bert Rinkel  
apaacu@aol.com

Glenn Swann  
caine2323@yahoo.com

Kathleen Shanahan  
kathleen.o.shanahan@gmail.com

Robert Wolfertz  
maritimus@comcast.net

Sonia Helgesson  
skhelgesson@yahoo.com

Carolyn Elefant  
carolyn@carolynelefant.com

Carrie Sargeant  
carrie.sargeant@gmail.com

Gail Carabine  
gailcarabine@gmail.com

Anne Stewart  
astewaraj@gmail.com

Gerald Mitchell  
gmitch7778@yahoo.com

Paul Fries  
paulfries@hotmail.com

Anne Kursinski  
marketstreetinc@yahoo.com

Tina Salmastrelli  
tsalmastre@aol.com

Jane Sost  
jnsost@hotmail.com

Bretta Jacquemin  
Bretta0317@outlook.com

Robert Smith  
robertmsmith.caraasmith@gmail.com

Donna Tapellini  
dtap0404@aol.com

Carrie Goldberg Styer  
cmgoldberg@yahoo.com

Arthur Rack  
alrack50@gmail.com

Jean Falvo  
billjeanfalvo@comcast.net

Frances Bardusco  
franby@aol.com

Michael Serfes  
mike.serfes@gmail.com

Margaret Martonosi  
mmartonosi@gmail.com

Stephanie Rankin  
zstephanie9@gmail.com

Karrin Pearson  
karrin.pearson@gmail.com

Suzanne Cammerano  
scammerano@gmail.com

Taylor Iodice  
tayloreiodice@gmail.com

Patty Hoffmann  
stoney\_hoff@hotmail.com

Jerry Steward  
signandprint.co@rcn.com

Andrew Oleson  
aoleson@gmail.com

Lauren McManus  
juicenart@gmail.com

Marie Leithauser  
marietle1@icloud.com

Roberta Kyle  
pinkpackrat@gmail.com

Elycia Lerman  
265nmainst@gmail.com

Robin Cronce  
robincronce35@gmail.com

Gaetan Mangano  
gaetan.mangano@yahoo.com

Joe Guest  
Joecguest@gmail.com

Micah Weeks  
Micahweeks@rocketmail.com

Mary Jane Legere  
legere2@comcast.net

William Dougherty  
wdougherty2000@gmail.com

Agnes Marsala  
agdrums@verizon.net

Rita Romeu  
romeur@comcast.net

Austin Wakefield  
austin.wakefield@gmail.com

Walter Helfrecht  
wh08501@optonline.net

Ursula Connors  
ursulac7@gmail.com

Debra Forman  
debsforman@yahoo.com

Anita Crandall  
amcrandall@gmail.com

Ellen Hecht  
Ellen\_hecht@comcast.net

Janet Nocar  
jnocar@comcast.net

Kelly Kappler  
kellylquinlan@gmail.com

Lawrence Vellensky  
vellensk@yahoo.com

Sue Begent  
sdbegent61@aol.com

Beverly Railsback  
bdrailsback@yahoo.com

Ray Ostrowski  
mveselka1@comcast.net

Salvagore Salvagno  
Salsalvagno@yahoo.com

Stephanie Moss  
anykeyf4@aol.com

Laura Papell  
lauriepapell@yahoo.com

Filomena Hengst  
febrogna@gmail.com

Max Crandall  
slidewell@gmail.com

Lisa Stolzer  
lisa.stolzer@gmail.com

Andrew Armstrong  
typeting@hotmail.com

Douglas McDowell  
mcdowell38@comcast.net

Derrick Kappler  
javaderrick@gmail.com

Mark Howe  
mh3383@hotmail.com

Deborah Galen  
deborahgalen@gmail.com

Jennifer Torpie  
Jentorpie@gmail.com

Joan Millsaps  
millsapsjoan@gmail.com

Lena Smith  
lsmith@fwwatch.org

Alma Quinlan  
almamq27@gmail.com

Daniel Caruso  
Nizasp@optonline.net

David Muha  
dwmuha@ymail.com

Karen Bryant  
keb66@hotmail.com

Noreen O'Donnell  
odsinthewoods@gmail.com

Lisa McLaughlin  
dancingcat239@gmail.com

Karen McDermott  
kgm1700@yahoo.com

Janet Lavenger  
lavenger@verizon.net

Matthew Schick  
mlschick@verizon.net

Caitlin Johnson  
johnson.caitlin.h@gmail.com

Amleto Pucci  
amletopucci@ptd.net

Delaney McDermott  
delaneymcde@gmail.com

Kevin Kline  
kkline@earthlink.net

Mandy Reilly  
itsmandyreilly@gmail.com

Breena Holland  
brh205@lehigh.edu

Dana Christensen  
Dana@brightst.com

John Crum  
johncrum@mac.com

Aurelio Calles  
aureliocalles@yahoo.com

Matt Schick  
Mattschick79@gmail.com

Margaret Swiantecke  
pegswanteck@verizon.net

Howard Lopshire  
hlopshire@carrollengineering.com

James Gilligan  
gilligan53@gmail.com

Donna Haynes-Johnson  
djohnson18972@aol.com

Clark Kline  
kliney.c@gmail.com

Edith Dolinski  
jdolinski@earthlink.net

Bob Corey  
bbcinfo@earthlink.net

Richard Lewis  
ubegreenman@gmail.com

Anshuni Shah  
anshuni.shah@gmail.com

Elizabeth Peer  
elizmagill@gmail.com

Piyush Satapathy  
piyush.satapathy@gmail.com

Sally Gellert  
SJGUU@aol.com

Kay Whittle  
whittleke23@gmail.com

Karin Fleming  
karin8526@gmail.com

Irene Kane  
irenekkane@aol.com

Claudia Weber  
cmw537@gmail.com

Mary Beth Warga  
bethwarga@hotmail.com

Patricia Madara  
jpjsdt1@gmail.com

Christian Exoo  
christianmexoo@gmail.com

Jodi Markowski  
jodimarkowski@yahoo.com

M. Harris  
wiscohar3@comcast.net

Adele Bove  
rfbove@verizon.net

Roger Kane  
rogerksdog@aol.com

Mary Ann Kusner  
marykusner@aol.com

Richard Skilton  
rbskilton@gmail.com

Mary Snee  
snee5@aol.com

Robert Haines  
bob.haines67@gmail.com

Karen Wertzberger  
Kw100@comcast.net

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: s/ Jason W. Rockwell  
Jason W. Rockwell  
Assistant Attorney General  
R.J. Hughes Justice Complex  
P.O. Box 093  
Trenton, NJ 08625  
*Counsel for New Jersey Department of  
Environmental Protection*

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