

**Macmillan, Arlene**

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**From:** amacmillan@state.pa.us  
**Sent:** Thursday, February 25, 2010 1:04 PM  
**To:** Bingaman, Robert  
**Cc:** Hoffman, Michael; Keezel, Wendy; Macmillan, Arlene; Perry, June; Yohe, Wendy  
**Subject:** Rep Matthew Baker for Larry Herman of Cuz Excavating APPLICATION

**Importance:** High

Rep Matthew Baker for Larry Herman of Cuz Excavating APPLICATION

ARLENE MACMILLAN

CORRESPONDENCE TRACK NO: 950

DATE CORRESPONDENCE RECEIVED: 2/25/2010

CALLER INFORMATION:  
REPRESENTATIVE MATTHEW BAKER  
PHONE: 717-772-5371

SENATOR / REPRESENTATIVE NAME:  
BAKER, MATTHEW E - Rep.

COMPANY NAME:  
TRANSPORTATION

CONSTITUENT INFORMATION:  
LARRY HERMAN  
CUZ EXCAVATING  
239 BUCK RUN LANE  
CANTON, PA 17724  
(H)PHONE: 570-971-0023

CORRESPONDECE DETAIL:  
2/25/2010 RECEIVED FROM REP MATTHEW BAKER. PLEASE PROCESS AND EXPEDITE APPLICATION FOR MOTOR COMMON CARRIER OF PROPERTY FOR CUZ EXCAVATING. HAND CARRYING APPLICATION, EXEMPTION FROM CARGO INSURANCE, PARTNERSHIP PAPERS, ATTORNEY'S CK #8911 FOR \$100. TO ROB BINGAMAN, BUREAU OF T&S TODAY.

**Pennsylvania Public Utility Commission  
Bureau of Transportation & Safety  
PO Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-3834**

## Application for Motor Common Carrier of Property

Please complete all parts of the following application. Incomplete applications will be returned. All questions may be directed to the Bureau of Transportation & Safety at (717) 787-3834.

1. **Legal Name of Applicant** (Individual, Partnership or Corporation)

C&Z Excavating

2. **Trade Name** (Attach a copy of fictitious name registration if applicable)

\_\_\_\_\_

3. **Physical Address** (do not use PO Box)

239 Buck Run Lane  
Street Address

Canton PA 17224  
City, State and Zip Code

570-971-0023                      Bradford  
Telephone Number                      County

4. **Mailing Address** (if different from Physical Address)

\_\_\_\_\_

\_\_\_\_\_

RECEIVED  
BUREAU OF  
TRANSPORTATION & SAFETY  
2010 FEB 26 AM 8:45

**RECEIVED**

FEB 26 2010

PA PUBLIC UTILITY COMMISSION  
- 1 SECRETARY'S BUREAU

RECEIVED  
PA PUC  
OFFICE - LEGIS. AFF.  
2010 FEB 25 PM 12:00

5. **Attorney** (if applicable)

\_\_\_\_\_  
Attorney's Name & Telephone Number for this Filing

\_\_\_\_\_  
Attorney's Address

6. Does applicant currently hold PA PUC authority? Yes  No (circle one)

If yes, enter current docket number A-00 \_\_\_\_\_

7. What type of commodity do you intend to transport? STONE

8. **Form of Organization** (Check one that applies to this application)

**Individual**

**Partnership**

Attach a copy of a Partnership Agreement and list the names and addresses of ALL partners.

**Corporation**

Attach a copy of the Certificate of Incorporation, Certificate of Authority, or the foreign corporation registration. Include a list of all corporate officers/titles and distribution of shares.

**LLC or LLP**

Attach a copy of the Certificate of Incorporation, Certificate of Authority, or foreign corporation registration. Include a list of all members (even if there is only one member) and title of each member.

9. **Attachment Checklist**

**For Corporations:**

Copy of Certificate of Incorporation, Certificate of Authority, or the foreign corporation registration.

List of all corporate officers/titles, names of shareholders and distribution of shares.

**For LLPs and LLCs Only:**

Copy of Certificate of Incorporation, Certificate of Authority, or foreign corporation registration.

List of all members (even if there is only one member) and title of each member.

**For Partnerships Only:**

Copy of Partnership Agreement.

List the names and addresses of ALL partners.

**For ALL Applicants:**

- Fictitious Trade Name Registration (if applicable).
- Copy of Current Safety Rating (if available).
- Proof of Insurance (See item 5 on instruction sheet).
- Certified check, money order or attorney's check.

**10. Certification**

Applicant certifies that it is not now engaged in any intrastate transportation of property for compensation between points in Pennsylvania and will not engage in said transportation unless and until authorization is received from the Pennsylvania Public Utility Commission.

Applicant further certifies that it understands the requirements of the Pennsylvania Public Utility Commission, especially as they relate to safety and insurance and that it may be subject to civil penalties, suspension or cancellation of the Certificate for failure to comply with Commission requirements.

Applicant further certifies that it understands that it is subject to an annual assessment based upon its reported gross Pennsylvania intrastate revenues; said assessment to help defray expenses incurred in regulating Motor Common Carriers of Property; and acknowledges that failure to report revenue and pay its annual assessment may result in civil penalties, suspension or cancellation of the Certificate.

**You must sign the following Verification of Application.**

**Verification of Application**

The verification of the application must be completed by the applicant appearing on Line 1 of the application by the named individual, all partners (if a partnership) or by the President or Secretary (if a corporation).

I/we hereby state that the statements made in this application is/are true and correct to the best of my/our knowledge and belief.

The undersigned understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 Relating to Unsworn Falsification to Authorities.

\_\_\_\_\_

(Print Name)

\_\_\_\_\_

(Signature)

(Date)

## PARTNERSHIP AGREEMENT

**AGREEMENT**, made on this 10<sup>th</sup> day of September, 2007, by and between **DAVID WARD** of R.R. #2, Box 4074, Canton, Bradford County, Pennsylvania, 17724, and **LARRY HERMAN, JR.** of 1941 Steam Valley Road, Trout Run, Lycoming County, Pennsylvania 17771 and **Trenton Quay Ward** of R.R. #2, Box 4074, Canton, Bradford County, Pennsylvania 17724 and **Justin Walker** of R.R. #2, Box 4074, Canton, Bradford County, Pennsylvania 17724, referred to as partners.

### RECITALS

1. Partners desire to join together for the pursuit of common business goals.
2. Partners have considered various forms of joint business enterprises for their business activities.
3. Partners desire to enter into a partnership agreement as the most advantageous business form for their mutual purposes.

**NOW THEREFORE**, In consideration of the mutual promises contained in this agreement, and intending to be legally bound, the partners agree as follows:

### ARTICLE ONE NAME, PURPOSE AND DOMICILE

The name of the partnership shall be **CUZ EXCAVATING**. The partnership shall be conducted for the installation, rebuilding and repair of automotive transmissions and related enterprises. The principal place of business shall be at 54 Springbrook Drive, Canton Borough, Bradford County, Pennsylvania, 17724, unless relocated by the agreement of the partners.

**ARTICLE TWO  
DURATION OF AGREEMENT**

This agreement shall remain in effect until one of the following occurs: 1) the death of one of the partners; 2) 90 days notice of the desire to end the partnership is provided to the other partner; or 3) termination by mutual consent of the parties or by operation of the provisions of this agreement occurs.

**ARTICLE THREE  
CONTRIBUTION**

Each partner shall contribute an equal amount to be used by the partnership to establish its capital position. The value of all assets listed and contributed to this partnership as set forth in Exhibits "A" and "B" shall be agreed upon by the partners. Any additional contribution required of partners shall only be determined and established in accordance with Article Fourteen.

**ARTICLE FOUR  
AUTHORITY**

No partner shall buy any goods or articles or enter into any contract exceeding the value of One Thousand Five Hundred (\$1,500.00) Dollars without the prior consent in writing of the other partner. If any partner exceeds this authority, the other partner shall have the option to take the goods or accept the contract on account of the partnership or to let the goods remain the sole property of the partner who shall have obligated himself.

**ARTICLE FIVE  
SEPARATE DEBTS**

No partner shall enter into any bond, or become surety or cosigner, or provide

security for any person, partnership, or corporation, or knowingly condone anything whereby the partnership property may be attached or taken in execution, without the prior written consent of the other partner.

Each partner shall punctually pay the partner's separate debts and indemnify the other partner and the capital and property of the partnership against the partner's separate debts and all expenses relating to such separate debts.

#### **ARTICLE SIX BOOKS AND RECORDS**

Books of account shall be maintained by the partners, and proper entries made in the books of all sales, purchases, receipts, payments, transactions, and property of the partnership. The books of account and all records of the partnership shall be retained at the principal place of business as specified in Article One. Each partner shall have free access at all times to all books and records maintained relative to the partnership business.

#### **ARTICLE SEVEN ACCOUNTING**

The fiscal year of the partnership shall be from January 1 to December 31 of each year. On the 15th day of April, commencing in 2007, and on the 15th day of April in each succeeding year, a general accounting shall be made and taken by the partners of all sales, purchases, receipts, payments, and transactions of the partnership during the preceding fiscal year, and of all capital property and current liabilities of the partnership. The general accounting shall be written in the partnership account books and signed in each book by each partner immediately after it is completed. After the signature of each

partner is entered, each partner shall keep one of the books and shall be bound by every account, except that if any manifest error is found in an account book by any partner and shown to the others, within two (2) months after the error shall have been noted by all of them, the error shall be rectified.

## **ARTICLE EIGHT DIVISION OF PROFITS AND LOSSES**

Each partner shall be entitled to Twenty-Five Percent (25%) of the net profits of the business, and all losses occurring in the course of the business shall be borne in the same proportion, unless the losses are occasioned by the wilful neglect or default, and not the mere mistake or error, of any partner, in which case the loss so incurred shall be made good by the partner through whose neglect or default the losses shall arise.

## **ARTICLE NINE SALARY**

Each partner shall receive a salary from the partnership as shall be agreed upon from time to time by the partners. The salary of each partner shall be determined by the participation of each partner in the enterprise. Any off-transmission income shall be taken into consideration and deducted from that partner's salary. Any employment entered into by any partner outside the partnership shall be approved by the other partners prior to the partner taking any such position.

## **ARTICLE TEN RETIREMENT**

In the event any partner shall desire to retire from the partnership, the partner shall give 90 days notice in writing to the other partners. The retirement of any partner will work as an immediate dissolution of the partnership.

**ARTICLE ELEVEN  
DEATH OF PARTNER**

In the event of the death of one partner, the legal representative of the deceased partner shall remain as a partner in the firm, except that the exercise of this right on the part of the representative of the deceased partner shall not continue for more than a period of Twelve (12) months, even though under the terms of this agreement a greater period of time is provided before the termination of this agreement. The original rights of the partners shall accrue to their heirs, executors, or assigns.

**ARTICLE TWELVE  
EMPLOYEE MANAGEMENT**

No partner shall hire or dismiss any person in the employment of the partnership without the consent of the other partners, except in cases of gross misconduct by the employee.

**ARTICLE THIRTEEN  
RELEASE OF DEBTS**

No partner shall compound, release, or discharge any debt that shall be due or owing to the partnership, without receiving the full amount of the debt, unless that partner obtains the prior written consent of the other partners to the discharge of the indebtedness.

**ARTICLE FOURTEEN  
ADDITIONAL CONTRIBUTIONS**

The partners shall not have to contribute any additional capital to the partnership than that required under Article Three, except as follows: (1) each partner shall be required to contribute a proportionate share in additional contributions if the fiscal year

closes with an insufficiency in the capital account or profits of the partnership fail to meet current expenses.

#### **ARTICLE FIFTEEN ARBITRATION**

if any differences shall arise between or among the partners as to their rights or liabilities under this agreement, or under any instrument made in furtherance of the partnership business, the difference shall be determined and the instrument shall be settled by arbitrators. Each partner will appoint an arbitrator of his choice. Each partner shall pay the costs of his arbitrator.

#### **ARTICLE SIXTEEN NOTICE**

All notices provided for under this agreement shall be in writing and shall be sufficient if sent by registered mail to the last known address of the party to whom such notice is to be given.

#### **ARTICLE SEVENTEEN ACQUISITION OF PROPERTY**

No partner shall without the consent of the other partners, make, execute, or deliver any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, deed, guarantee, indemnity bond, surety bond, or contract to sell or contract of sale of all or substantially all of the property of the partnership.

No partner without consent shall lease or mortgage any partnership real estate or any interest therein or enter into any contract for any such purpose.

No partner shall pledge or hypothecate or in any manner transfer his interest in the partnership, except to the other parties in this agreement.

**ARTICLE EIGHTEEN  
COVENANT FOR MUTUAL BENEFIT**

The parties hereto covenant and agree that they will execute any further instruments and that they will perform any acts which are or may become necessary to effectuate and to carry on the partnership created by this agreement.

**IN WITNESS WHEREOF**, The parties hereto have here unto set their hands and seals the day and year first above written.

Signed, Sealed and delivered in the Presence of:

Matthew S. Booth

David Ward (SEAL)

Larry Herman, Jr (SEAL)

Trenton Quay Ward (SEAL)

Justin Walker (SEAL)